

## **61B-15 FORMS AND DEFINITIONS**

### **61B-15.0011 Definitions for Filings and Documents.**

For purposes of these rules and Sections 718.502, 718.503 and 718.504, Florida Statutes, the following definitions shall apply:

(1) “Documents” means any or all of the documents comprising the “filing” as that term is defined in these rules.

(2) “Days” means calendar days and, in computing any period of time prescribed or allowed for a filing or response, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The term “legal holiday” means those days on which State of Florida government offices are closed for legal holiday as provided by Section 110.117, Florida Statutes.

(3) “File” means to submit required documents to the division in the Tallahassee, Florida, office via ground mail, airmail, facsimile, e-mail, or other means, so long as the division actually receives the filing and has the equipment and software necessary to view and review the filing.

(4) “Filing” means the documents required to be submitted to the division pursuant to Sections 718.502, 718.503 or 718.504, Florida Statutes. The documents or filing may be comprised of paper, CD-ROM, facsimile, e-mail, or other media, so long as the division actually receives the filing and has the equipment and software necessary to view and review the filing.

(5) “Medium” or “media” means the format used to file documents with the division or deliver documents to purchasers. Examples of “media” include: paper, e-mail, facsimile, CD-ROM, and Internet website.

(6) “Offer” means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire an interest in a condominium unit, either proposed or existing, if undertaken for gain or profit.

(7) “Received” or “receipt” by the division refers to the date on which the division or department actually receives a filing or documents related to a filing. If a filing is delivered to the division via facsimile or e-mail, the facsimile or e-mail confirmation sheet shall be evidence of the date on which the division received the filing. If the filing is delivered to the division via ground mail, airmail, or overnight service, the carrier’s delivery receipt shall be evidence of the date on which the division received the filing. In the absence of any of the foregoing evidence of division receipt, the division will use the earliest department or division date stamp on the filing as the date received.

(8) “Written” means and includes paper, CD-ROM, facsimile, e-mail, or other media so long as the division actually receives the filing and has the equipment and software necessary to view and review the filing.

*Specific Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.502, 718.503, 718.504 FS. History—New 12-23-02.*

### **61B-15.0012 Forms.**

(1) The forms prescribed for use by the division for submission of filings and documents are the following:

(a) Developer/Condominium Filing Statement, DBPR Form CO 6000-2, incorporated herein by reference and effective 12-23-02;

(b) Filing Statement for Subsequent Phases, DBPR Form CO 6000-3, incorporated herein by reference and effective 12-23-02;

(c) Notice of Condominium Recording Information, BPR Form CO 6000-1, incorporated herein by reference and effective 8-15-05;

(d) Frequently Asked Questions and Answers Sheet, DBPR Form CO 6000-4, incorporated herein by reference and effective 12-23-02;

(e) Certificate of Identical Documents, BPR Form CO 6000-5, incorporated herein by reference and effective 12-23-02;

(f) Receipt for Condominium Documents, DBPR Form CO 6000-6, incorporated herein by reference and effective 8-26-04.

(g) Filing Checklist, DBPR Form CO 6000-7, incorporated herein by reference and effective 12-23-02.

(2) All forms may be obtained by contacting the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1033.

*Specific Authority 718.501(1)(f), 718.502(1)(c), 718.621 FS. Law Implemented 718.403, 718.502, 718.503, 718.504, 718.618(8) FS. History—New 12-23-02, Amended 8-26-04, 8-15-05.*

**61B-15.007 Developer, Defined.**

(1) For purposes of filing under Sections 718.202, 718.502, 718.503, 718.504 and 718.505, F.S., and Rule 61B-23.003, F.A.C., the term developer includes, subject to the exceptions provided in Section 718.103(16), F.S., or these rules:

(a) A creating developer, which means any person who creates a condominium;

(b) A successor or subsequent developer, which means any person, other than the creating developer or concurrent developer, who offers condominium parcels for sale or lease for more than 5 years in the ordinary course of business; and

(c) A concurrent developer, which means any person who acts concurrently with a developer in offering to sell or lease for more than 5 years condominium parcels in the ordinary course of business. As used in this rule, person includes natural persons, corporations, partnerships, limited liability companies, and any other legal entities.

(2) The following constitutes “offering condominium parcels in the ordinary course of business” for filing purposes, as defined by subsection 61B-15.0011(4), F.A.C., where that person:

(a) Offers more than 7 parcels, or for condominiums comprised of less than 70 parcels, where that person offers more than 5 parcels in the condominium within a period of 1 year; or,

(b) Participates in a common promotional plan that offers more than 7 parcels within a period of 1 year. A person is not, however, deemed to have participated in a plan merely by virtue of providing financial contributions or professional or brokerage services.

