BOARD OF DIRECTORS CERTIFICATION 2026

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GOEDE / DeBOEST / CROSS

ATTORNEYS AND PROFESSIONAL COUNSEL

BOD CERTIFICATION

Board of Directors Education Certification Presented By:

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DISCLAIMER

- The information in these slides and in this presentation is not legal advice and should not be considered legal advice.
- This presentation represents the personal opinions of the presenters.
- This presentation is offered for informational and educational purposes only.

Who Needs to Take This Course?

OLD LAW

- Take course or sign certificate within 90 days.
- Valid for entire uninterrupted service on Board.

NEW LAW

Condo

- Must take course in the year before being on the board or 90 days after election/appointment and sign certificate.
- Valid for 7 years.
- If elected/appointed before July 1, 2024, must take course by July 1, 2025.

Coop

- Old law applies.

HOA

- Must take course within 90 days of election/appointment. No certificate allowed or required.
- Valid for 4 years.
- If elected/appointed before July 1, 2024, you have 4 years to take the course.

Continuing Education

Condo: 1 hour annually.

Coop: Not required.

HOA: 4 hours annually if less than 2500 lots.
8 hours annually if 2500 or more lots.

Failure to File Certificate with Association

A director who does not timely file the educational certificate is suspended from the board until he or she complies with the requirement. The board may temporarily fill the vacancy during the period of suspension.

Applicable Laws

- Chapter 718 – Condominium Act
- Chapter 719 – Cooperative Act
- Chapter 720 – Homeowners' Association Act
- Chapter 617 – Not for Profit Corporations Act
- Administrative Code – Administrative Rules and Regulations of the State

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BOARD MEMBER ELIGIBILITY

BOARD MEMBER ELIGIBILITY

1

Must be 18 years old or older.

617.0802(1) F.S.

BOARD MEMBER ELIGIBILITY

2

Convicted of a felony, unless ALL rights have been restored for at least 5 years or more

718.112(2)(d)(2) F.S.

719.106(1)(a)(2) F.S.

720.306(9)(b) F.S.

BOARD MEMBER ELIGIBILITY

A CONDO or Co-op owner may NOT be a board member if:

3

- Suspended or removed from the board by the DBPR
- A co-owner is already on the board
- NOTE: These restrictions are not in Chapter 720

718.112(2)(d)(2) F.S.

719.106(1)(a)(2) F.S.

BOARD MEMBER ELIGIBILITY

4

A Board member must be an Owner IF the governing documents require it. The law does not require Board members to be owners.

BOARD MEMBER ELIGIBILITY

An owner may NOT be a board member if:

5

A **CONDO** owner may NOT be a board member if delinquent in paying any assessments.

A **Co-op or HOA** owner may NOT be a board member if delinquent in paying any monetary amounts.

718.112(2)(d)(2) F.S.

719.106(1)(a)(2) F.S.

720.306(9)(b) F.S.

ELECTIONS - THE RULES ON HOW YOUR BOARD IS ELECTED

ELECTION TIMELINE

First notice of election: 61B-23.0021(4) F.A.C. — **60** DAYS

Notice of candidacy deadline 61B-23.0021(5) F.A.C. — **40** DAYS

Candidate information sheets 61B-23.0021(7) F.A.C. — **35** DAYS

Notice of meeting and second notice of election: 61B-23.0021(8)F.A.C. — **14** DAYS

**60 days to challenge*

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BALLOTS

1 When **Second Notice** is mailed, the ballot and any candidate information sheets shall be included.

2 Accompanying the ballot shall be an **outer envelope** which indicates:

1. **Voter's name,**
2. **Unit or unit numbers being voted, and**
3. **Signature space for the voter.**

3 **And a smaller inner envelope** in which the ballot shall be placed

4 Once the ballot is completed, the voter shall place the completed ballot in the inner smaller envelope and seal the envelope.

5 Place the sealed inner envelope in the outer envelope, seal the outer envelope, and complete the requested information.

Florida Administrative Code 61B-23.0021

BOARD MEMBER ELECTION PROCESS

CONDOS and Co-ops must follow a statutory process

1. Members may vote in person, by mail, or email*
2. NO proxies allowed
3. NO nominations from the floor
4. To be valid at least 20% of owners must vote

*Unless the association has adopted on-line electronic voting, the association must establish an e-mail address for receipt of electronically transmitted ballots. The voter may voluntarily choose to vote by e-mail in the election but must give up the secrecy of the ballot. An ALL CAPS disclaimer must inform the voter that they are giving up their anonymity.

HOA BOARD MEMBER ELECTION PROCESS

720.306(9)(a) F.S.