(3) Notwithstanding the above, one is not offering condominium units in the ordinary course of business for filing purposes, as defined by subsection 61B-15.0011(4), F.A.C., where all of the units are offered and conveyed to a single purchaser in a single transaction. An example of such a transaction would be a financial lending institution receiving title to a number of condominium units through foreclosure or deed in lieu of foreclosure and then conveying all of such units to another person. In such circumstances, the lending institution would not be deemed to be a developer for filing purposes. However, such entity shall, upon the conveyance to a single purchaser, notify the division in writing of the identity and business address of the purchaser, the name of the condominium involved, the date of the conveyance and the number of units conveyed.

(4) For purposes of filing with the division, as defined by subsection 61B-15.0011(4), F.A.C., one is not offering condominium parcels for sale or lease for more than 5 years in the ordinary course of business where that person offers parcels in a condominium that consists of 7 or fewer

residential units including all residential units planned in a phase condominium and all residential units planned within a multicondominium. However, this shall not relieve the developer of the duty to file a notice of recording information and pay annual fees as required by Sections 718.104(2), 718.403(8), and 718.501(2)(a), F.S. and subsection 61B-17.001(3), F.A.C.

(5) This rule applies to developer filing requirements and shall not exempt a developer from complying with all other provisions of the Condominium Act where the developer is offering fewer units than specified in this rule.

*Rulemaking Authority 718.501 FS. Law Implemented 718.103(11), (12), (16), (23), 718.104(2), 718.106, 718.403(8), 718.502-.505 FS. History—New 10-1-85, Formerly 7D-15.07, Amended 1-27-87, 7-10-88, 3-21-89, 6-13-89, Formerly 7D-15.007, Amended 11-14-95, 12-23-02, 3-7-06, 4-2-09.*

## **61B-17 FILINGS**

### **61B-17.001 Developer, Filing; Electronic Filing Required.**

(1)(a) Except in the case of a reservation program, a developer of a residential condominium shall file with the Division one copy of each document required by Sections 718.502(5), 718.503, and 718.504, Florida Statutes. The filing shall occur prior to any offering of a condominium unit to the public. The developer shall submit with the filing a Developer/Condominium Filing Statement, DBPR Form CO 6000-2, referenced in Rule 61B-15.0012, F.A.C. When each subsequent phase is filed, the developer shall submit DBPR Form CO 6000-3, Filing Statement for Subsequent Phases, as referenced in Rule 61B-15.0012, F.A.C.

(b) In the case of a reservation program, a developer of a condominium shall file with the Division one copy of each document required by Section 718.502(2), Florida Statutes, and shall obtain approval of the Division prior to any offering of a condominium unit to the public. In addition, a developer shall file, prior to offering, proof of the developer's ownership, contractual, or leasehold interest in the land upon which the condominium is to be developed. Such evidence must provide the address, or otherwise specify the location, of the land upon which the condominium is to be developed.

(2) For purposes of this rule the Division shall accept a signed written statement from the developer or the developer's attorney describing the developer's interest in the land upon which the condominium is to be developed. The signature of the developer or the developer's attorney constitutes a certificate that they have read the statement and, to the best of their knowledge, information, and belief formed after reasonable inquiry, the statement accurately describes the developer's interest in the land.

(3) Upon recording the declaration of condominium pursuant to Section 718.104(2), Florida Statutes, or amendments adding phases pursuant to Section 718.403, Florida Statutes, the developer shall file the recording information with the Division within 120 working days on DBPR Form CO 6000-1, NOTICE OF CONDOMINIUM RECORDING INFORMATION, as referenced in Rule 61B-15.0012, F.A.C. If the recorded documents have not already been filed, reviewed, and approved by the Division in accordance with subsection (1) of this rule and Sections 718.502(5), 718.503, and 718.504, Florida Statutes, prior to recording, then a complete copy of the recorded documents must be submitted with DBPR Form CO 6000-1, NOTICE OF CONDOMINIUM RECORDING INFORMATION. If the recorded documents have been previously filed, reviewed, and approved by the Division, then only the form need be filed.

(4) Frequently Asked Questions and Answers Sheet. Each developer shall submit with its filing a completed Frequently Asked Questions and Answers Sheet substantially conforming to DBPR Form CO 6000-4, FREQUENTLY ASKED QUESTIONS AND ANSWERS SHEET, as referenced in Rule 61B-15.0012, F.A.C. The answers to the questions may be summary in nature,

in which case the answers shall refer to identified portions of the condominium documents.

(5) Estimated Operating Budgets. Each condominium filing shall include an estimated operating budget conforming to the requirements of Rule 61B-22.003, F.A.C., in a single exhibit labeled "Estimated Operating Budget."

(6) Once a developer has filed documents with the Division for review pursuant to Rule 61B-17.005, F.A.C., the developer may offer units to the public. However, the developer shall not close on contracts until the documents are approved by the Division pursuant to Rule 61B-17.005, F.A.C.