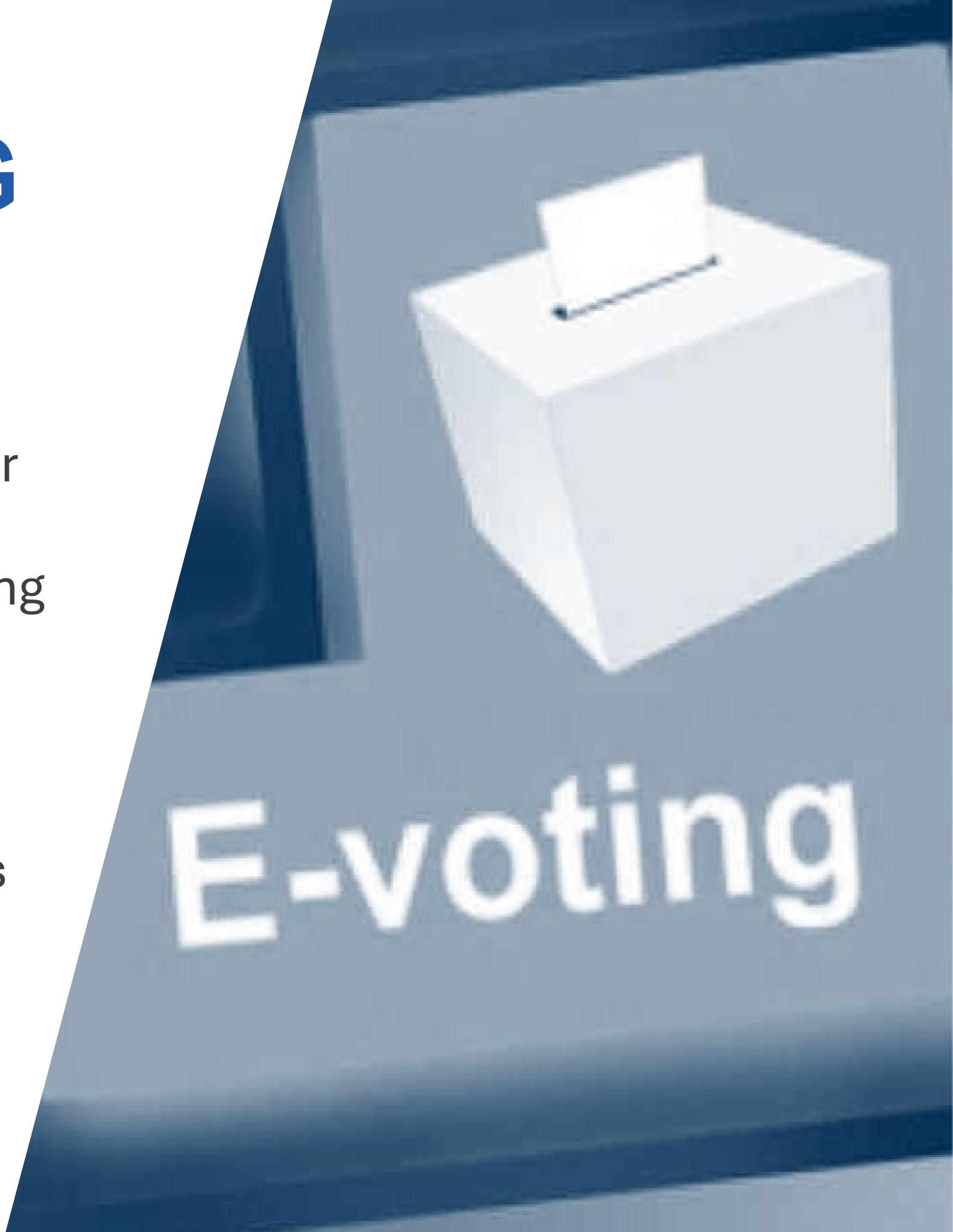
1. HOA election is conducted as specified in the documents → check them!
2. Members may vote in person or by proxy
3. Members may nominate themselves at the meeting
4. If an HOA has a process for choosing candidates in advance, no floor nominations!

ELECTRONIC VOTING

718.128 F.S., 719.129 F.S., and 720.317 F.S.

Associations may conduct elections & other owner votes through internet-based online voting system if the owner consents in writing

1. Must authenticate owner's identity
2. Must transmit ballot online that ensures secrecy
3. Confirm system works at least **14** days in advance



ELECTRONIC VOTING

1. Electronic voting counts towards quorum

2. Board must adopt online voting at a meeting (48-hour notice required for CONDO /14-day notice required for HOA and COOP)

3. Must allow people to vote by traditional ballot if they wish to

BOARD MEMBER APPOINTMENT OR ELECTION

If there is a vacancy on the board, a replacement may be appointed by the remaining board members.

1. The replacement will serve out the term of the member he/she replaced.
2. But check the Bylaws

617.0809 F.S., 61B-23.0027(3)(e) F.A.C.

TERM & NUMBER OF BOARD MEMBERS

1. **Condo** board member may not serve more than **8** consecutive years unless:

   - approved by vote of unit owners representing at least 2/3 of all votes cast in the election; OR

   - there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy

2. **HOAs** and Co-ops have no term limits unless in governing documents.

3. Minimum number of board members is 3

617.0803(1)F.S., 718.112(2)(d)2 F.S.

ANNUAL MEETINGS

CONDO

1. All community associations must hold an annual meeting each year.

2. Primary purpose is to elect board members and receive updates from the board.

3. An annual meeting of the unit owners shall be held at the location provided in the Association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 15 miles of the condominium property.

4. **HOA's** → check the bylaws

718.112(2)(d)(1) F.S. and 719.106(1)(d) F.S.

ANNUAL MEETINGS

CONDO

- If a unit 5 owner meeting is conducted via video conference a unit owner may vote electronically in the manner provided in F.S. 718.128.
- If the annual meeting is conducted via video conference, a quorum of the board must be physically present at the physical location of the meeting where owners can attend.

718.111(12)(d)1

BOARD MEETINGS

1 **What is a meeting?**

"Quorum of the board together discussing association business"

2 Board can talk via e-mail and it is not a meeting, but no decisions can be made via email.

BOARD MEETINGS RULES

- **48 hour** posted notice for regular board meetings.
  - On the property
  - On the website

BOARD MEETINGS RULES

- 14 days mailed and posted notice for special board meetings to:

1. **Adopt a rule affecting the use of the Unit or Parcel**
2. **Adopt a special assessment**
3. **Board Resolution authorizing electronic voting**
4. **Budget adoption (condo and co-op)**

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VOTING AT BOARD MEETINGS

Directors have 4 Options:

1. Vote “Yes”
2. Vote “No”
3. Stay Silent (Presumed to have no objection)
4. Abstain (Presumed to have taken no position)

CONFLICTS OF INTEREST

CONDO

- It is prohibited for an Association to employ or contract with a provider of good or services that is owned or operated by a Director or a relative unless approved by 2/3 majority vote of the other Directors

- "Relative" – within the third degree of consanguinity by blood or marriage (parent, child, sibling, etc.)

- Disclosure written on contracts and in minutes

CONFLICTS OF INTEREST

CONDO

- ✓ Can still attend meeting
- ✓ Can make a presentation
- ✓ Recuse and leave
- ✓ Counts towards a quorum
- ✓ Voidable – 20% Vote

CONFLICTS OF INTEREST

HOA

1. **Director or Officer enters into a contract for goods or services with Association**

2. **Director or Officer, or relative, holds an interest in an entity that conducts business with the Association or proposes to do so**

❖ **DUTY: Directors and Officers must disclose to the Association any activity that may be reasonably construed to be a conflict of interest at least 14 days before voting on an issue or entering into a contract that is the subject of the conflict.**

OWNERS RIGHTS AT BOARD MEETINGS

- Owners Have the Right to Attend
- Owners Have the Right to Speak on All Agenda Items
- Board May Adopt Rules re: Frequency and Duration

OWNERS RIGHTS AT BOARD MEETINGS

Residential Condo More Than 10 Units

- Must Meet at Least 1 Time Each Quarter
- At Least 4 Times Each Year – Agenda Must Include an Opportunity to Ask Questions

- No Affirmative Obligation to Answer Questions

OWNERS RIGHTS AT BOARD MEETINGS

EXCEPTIONS

Owners have the right to attend all Board meetings, except Board meetings that discuss:

1. Attorney-client privileged topic with Association's attorney

2. Personnel matters

OWNERS RIGHTS AT BOARD MEETINGS

Petitions to Add Agenda Items

Owners have the right to petition the Board to address an item of business.

- If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose.

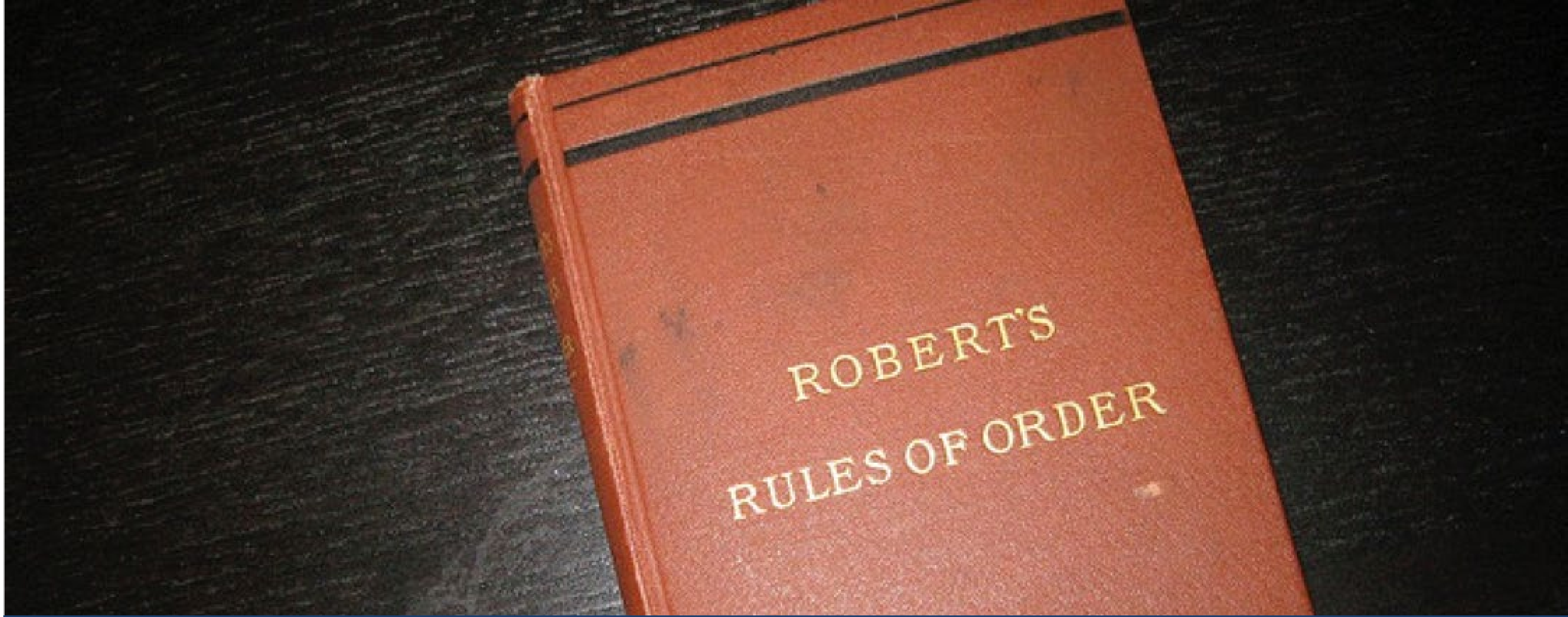
REMOTE MEETINGS

CONDO

- "Video conference" means a real-time audio and video-based meeting between two or more people in different locations using video-enabled and audio-enabled devices.

- The notice for any meeting that will be conducted by video conference must have a hyperlink and call-in conference telephone number for unit owners to attend the meeting and must have a physical location where unit owners can also attend the meeting in person.

- All meetings conducted by video conference must be recorded, and such recording must be maintained as an official record of the association.



ROBERT’S RULES OF ORDER

What do I need to know to keep meetings moving?

Robert's Rules of Order

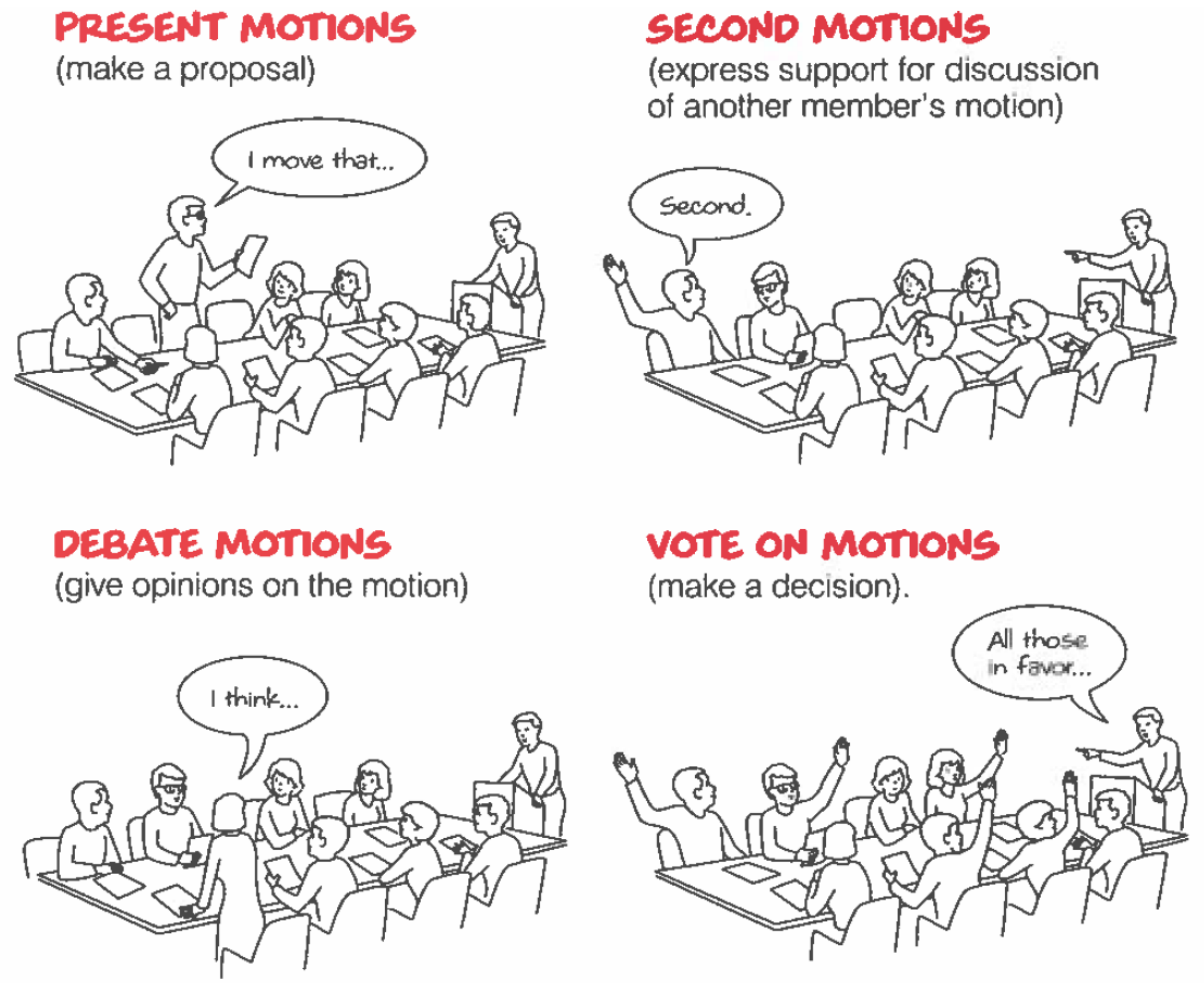
What are they?