(7) Beginning on July 1, 2007, all new developer filings required or permitted by Chapter 61B-17, F.A.C., except as otherwise provided in this rule, shall be made by electronic filing with the division. This requirement applies to original filings, amendment filings, reservation filings, notices of intended conversion, and any other filing. No filing, except as provided in this rule, shall be submitted to the division in a paper format, except that filings submitted prior to July 1, 2007, in a paper format shall be allowed to be completed in a paper format.

(a) Format. All electronic filings shall be contained in a CD ROM format. No filings shall be submitted by email or Internet, dial up modem, floppy disc, or email attachment directed to the division. Within the CD ROM, the documents shall be presented in a portable document format (PDF) with each document labeled by name.

(b) Signatures. All documents required to contain an original signature, such as the fully executed escrow agreement, shall be reproduced electronically and shall be included on the CD ROM.

(c) Seals. All documents required to contain a seal such as an engineer's seal, architect's seal or notary public's seal, shall be reproduced electronically in such a way as to make the seal evident, and shall be included on the CD ROM.

(d) Developer responses to notices of deficiency issued by the division shall be submitted electronically in PDF format either on a CD ROM, or as a PDF or WORD attachment to an email.

(e) Integrated text. Within 45 days following receipt of the division's letter of approval of an electronic filing, the developer shall submit to the division a plain text integrated version of the filed documents in CD ROM format incorporating the initial filing with all changes necessitated by the division's examination process. For example, the declaration shall be shown as a single document containing all required amendments within its text without underlining or strike-through format. The integrated filing CD ROM shall include a signed written statement by the developer's attorney, or by the developer if not represented by an attorney, stating that the CD ROM contains an accurate integrated text of the filing. If there was no change in the filed documents necessitated by the division's examination process, this subsection will not apply.

(f) Temporary Exemption. A developer may apply for a temporary hardship exemption if the developer experiences unanticipated technical difficulties that prevent the timely preparation and submission of any electronic filing. Such application shall be made in paper format and filed with the division. A developer who files in paper under the temporary hardship exemption must submit an electronic format copy of the filed paper documents within 14 days of the filing of the paper format document.

(g) Continuing Hardship Exemption. Until July 1, 2008, if a developer determines that the preparation of an electronic filing is unduly burdensome, unduly expensive, or is not technologically available, the developer may apply to the division for an automatic exemption from the requirement of an electronic filing in order to be permitted to file the documents in a paper format. Such automatic exemption shall only apply to the individual filing for which it is requested.

*Specific Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.103(14), 718.104, 718.403, 718.502, 718.504(20) FS. History—New 11-15-77, Amended 7-22-80, 7-6-81, 8-31-83,*

10-1-85, Formerly 7D-17.01, Amended 1-27-87, 7-10-88, Formerly 7D-17.001, Amended 2-22-94, 2-20-97, 4-14-99, 1-26-03, 8-15-05, 1-17-07.

**61B-17.0012 Declaration; Filing.**

Any document required to be delivered to a prospective buyer or lessee pursuant to Section 718.503 or 718.504, Florida Statutes, which describes the developer's (or other person's) right to retain control of the association shall recite the provisions of Section 718.301(1)(a)-(e), Florida Statutes, regarding turnover of control of the association. This disclosure requirement shall not prohibit a developer from providing in the declaration for turnover to the unit owners other than the developer at an earlier point than the maximum time period set forth in these statutory entitlements.

*Specific Authority 718.501 FS. Law Implemented 718.104(4)(i), 718.301, 718.503, 718.504 FS. History—New 11-23-93.*

**61B-17.002 Procedure for Filing.**

(1) Each filing shall contain in the forepart a Table of Contents which lists the documents in the filing, in the order in which they appear.

(2) Each document shall be tabbed and labeled on the right side. Each label shall identify the document by appropriate word, phrase or abbreviation.

(3) Each filing shall be submitted in an expandable file folder approximately 14-3/4" by 9-1/2" in size. Filing statements and the Filing Checklist described in this rule shall be submitted with the documents and need not be submitted to purchasers.

(4) There shall be submitted with each filing a Filing Checklist which substantially conforms to DBPR Form CO 6000-7, Filing Checklist, as referenced in Rule 61B-15.0012, F.A.C.

(5) A developer who contracts to sell a condominium parcel when the construction, furnishing and landscaping of the condominium property submitted to condominium ownership have not been substantially completed or renovation of property converted to condominium ownership has not been substantially completed in accordance with the plans, specifications or representations made by the developer, shall file with the Division a copy of a fully executed escrow agreement for contract deposits pursuant to Section 718.202, Florida Statutes. An escrow agreement is deemed to be fully executed by the inclusion of the dates of execution and the appropriate signatures. An escrow agreement is the agreement between the developer and the escrow agent establishing the escrow account.

(6) If the developer wishes to include in the filing certain documents that were previously reviewed and accepted by the Division, the filing shall be accompanied by DBPR Form CO 6000-5, Certificate of Identical Documents, as referenced in Rule 61B-15.0012, F.A.C.

(7) Wherever possible, the Division shall utilize electronic means of communication in its correspondence with the developer including e-mail and facsimile. If requested, the Division shall utilize the means of communication preferred by the developer.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.202, 718.502, 718.503, 718.504, 718.505 FS. History—New 11-15-77, Amended 7-22-80, Formerly 7D-17.02, Amended 4-1-92, Formerly 7D-17.002, Amended 1-26-03. 8-30-04.*

**61B-17.003 Phase Condominium Filing.**

(1) Every developer of a phase residential condominium shall file the initial phase with the Division. Said initial filing shall be submitted as required by Rule 61B-17.002, F.A.C.

(2) "Subsequent Phase" means any phase not submitted to the condominium form of ownership with the recording of the original declaration of condominium. Subsequent phase(s) shall be filed as set forth below prior to offering any unit therein for sale or lease when the lease

period is more than five years. Amendments to the declaration providing for subsequent phases and supporting documentation may be filed at the same time as the initial filing, or at a later time, but at any time all requirements of this rule shall be observed.

(3) In addition to filing as mentioned above, upon recording an amendment to the declaration submitting a subsequent phase to the condominium form of ownership, the developer shall file the recording information in accordance with subsection 61B-17.001(4), F.A.C. Upon substantial completion of the construction of each subsequent phase, the developer shall file with the Division a survey prepared by a surveyor authorized to practice in the State of Florida with the appropriate certificate of the surveyor. Said certificate shall state that the construction of the improvements is substantially complete and is an accurate representation of the location and dimensions of the improvements. There shall be no filing fee for the filings described in this paragraph.

(4) When subsequent phase(s) are filed, the developer shall submit all amendments and all additional information, as outlined in Chapter 718, Florida Statutes, and these rules that pertain to said phase. Documents previously filed with the initial phase and which also pertain to the subsequent phase being filed, may be incorporated into the filing of subsequent phase(s) by reference thereto in the Filing Statement for Subsequent Phase(s).

(5) Subsequent phases shall be filed using the amendment procedures provided by Rule 61B-17.006, F.A.C. The filing fee due pursuant to Section 718.502(3), Florida Statutes, for each residential unit being added in the subsequent phase, shall accompany the filing. Each filing of a subsequent phase shall be submitted with the Filing Statement for Subsequent Phase(s).

(6) Filing for each subsequent phase shall contain a Table of Contents identifying the contents of the filing and their page numbers. The developer shall prepare the Table of Contents indicating the order in which the documents appear in the subsequent filing in order to facilitate review by the Division.

(7) The declaration for an initial phase shall include a description of each anticipated phase in the manner required by Section 718.403, Florida Statutes.

(a) The estimated operating budget filed with the Division in a phase condominium shall include a budget for the condominium completed through the phase being filed and a budget for the condominium as it would be upon completion of all phases, using estimated expenses as of the date of filing.

(b) The description of the general size of units pursuant to Section 718.403(2)(b), Florida Statutes, shall be stated in terms of approximate square footage per unit type.

(8) Any amendment to the declaration that adds subsequent phases shall state the resulting percentage or proportion of the ownership interest in the common elements appurtenant to each unit.

(9) After the original declaration of condominium has been recorded, any amendment changing the estimated completion dates of any phase or changing the items required to be included in the original declaration by Section 718.403(2), Florida Statutes, shall be approved by all unit owners.

*Specific Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.104(4)(f), 718.403(1)-(7), 718.502(3), 718.503(2) FS. History—New 11-15-77, Amended 7-22-80, 5-11-82, Formerly 7D-17.03, Amended 1-27-87, Formerly 7D-17.003, Amended 1-20-97, 1-26-03, 8-5-03.*

#### **61B-17.005 Examination of Documents.**

(1) Upon receipt of a filing, the Division will determine whether the filing is in proper form. The filing is considered to be in proper form when:

(a) Tabbing. All forms and documents, properly completed, tabbed, labeled and assembled in accordance with these rules, are included;

- (b) The Condominium Filing Statement has been completed properly; and
- (c) The correct filing fee has been received by the Division.

(2) If the Division does not give notice within (10) days after receipt of the filing, the filing is presumed to be in proper form for purposes of the examination process. If the filing is not considered to be in proper form, the Division shall notify the developer or its agent of the unacceptability of the filing and the reasons therefor.