- Guide to parliamentary procedure

  How to conduct meetings and make decisions as a group

- Governing documents often require the Board to abide by Robert's Rules of Order

Robert's Rules of Order



BOARD MEMBER DECISION MAKING

How do I keep Board Members out of trouble?

Fiduciary Duty

Business Judgment Rule

BOARD MEMBER DECISION MAKING

Fiduciary Duty

617.0830 General standards for directors.—

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

BOARD MEMBER DECISION MAKING

Fiduciary Duty

617.0830 General standards for directors.—

[...]

(2) In discharging his or her duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

BOARD MEMBER DECISION MAKING

Fiduciary Duty

617.0830 General standards for directors.—

[...]

(3) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

BOARD MEMBER DECISION MAKING

RECAP -Business Judgment Rule

- The “business judgment rule” generally applies to protect Directors who act reasonably and within the scope of their authority.
- The business judgment rule provides that Directors are not liable for their business decisions if they discharged their duties in good faith, with the care of an ordinarily prudent person, and in the best interest of the corporation.
- Decisions are not required to be the best, but they should be informed.

Enforcement of Governing Documents

- FINES
- SUSPENSIONS
- SELF HELP (CURATIVE MAINTENANCE)
- CODE ENFORCEMENT & OTHER AGENCIES
- ARBITRATION / COURT
- MEDIATION / COURT

SUSPENSIONS

What can be Suspended?

- Voting Rights

  - Only for delinquency

- Amenity Use Rights

  - Delinquency
  - Violations

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SUSPENSIONS

Voting Rights

(Delinquency)

- **HOA** - An association may suspend the voting rights of an owner for the nonpayment of any fee, fine, or other monetary obligation due to the association that is more than 90 days delinquent.

- **CONDO** - An association may suspend the voting rights of a unit owner due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent.

  - Proof of obligation must be provided to the unit owner 30 days before the suspension takes effect.

  - At least 90 days before an election, an association must notify a unit owner that voting rights may be suspended due to a nonpayment of a fee or other monetary obligation.

- No hearing required

SUSPENSIONS

Voting Rights

(Delinquency)

STEPS

1. Proof to Owner – 30 Days Before Suspension Takes Effect (**CONDO** only)
2. Board Meeting – Vote to Approve Suspension
3. Notify Owner – by mail or hand delivery

- **Suspension ends upon full payment of all obligations**

SUSPENSIONS

Voting Rights

(Delinquency)

A voting interest which has been suspended shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action.

The suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws.

SUSPENSIONS

Amenities

(Delinquency)

- **Delinquency:** If a unit owner is more than 90 days delinquent in paying a fee, fine, or other monetary obligation due to the association, the association may suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements/areas, facilities, or any other association property **until** the fee, fine, or other monetary obligation is paid in full.

CONDO Suspension does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

HOA Does not apply to that portion of common areas used to provide access or utility services to the parcel. May not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

No hearing required.

SUSPENSIONS

Amenities

(Rule Violations)

- **Violations**: An association may suspend, for a reasonable period of time, the right of an owner, or an owner's tenant, guest, or invitee, to use the common elements/areas, common facilities, or any other association property for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

CONDO Suspension does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

HOA Does not apply to that portion of common areas used to provide access or utility services to the parcel. May not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

***Hearing required – 14 Days' Notice**

FINING

WHO CAN BE FINED?

CONDO

Section 718.303(3) - the owner of the unit or its occupant, licensee, or invitee for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

HOA

Section 720.305(2) - any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

FINING

CONDO (Chapter 718)

- Fines not to exceed $100 per violation, per day or $1,000 in aggregate for a continuing violation

Continuing in nature?

- Fine may not result in a lien
- Hearing Required – Due Process

HOA (Chapter 720)

- Fines not to exceed $100 per violation or $1,000 in aggregate "unless otherwise provided in the governing documents"

Continuing in nature?

- Fines of $1,000 or more can result in a lien
- Hearing Required – Due Process

What is Due Process?

Due Process is fair treatment accordingly to established rules and principles.

- In fining/suspension context:

  a) Open Board meeting
  b) Providing Notice to Owner
  c) Hearing before panel of impartial owners (Committee)

Failure to Provide Due Process Will Cause Fines to Fail

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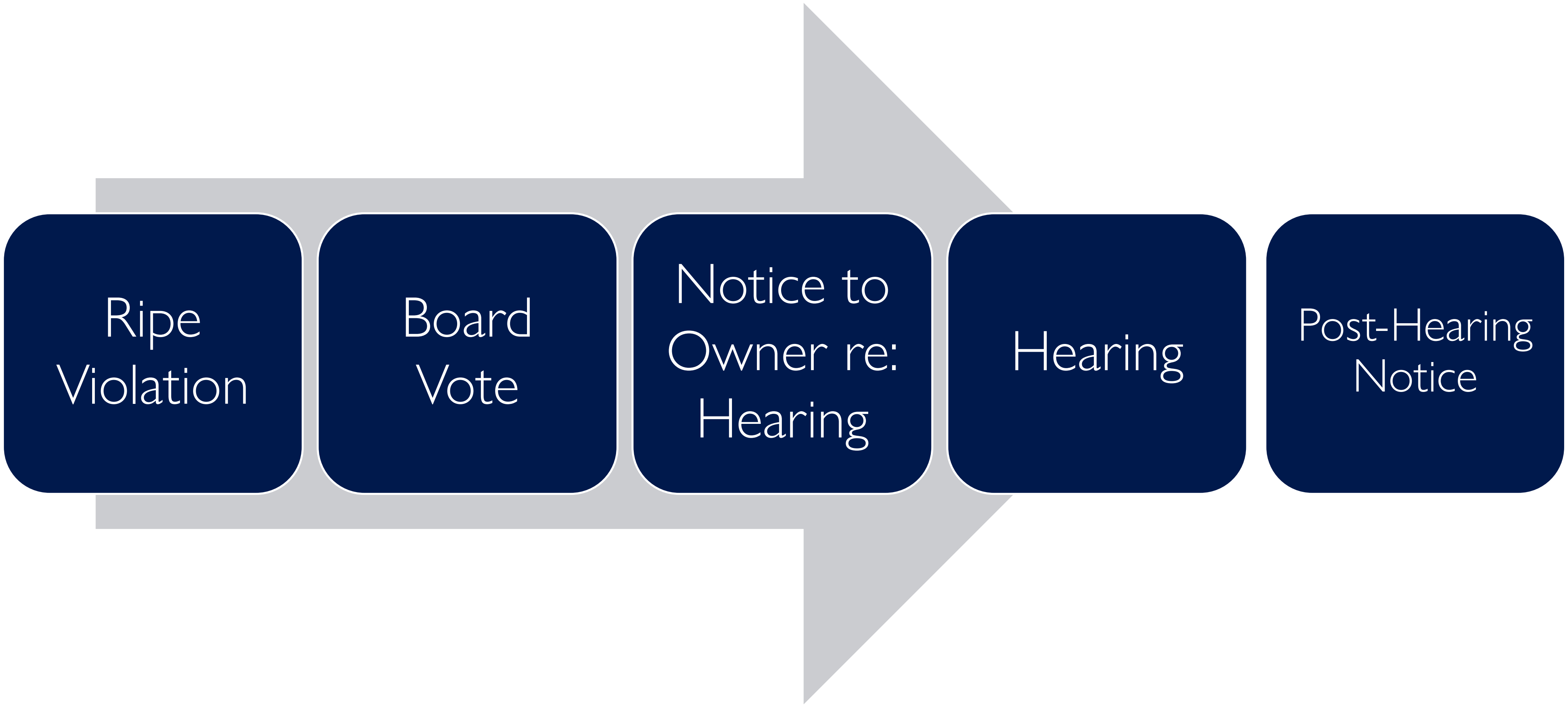
Procedure – Fines & Suspensions



APPOINTMENT OF THE COMMITTEE

- The Committee members are appointed by the Board of Directors.

- Sections 718.303 and 720.305, Florida Statutes, provide that the Committee must be made up of other owners who are **neither** board members nor persons residing in a board member's household. The Committee must be composed of at least three (3) members appointed by the Board, who are **not** officers, directors, or employees of the Association or the spouse, parent, child, brother or sister of an officer, director, or employee.

    - **Goal: Impartial Committee**

- If the Committee does not approve the proposed fine or suspension by majority vote, then the fine or suspension may not be imposed. Therefore, the Board can and should choose the members carefully and pick people that generally support enforcement of violations.

➢ **Practice Tip: Appoint more than three (3) Committee members to allow for substitutions when one Committee member is unavailable.**

FINING + Suspensions

Special Rules - HOA (Chapter 720)

- Within **7 days after the hearing**, the committee shall provide written notice of the committee’s findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the owner may cure the violation or fulfill a suspension, or the date by which a fine must be paid.

- If a violation has been cured before the hearing or in the manner specified in the hearing notice or committee findings notice, a fine or suspension may not be imposed.

- If a violation is not cured and the fine or suspension is approved by the committee by a majority vote, the committee must set a date by which the fine must be paid, which date must be at least 30 days after delivery of the committee findings notice.

FINING + Suspensions

Special Rules - HOA (Chapter 720)

An HOA may not levy a fine or impose a suspension for any of the following:

a) Leaving garbage receptacles at the curb or end of the driveway within 24 hours before or after the designated garbage collection day or time.

b) Leaving holiday decorations or lights up longer than indicated in the governing documents, unless such decorations or lights are left up for longer than 1 week after the association provides written notice of the violation to the parcel owner.

DISPUTE RESOLUTION

WHAT IS A "DISPUTE" FOR CONDOMINIUMS and CO-OPS?

718.1255(1) F.S. – A dispute is any disagreement between two or more parties that involves: The authority of the Board under 718 or the Association documents to:

Require any owner to take any action, or not take any action, involving that owner's unit or the appurtenances thereto

Alter or add to a common area or element

719.1255 F.S. says look at 718.1255 F.S.

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WHAT IS A "DISPUTE" FOR CONDOMINIUMS?

718.1255(1) F.S. – A dispute is also any disagreement between two or more parties that involves <u>the failure or a governing body, when required by 718 F.S. or an association document, to</u>:

1. Properly conduct Elections
2. Give adequate NOTICE of meetings or other actions
3. Properly conduct meetings
4. Allow inspection of books and records

WHAT IS NOT A "DISPUTE" FOR CONDOMINIUMS?

718.1255(1) F.S. – The following disagreements are NOT disputes pursuant to 718 F.S. if they primarily involve:

1. Title to any unit or common element
2. Interpretation or enforcement of any Warranty
3. The levy of a Fee or Assessment
4. The collection of assessment levied against a party
5. The eviction or other removal of a tenant from a unit
6. Alleged breaches of fiduciary duty by one or more Directors
7. Claims for damages to a unit based upon alleged failure of the association to maintain the common elements or condominium property

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CONDO - If the disagreement IS a dispute,

Before Litigation:

1. Non-Binding Arbitration
   OR
2. Pre-Suit Mediation

Exception: Election and Recall Disputes are not eligible for mediation and must go through arbitration or litigation.

Please speak to your legal counsel regarding these options in order to determine which best accomplishes the Association's goals.

If the disagreement **IS NOT** a dispute,

the aggrieved party may immediately pursue legal action in state court.

Arbitration decisions available online at:

www.myfloridalicense.com/dbpr/lsc/

"DISPUTES" in HOAs – 720.311 F.S.

The "aggrieved party" must make written offer of pre-suit mediation if the dispute involves:

1. **Use of, or changes to, parcel or common areas**
2. **Covenant enforcement disputes**
3. **Amendments to association documents**
4. **Meetings of the board and committees**
5. **Membership meetings** *(not including election meetings)*
6. **Access to official records.**

REQUIREMENTS FOR PRESUIT MEDIATION DEMAND SET FORTH IN 720.311(2) F.S.