(3)(a) The Division will examine the content of the filing to determine its sufficiency under the Condominium Act and these rules. Within 45 days from receipt of the initial filing, the Division shall notify the developer or its agent by mail of any deficiencies or that the filing is accepted. If the notice is not given within 45 days from receipt of the filing, the filing is presumed to be accepted. However, failure to notify the developer or its agent of any deficiencies shall not preclude the determination of deficiencies at a later date nor shall it relieve the developer of any responsibility under the law.

(b) Division acceptance of a filing pursuant to these rules shall automatically expire if, within 24 months after the date of the Division's acceptance letter, the developer has not, pursuant to Section 718.104, Florida Statutes, created the condominium indicated in the accepted filing, or in the case of a phase condominium, has not created the phase or phases pertaining to that filing. However, Division acceptance of a filing will not expire if, within 30 days before or after the expiration of the 24-month period referenced above, the developer in writing requests to extend the filing acceptance for an additional 24-month period. Additional requests to extend the acceptance may be filed within 30 days before or after the expiration of any requested extension. There is no fee associated with the timely filing of a request to extend the Division's acceptance of a developer filing. Accompanying each request for extension shall be a statement signed by the developer or its duly authorized representative affirming that as of the date the request for extension is sent to the Division, all changes to the accepted filing occasioned by changes in Chapter 718, Florida Statutes, The Condominium Act, and the rules of the Division, have been effectuated. The developer, when the filing acceptance expires pursuant to this rule, shall immediately and in writing notify all purchasers under contract of the expiration of acceptance of the filed documents and shall offer immediate refunds of any deposits collected, as well as interest as appropriate, under the contracts. If a filing acceptance expires, the developer, when subject to the provisions of Section 718.202, Florida Statutes, shall, within 45 days of such expiration, provide to the Division a complete accounting of any deposits collected pursuant to the accepted documents. A complete refiling of the documents pursuant to the requirements of Chapter 718, Florida Statutes, and these rules, including the payment of filing fees, shall be required prior to any additional offerings.

(c) As utilized in this rule, the phrase "complete accounting" refers to a list of the names and addresses of all purchasers under contract, the date each contract was entered into, the amount of each deposit, the date and amount of each disbursement from the escrow account, and a copy of all notifications to purchasers under contract required by this rule.

(4) The developer shall have 45 days from the date of the Division's notification of deficiencies in the filing to correct any deficiencies noted by the Division. The developer shall submit such corrections with a cover letter containing an itemization of corrections in the same order in which the deficiencies were presented and shall submit corrected pages showing additions and deletions by underline and strike through or similar coding. The Division shall, however, grant an extension of the 45-day period upon written request received by the Division within the 45-day period, which request shall set forth the reasons for the request. If deficiencies are not corrected within the 45-day period and an extension of time is not timely requested, the Division shall reject the filing and no further offers may be made. The developer will not be granted more than four (4) 45-day extensions. The Division shall notify the developer of said

rejection by a final order. Prior to the issuance of a final order, the Division shall notify the developer of the pending action and shall provide an opportunity for the developer to respond in writing or at a hearing if requested. If a filing is rejected, the developer, when subject to the requirements of Section 718.202, Florida Statutes, shall, within 45 days of issuance of the final order of rejection, provide the Division with a complete accounting of any deposits collected pursuant to the rejected documents. The developer shall also, immediately and in writing, notify all purchasers under contract of the rejection and shall offer immediate refund of deposits collected, as well as interest as appropriate, under the contracts. A complete refiling of the documents pursuant to the requirements of Chapter 718, Florida Statutes, and these rules, including the payment of filing fees, will be required prior to any additional offerings.

(5) The Division shall notify the developer or its agent within 30 days from the receipt of documents correcting noted deficiencies of the acceptability of the corrections. If the notice is not given within 30 days, the documents will be considered accepted for filing purposes.

(6) In no event shall the Division's acceptance of the filing be construed as a Division endorsement or approval of the offering and no document or offering material shall indicate that the Division has in any manner endorsed or approved the offering.

(7) If a filing is received without the correct filing fee, the Division's review period will not commence and the filing will not be reviewed. If the correct filing fee is not submitted within one week after the developer receives the Division's notification, the filing will be returned, no further offers may be made, and all purchasers under contract shall be entitled to a refund of any deposit and interest earned thereon.

*Specific Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.501, 718.502, 718.505 FS. History—New 11-15-77, Amended 7-22-80, 8-31-83, Formerly 7D-17.05, Amended 9-7-88, 3-21-89, Formerly 7D-17.005, Amended 1-26-03, 8-30-04.*

#### **61B-17.006 Filing and Examination of Amendments to Documents.**

(1) "Amendment" means any change to documents that have previously been filed with and accepted by the division, whether technical or substantive, regardless of the procedure by which the change is made. Developers shall file such changes as amendments, regardless of the nature of the changes, except as provided in paragraph (2)(b).