Recipient has 20 days to respond and agree to mediator

If NO response, implied refusal to mediate and aggrieved party may immediately file in state or federal court and attorneys' fees and costs are not recoverable by refusing party if successful

OFFICIAL RECORDS

WHAT ARE OFFICIAL RECORDS

1. EVERYTHING!
2. Governing Documents
3. Rules
4. Contracts
5. Financial Reports
6. Accounting Records
7. Roster
8. Minutes

Catch All

CONDO (Chapter 718) + HOA (Chapter 720)

All other written records of the association not specifically included which are related to the operation of the association.

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How Long?

CONDO (Chapter 718)

Forever

- Developer Documents – plans, permits, warranties, etc.
- Governing Documents
- Meeting Minutes

15 Years

- Milestone Inspection Reports
- SIRS

7 Years

- All Other

1 Year

- Election voting materials
- Bids
- Recordings of Meetings

HOA (Chapter 720)

7 Years

- All official records, unless the governing documents specify a longer time

1 Year

- Election Voting Materials
- Bids

UNIT OWNER ACCESS TO RECORDS

1. **Condos**, Co-ops – Respond within 10 Working Days
2. **HOA's** – Respond within 10 Business Days
3. Within 45 miles
4. Internet access OK
5. HOAs - $0.25 per page
6. HOAs - $20/hour for staff after 1st half-hour
7. Rules are OK!

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CHECKLIST - CONDOS

- In response to a written request to inspect records, the association must simultaneously provide a checklist of all records made available for inspection and copying.
- The checklist must also identify any of the association's official records that were not made available to the requestor.
- An association must maintain the checklist for 7 years.
- Creates a rebuttable presumption that the association has complied.

THE "EXCEPTIONS" TO ACCESS TO RECORDS

The following records are **NOT** accessible by members of an Association:

Any record protected by the Lawyer-Client privilege as described in 90.502 F.S.

Any record protected by the work-product privilege.

MORE "EXCEPTIONS" TO ACCESS TO RECORDS

The following records are **NOT** accessible by members of an Association:

Information obtained by an association in connection with the approval of:

1. **Lease**
2. **Sale**
3. **Other Transfer of a Unit**

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MORE "EXCEPTIONS" TO ACCESS TO RECORDS

The following records are **NOT** accessible by members of an Association:

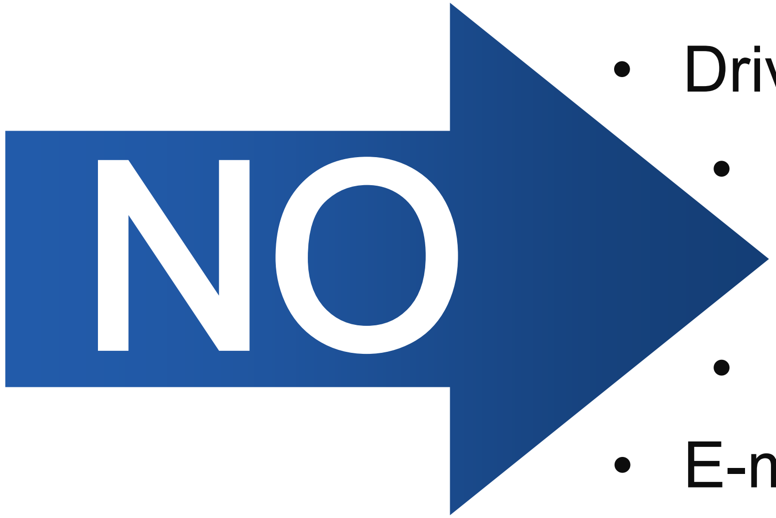
1. **Personnel records** of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records.

2. The term **"personnel records"** does **NOT** include written employment agreements with an association employee **OR** management company

3. Budgetary or financial records that indicate the **compensation paid** to an association employee can be viewed.

"EXCEPTIONS" TO ACCESS - CONTINUED

The following records are **NOT** accessible by members of an Association:



- Social security numbers
- Driver's license numbers
- Credit card numbers
- Emergency contact information
- Facsimile numbers
- E-mail addresses
- Telephone numbers

Other than as provided to fulfill the association's notice requirements.

ROSTERS | Telephone Numbers

CONDO (Chapter 718)

A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers.

An owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association.

HOA (Chapter 720)

A roster of current homeowners and their addresses and telephone numbers and section and lot numbers.

An owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association.

Email Addresses

CONDO (Chapter 718) + HOA (Chapter 720)

- ❖ The association shall maintain the e-mail addresses for owners consenting to receive notice by electronic transmission.
- ❖ Available for inspection by other owners if consented to receive notice by electronic transmission
- ❖ Revocable

Accounting Records

CONDO (Chapter 718) + HOA (Chapter 720)

A current account and a periodic statement of the account for each owner designating:

1. Name of the owner
2. Due date and amount of each assessment
3. Amount paid on the account
4. Balance due

CONTRACTS AND BIDS

DEVELOPER CONTRACTS - CONDO

1. Any contract, lease, declaration, or agreement for operation, or management of a **Condo** Association or Co-Op may be cancelled by unit owners (other than developer) AFTER turn-over.

2. Approval requirements depend on number of condominiums and percentage ownership.

718.302 F.S and 719.302(1)(a), F.S.

CONDO BIDDING REQUIREMENTS

1. 718.3026(2) F.S. and 719.3026(1) F.S. – A **CONDO** association MUST obtain competitive bids for any contract exceeding 5% of total annual budget including reserves

2. NOT required to accept lowest bid. All bids must be kept for 1 year for condominiums and co-ops.

DEVELOPER CONTRACTS - HOA

1. 720.309 F.S. - No Cancellation Rights: Any “pre-turnover” contract providing for Operation, Maintenance, or Management of the Association must be “fair and reasonable” if the contract is for more than 10 years.

BIDDING REQUIREMENTS - HOA

2. 720.3055(1) F.S. - Competitive Bidding is required for contracts that exceed 10% of the total annual budget including reserves.

BIDDING REQUIREMENTS – Condo + HOA

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NOT required to obtain bids for

1. Contracts with employees of association
2. Contract for attorney, accountant, architect
3. Community association manager
4. Timeshare management firm
5. Engineering
6. Landscape architect services
7. Emergency situations
8. If only one source in county for products/services

718.3026(2) F.S.
719.3026(2)(a)(1) F.S.
720.3055 F.S.

COLLECTION CHALLENGES

Many associations struggle with high delinquency rates.

RESULT

Maintenance fees stay high, paying members are supporting delinquent members, and common amenities suffer.

BOARD MEMBER FACE

1. Complaints
2. Budget Issues
3. Stress of Tracking Foreclosures
4. Bankruptcies

COLLECTION CHALLENGES

Collection Process (step by step):

- Invoices and Courtesy Reminders by the Association
- Notice of Late Assessment

Attorney Actions:

1. Notice of Intent to Lien
2. Notice of Intent to Foreclose and Claim of Lien
3. Lien Foreclosure
4. Foreclosure Sale
5. Rent, Sell, or Deed in Lieu of Foreclosure
6. Push Banks to Foreclose Without Delay

COLLECTION CHALLENGES

AVOID THE FOLLOWING:

Doing your own collections

- Fair Debt Laws

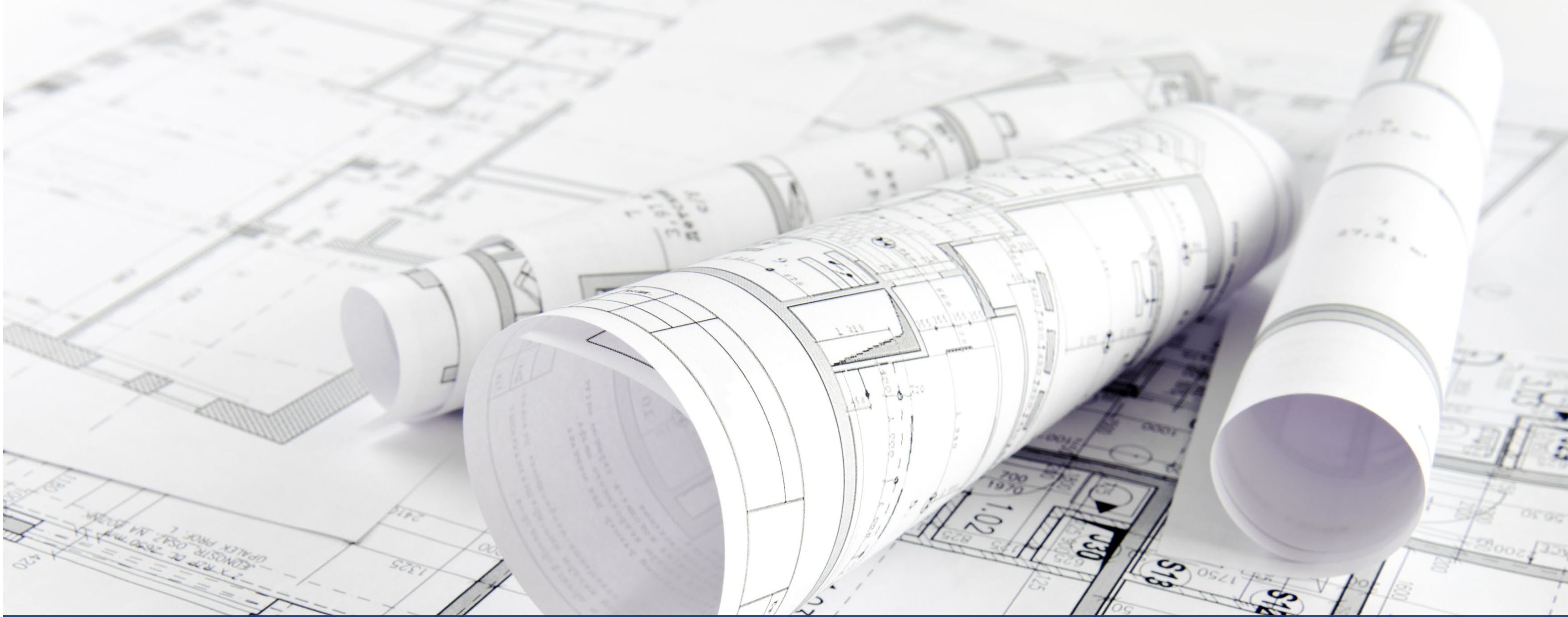
Recording your own liens

- Unauthorized Practice of Law

Avoid Inactivity!

- Liens Expire (Condominiums and Co -Ops)
- 12 Month Window to Collect

Condominium - Abandoned Units



MILESTONE INSPECTION - CONDO

G D & C

MILESTONE INSPECTION– CONDO & COOP

- “**Milestone inspection**” - a structural inspection by an architect or engineer for the purposes of attesting to the life safety and adequacy of the structural components of the building and determining the general structural condition, including a determination of any necessary maintenance.
- Building that is 3 habitable stories or more in height must have a milestone inspection performed by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy, and every 10 years thereafter.
- If a building reached 30 years of age before July 1, 2022, the building’s initial milestone inspection must be performed before December 31, 2024.
- If a building reaches 30 years of age on or after July 1, 2022, and before December 31, 2024, the building’s initial milestone inspection must be performed before December 31, 2025.
- The local enforcement agency may determine that local circumstances, including environmental conditions such as proximity to salt water, require that a milestone inspection must be performed by December 31 of the year in which the building reaches 25 years of age.

MILESTONE INSPECTION– CONDO & COOP

A Milestone Inspection consists of two phases:

- **Phase 1**
  - A visual examination of habitable and nonhabitable areas of a building, including the major structural components of a building
  - A qualitative assessment of the structural conditions of the building.
  - If no signs of substantial structural deterioration, phase 2 is not required.

- **Phase 2**
  - Phase 2 must be performed if any substantial structural deterioration is identified during phase 1.
  - May involve destructive or nondestructive testing at the inspector's direction.
  - May be as extensive or as limited as necessary to fully assess areas of structural distress.

STRUCTURAL INTEGRITY RESERVE STUDY
CONDO & COOP

- A residential association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building that is 3 stories or higher in height.

- Must include a study of the following items:

  - Roof.
  - Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.
  - Fireproofing and fire protection systems.
  - Plumbing.
  - Electrical systems.
  - Waterproofing and exterior painting.
  - Windows and exterior doors.
  - Any other item that has a deferred maintenance expense or replacement cost that exceeds $25,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

STRUCTURAL INTEGRITY RESERVE STUDY
CONDO & COOP

- A residential association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building that is 3 habitable stories or higher in height.