(2)(a) Every developer of a condominium who holds a unit for sale in a condominium shall submit to the Division any amendments in documents or items on file with the Division and deliver to the purchaser pursuant to Rule 61B-18.001, F.A.C., all amendments prior to closing, but in no event, later than 10 days after the amendment.

(b) No changes shall be made to the form purchase contract approved by the Division without first filing and obtaining acceptance of such changes from the Division. However, in an individual unit sale transaction using the form purchase contract approved by the Division, a change to the purchase contract or a modification made on the purchase contract or the attachment of a rider or addendum to such contract is not required to be filed with the Division provided that such change, modification, rider or addendum does not contain either a waiver or reduction of purchaser's rights under Chapter 718, Florida Statutes, or a reduction of a developer's duties under Chapter 718, Florida Statutes, and the rules promulgated thereunder, and is not otherwise inconsistent with Chapter 718, Florida Statutes. A developer is not required to deliver such change, modification, rider or addendum to any purchaser other than the purchaser whose contract has been modified by such change, modification, rider or addendum.

(c) Upon filing an amendment or amendments to documents or items that have been accepted by the Division, the developer shall pay to the Division a filing fee of \$100 per filing. A developer may include within each filing, multiple amendments relating to a single condominium in which case a filing fee of only \$100 shall be charged. However, there shall be no charge for

filing documents that do not change an accepted condominium filing, such as a Certificate of Incorporation, or a change to a notice of intended conversion, reservation program, or notice of termination of condominium.

(d) The following amendments do not materially alter or modify the offering within the meaning of Section 718.503, Florida Statutes. However, nothing herein shall preclude a developer from arguing that other amendments not expressly described herein do not materially alter or modify the offering within the meaning of Section 718.503, Florida Statutes.

1. Any grammatical or typographical correction, or change in presentation or format that does not affect the meaning of any provision of the accepted offering documents and does not violate conspicuous type or other disclosure requirements contained in Chapter 718, Florida Statutes;

2. Any substitution of an executed, filed or recorded copy of a document for the otherwise identical unexecuted, unfiled or unrecorded copy of the document contained in the accepted offering documents (with regard to the inclusion of a recorded phase amendment pursuant to Sections 718.110 and 718.403, Florida Statutes, substitution shall be permitted if the form of phase amendment accepted with the initial registration is utilized for the phase amendment and the only modifications are ministerial in nature and designed to complete the amendment instrument as originally contemplated);

3. Inclusion of updated information such as identification or description of:

a. The current officers and directors of the association;

b. The name or ownership of the developer so long as the business organization of the developer still exists;

c. Phases added to the condominium in accordance with the phasing plan, pursuant to Section 718.403, Florida Statutes, and accepted by the Division;

d. Any action taken pursuant to any previously disclosed reserved right not arising under Section 718.110(4) or 718.403(2), Florida Statutes;

e. Disclosure of improvements for which construction has been completed and which improvements were either previously proposed or not complete;

f. Modification of the applicable budgets to incorporate submission of additional phases committed to the condominium; or

g. Elimination of disclosures required by Section 718.504(12), Florida Statutes, following transfer of control of the association pursuant to Section 718.301, Florida Statutes.

4. Any inclusion of information that will have application only to purchasers not currently under contract;

5. Modifications related to an increase in closing costs for prospective purchasers;

6. Modifications related to a change in the escrow agent or changes in the provision of title insurance; or

7. Modification of a master escrow agreement to include additional condominium projects or to remove condominium projects for which the developer is no longer offering units for sale.

(3) The developer shall submit with the amendments the following information on a separate cover sheet:

(a) Name and physical location of the condominium to which amendments apply;

(b) Developer's name and mailing address;

(c) Division Identification Number;

(d) Identification of document to which amendment applies;

(e) Book, page number and county where recorded, if applicable;

(f) A statement summarizing each amendment; and

(g) Identification of all new and deleted language. This requirement may be accomplished by providing a coded copy of the new documents identifying new language with underlining and striking through material to be deleted from the documents.

(4) The Division may require that documents or items be revised to include amendments if said revision is deemed necessary by the Division for full and adequate disclosure.

(5) Upon receipt of an amendment, the Division will examine the material to determine its sufficiency under the Condominium Act and these rules. Within 35 days from receipt of the documents, the Division shall notify the developer or its agent by mail of any deficiencies in the content or that the amendment is proper for filing purposes. If the notice is not given within 35 days from receipt of the documents, the amendment is presumed to be properly filed. However, failure to notify the developer or its agent of any deficiencies shall not preclude the determination of deficiencies at a later date nor shall it relieve the developer of any responsibility under the law.