- Must include a study of the following items:

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  - Plumbing.
  - Electrical systems.
  - Waterproofing and exterior painting.
  - Windows and exterior doors.
  - Any other item that has a deferred maintenance expense or replacement cost that exceeds $25,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

STRUCTURAL INTEGRITY RESERVE STUDY
CONDO & COOP

- A structural integrity reserve study is based on a visual inspection of the condominium property.

- May be performed by any person qualified to perform such study, but the visual inspection portion must be performed or verified by an engineer or an architect or a person certified as a reserve specialist or professional reserve analyst.

- Must identify each item being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item.

- Must provide a reserve funding schedule with a recommended annual reserve amount.

STRUCTURAL INTEGRITY RESERVE STUDY
CONDO & COOP

- May recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined or may recommend a deferred maintenance expense amount for such item.
- The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a deferred maintenance expense amount for such item.
- SIRS not required for buildings less than 3 habitable stories in height or single-family, two-family, three-family, or four-family dwellings with 3 or fewer habitable stories above ground.

STRUCTURAL INTEGRITY RESERVE STUDY
CONDO & COOP

- SIRS must be maintained for at least 15 years after the study is completed.
- Within 45 days after receiving the SIRS, the Association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available.
  - Distribution must be made by United States mail or personal delivery or by electronic transmission.
- Within 45 days after receiving the SIRS, the Association must provide the Division with a statement indicating that the study was completed and reported to owners – via a form posted on the Division's website.

STRUCTURAL INTEGRITY RESERVE STUDY
CONDO & COOP

- SIRS reserves may be funded by regular assessments, special assessments, lines of credit, or loans.
  - A special assessment, line or credit, or loan to fund SIRS reserves requires approval of a majority of the total voting interests.
  - However, repairs required by a SIRS study or milestone study may be funded by a line of credit or loan without membership approval.
- If an association completes a milestone inspection, the association may delay completing a SIRS study for up to 2 years to allow it to focus its financial resources on completing the repairs required by the milestone study.

GD&C

MONETARY/BUDGETARY MATTERS

G D & C

ANNUAL BUDGET
Condominiums and Co -ops

1. Any meeting at which a proposed annual budget of an association will be considered by the board or unit owners shall be open to all unit owners.

2. <u>**Notice**</u>**. 14-day notice must be mailed or electronically transmitted** to each unit owner along with a copy of the proposed budget. The proposed budget must include a reserve schedule with reserves shown as fully funded.

3. **An officer or manager of the association**, or other person providing notice of such meeting **must execute an affidavit** evidencing compliance with the notice requirement and must file the affidavit among the official records of the association.

BOD CERTIFICATION

ANNUAL BUDGET
Condominiums

- If the board proposes a budget which requires assessments exceeding 115% of the prior budget, the board must simultaneously propose a substitute budget that does not include discretionary expenditures that are not required in the budget.

- The substitute budget must be proposed at the budget adoption meeting before the adoption of the board's initial proposed budget. Copies of both budgets must be included in the 14-day mailed and posted notice of the meeting.

- Unit owners must consider and may adopt the substitute budget by a majority of all Unit owners. If the Unit owners do not adopt the substitute budget, then the board may adopt its initially proposed budget.

NOTE: This conflates two different types of meetings - a member meeting and a board meeting so apparently you must hold two meetings and prepare proxies for the members meeting for the substitute budget.

FINANCIAL REPORTING – Duty to Provide Report

HOA and Co-ops

- Within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare a financial report for the preceding fiscal year.

- Within 21 days after the final financial report is completed, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall provide each member with a copy of the annual financial report **or** a written notice that a copy of the financial report is available upon request at no charge to the member.

FINANCIAL REPORTING – Duty to Provide Report

Condominiums

- Within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare a financial report for the preceding fiscal year.

- Within 21 days after the final financial report is completed, but not later than 180 days after the end of the fiscal year or other date as provided in the bylaws, the association shall deliver to each unit owner by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the association's notice requirements, a copy of the most recent financial report, **OR** a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner.

FINANCIAL REPORTING – Waiver by Owners

Condo, Co-op, and HOA

If approved by a majority of the voting interests, an association may prepare a lower level of financial reporting.

E.g.: If the Association is required to prepare audited financial statements, the owners may vote to prepare a report of cash receipts and expenditures instead.

RESERVE ACOUNTS- Condominiums and Co -ops

Reserve Accounts. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance.

- Structural Integrity Reserve Accounts (“SIRS”) – if 3 stories and up
    - Roof
    - Load-bearing walls or other primarily structural members
    - Floor
    - Foundation
    - Fireproofing and fire protection systems
    - Plumbing
    - Electrical Systems
    - Waterproofing and Exterior Painting
    - Windows
    - Any other item that has a deferred maintenance expense or replacement cost that exceeds $25,000 and the failure to replace or maintain such item negatively affects the items listed above, as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study

BOD CERTIFICATION

RESERVE ACOUNTS- Condominiums and Co -ops

SIRS

- Must be completed by December 31, 2025.
- Applies to each building on a condominium property that is three stories or higher in height.
- Effective **December 31, 2024,** members may not vote to reduce reserve amounts or use reserve funds for a different purpose.
- Must also have reserves for other deferred maintenance expenses or items with replacement cost that exceeds $25,000 but does not negatively affect the items listed as components of the SIRS, as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study. There is flexibility with these funds.

CONDOS and CO-OPS under 3 STORIES

- Roof, Painting, Paving
- Any other item that has a deferred maintenance expense or replacement cost that exceeds $25,000
- A members meeting and vote is required to reduce reserve account amounts or use the reserve funds for a DIFFERENT purpose.

RESERVE ACOUNTS- HOA

Statutory. If a majority of the entire membership votes to establish reserve accounts, the Association is required to fully fund the reserve accounts each year. A members meeting and vote is required to reduce reserve account amounts or use the reserve funds for a DIFFERENT purpose.

Non-Statutory. Reserve account established by the Board. No requirement to fully fund each year. Board may use for funds for reserve item purposes or for DIFFERENT purpose after Board vote.

RESERVE ACOUNTS- Straight Line v. Pooled

Straight Line. Reserve funds are added to an account for each reserve item. A member's meeting and vote is required to use the reserve funds for a specific reserve item for a DIFFERENT purpose. Except SIRS for Condos.

Pooled. Reserve funds are added to a combined account for all reserve items. No member's meeting and vote is required to use the reserve funds for any specific reserve item listed in the reserve budget. Except SIRS for Condos.

RESERVE ACOUNTS- Straight Line v. Pooled Condominiums

- SIRS reserves may only be pooled with SIRS reserves.

- No owner vote is required to move to pooled funding of reserves.

BOD CERTIFICATION

Q & A