(6) The developer shall have 20 days from the date of the Division's notification of deficiencies in the amended material to correct the deficiencies noted by the Division. The developer shall submit such corrections with a cover letter containing an itemization of corrections in the same order in which the deficiencies were presented and shall submit corrected pages showing additions and deletions by underline and strike through or similar coding. The Division shall, however, grant an extension of the 20-day period upon written request of the developer. If deficiencies are not corrected within the 20-day period and an extension of time has not been granted by the Division, the Division shall reject the amendment and no further offers shall be made utilizing the rejected documents.

(7) Within 20 days after the receipt of documents responding to deficiencies noted by the Division, the Division shall notify the developer or its agent as to the acceptability of the corrected documents. If the notice is not given within 20 days, the amended documents will be considered accepted.

(8)(a) After the filing is accepted, a developer shall not alter the condominium type through these amendment procedures. For purposes of this rule, the condominium types utilized by the Division are as follows:

1. Standard Condominium refers to a single condominium operating under a single condominium association the development of which is completed in one stage of construction, as opposed to a phase condominium;

2. Land Condominium refers to a condominium in which the residential units of the real property being submitted to the condominium form of ownership consist of land only;

3. Planned Unit Development refers to a condominium which is included in or located within a real property development project that contains or will contain other types of real property ownership such as townhouses or single family homes;

4. Conversion Condominium refers to a condominium development in which currently existing real property improvements are being converted to residential condominium ownership;

5. Phase Condominium means a condominium developed pursuant to Section 718.403, Florida Statutes; and

6. Multicondominium means a condominium that is part of or included within a development which contains more than one condominium operated by a single association.

(b) In order to change the condominium type of an accepted condominium filing, for example changing from a standard condominium plan to a phase plan, conversion, or planned unit development, or any combination thereof, the developer must file anew with the Division pursuant to Section 718.502, Florida Statutes, and Rule 61B-17.005, F.A.C.

(9) In no event shall the Division's acceptance of an amendment be construed as endorsement or approval of the amendment by the Division. No documents or offering materials shall indicate the Division has in any manner endorsed or approved the materials.

*Specific Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.103(14), 718.502, 718.502(3), 718.503, 718.504, 718.505 FS. History— New 11-15-77, Amended 7-22-80, 10-1-85, Formerly 7D-17.06, Amended 1-27-87, 4-1-92, 7-11-93, Formerly 7D-17.006, Amended 11-23-*

93, 1-26-03, 8-30-04.

**61B-17.009 Alternative Assurances.**

(1) This rule governs alternative assurances provided for in Section 718.202, Florida Statutes. An alternative assurance must be approved by the Division Director prior to the use by a Developer of the sales deposits intended to be assured. Pending approval, sales deposit funds to be assured by the alternative assurance must be placed in escrow.

(2) Procedure for Filing. A proposed alternative assurance filing should be submitted under cover separate from any condominium filing. The alternative assurance filing must include:

(a) A cover letter explaining the details of the alternative assurance. The letter must include the name and address of the condominium for which the assurance is intended;

(b) A copy of the instrument evidencing the proposed alternative assurance; and

(c) A copy of the purchase deposit escrow agreement. The escrow agreement shall contain the following minimum provisions:

1. The developer and escrow agent must have the Division Director's written approval of the use of an assurance prior to its use by the developer.

2. The amount of any assurance plus the amount of any sales deposits in escrow must at all times equal or exceed the amount of sales deposits required to be assured by Section 718.202, Florida Statutes. It is the developer's duty to ensure that the assurances are adequate.

3. The developer shall provide the escrow agent with a monthly report of the amount of funds currently assured. The developer shall provide the Division with a quarterly report of the amount of funds currently assured.

4. The developer shall ensure that the Division Director, escrow agent and the developer receive at least a 30-day notice prior to the cancellation of any assurance.

5. At least 15 days prior to the expiration of any assurance posted in lieu of the escrow requirements of Section 718.202, Florida Statutes, the developer must place funds assured by the instrument into escrow.

(3) Types of assurances. As provided by Section 718.202(1), Florida Statutes, the Division Director is authorized to accept the following types of assurances:

(a) A surety bond issued by a company authorized and licensed to issue surety bonds in Florida;

(b) An irrevocable letter of credit issued by a financial institution as defined by Section 655.005, Florida Statutes, and located in Florida; or

(c) A cash bond held by the escrow agent.

(4) Minimum terms and conditions. The assurance instrument shall include the following minimum terms and conditions:

(a) The escrow agent has authority to draw on the assurance and treat the drawn funds as if they were escrowed funds;

(b) The Division Director has authority to draw on the assurance when circumstances warrant a draw and the escrow agent fails to do so;

(c) The original expiration date of any letter of credit or surety bond shall be not less than one year from the date of issuance; and

(d) If the assurance is automatically renewable the issuer shall give the escrow agent and the Division Director not less than 30 days notice of cancellation.

(5) Purchaser Refunds: During the period in which any letter of credit is in effect, if any purchaser is entitled to a refund as provided in Section 718.202(1), Florida Statutes, the refund must be made to the purchaser within thirty (30) days after the purchaser's request.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.202(1), 718.501(1)(d)2. FS. History—New 4-12-82, Formerly 7D-17.09, 7D-17.009, Amended 1-26-03.*

**61B-17.011 Delivery of Documents via Alternative Media.**

(1) If the developer wishes to use alternative media (for example, CD-ROM) for delivery of documents to purchasers, the developer must give the purchaser the option of receiving paper documents or alternative media documents. The purchaser's choice of delivery method shall be set forth in writing on a form called the "alternative media disclosure statement." The form "alternative media disclosure statement" shall be filed with the Division for review and approval along with other required documents. The form shall:

(a) Be separate from other documents delivered;

(b) Disclose the system requirements (for example, operating system, memory, hard drive, processor speed, printer requirements, software) necessary to view the alternative media documents;

(c) State that the purchaser should not select alternative media unless the purchaser will have the means to read the documents before the expiration of the 15-day cancellation period. The alternative media disclosure statement shall be listed on the form receipt for documents in the manner prescribed in DBPR Form CO 6000-6, Receipt for Condominium Documents, as referenced in Rule 61B-15.0012, F.A.C., and as required in subsection 61B-18.004(3), F.A.C. If a portion, but not all, of the documents are delivered through the use of alternative media, the developer shall identify in the prospectus table of contents and in the receipt for condominium documents which documents are being delivered via alternative media and which documents are being delivered in paper form.

(2) Prior to delivery of documents to a purchaser via alternative media, the developer must submit to the Division a sample copy of the alternative media proposed for use by the developer together with an executed certificate, using the form prescribed in DBPR Form CO 6000-5, Certificate of Identical Documents, referenced in Rule 61B-15.0012, F.A.C., certifying that the portion of the documents delivered via alternative media is identical in form and substance to the corresponding portion of the documents reviewed and accepted by the Division.

(3) In the event that the developer amends the documents and wishes to deliver the amendment to purchasers via alternative media, the provisions of this rule shall apply.

*Specific Authority 718.501(1)(f), 718.501(1)(c) FS. Law Implemented 718.502, 718.503, 718.504 FS. History—New 1-26-03.*

**61B-18 DOCUMENTS**

**61B-18.001 Contracts.**

(1) For the purpose of this rule, the following definitions shall apply:

(a) Closing on a contract for the sale shall mean conveyance of the unit as evidenced by the delivery of the deed transferring title to the purchaser.

(b) Closing on a contract for the lease of a unit shall mean execution of the lease by all parties.

(2) Prior to closing, a contract for the sale of a unit or a contract for the lease of a unit for an unexpired term of more than five years is voidable by the purchaser or lessee within fifteen days after both of the following have occurred:

(a) The contract has been executed by the buyer, and

(b) The buyer has signed the receipt for documents required by Rule 61B-18.004, Florida Administrative Code.

(3) At the time amendments are delivered to purchasers or lessees, pursuant to Rule 61B-17.006, Florida Administrative Code, the developer shall provide to those who have not closed a written statement that if any of the above-referenced amendments materially alter or modify the offering in a manner which is adverse to the purchaser, the purchaser or lessee shall have a 15-

day voidability period.

(4) At the time of closing a sale or lease for a period of more than 5 years, the developer shall notify the purchaser or lessee in writing stating that the developer has provided the purchaser or lessee all amendments to items delivered to the purchaser or lessee pursuant to Chapter 718, Florida Statutes.

(5) After the buyer or lessee for a term of more than 5 years has received all of the items required by Chapter 718, Florida Statutes, and these rules of the Division as evidenced by the signed Receipt of Documents, he may extend the time of closing for a period not to exceed 15 days if closing was scheduled less than 15 days after execution of contract and receipt of the documents.

(6) In order to void the contract, the buyer or lessee shall give written notice to the developer named in the contract to cancel the contract.

(7) If a contract is properly terminated by the buyer or lessee, as described in this rule, the developer shall refund to the proposed buyer or lessee any deposit made, together with any interest in accordance with Section 718.202, Florida Statutes.

(8) In the sale or lease of a unit which has been occupied by someone other than the buyer, a statement that the unit has been occupied must be included in the contract.

(9) If a contract is for the lease of a unit for a term of more than 5 years, the contract shall include as an exhibit a copy of the proposed lease.

(10) Only contracts conforming to the requirements of this rule and the provisions of Section 718.503, Florida Statutes, may be utilized by a developer in connection with the offering and sale, or lease for a term of more than five years, of a unit pursuant to the requirements of Section 718.502, Florida Statutes. A contract shall not limit the purchaser's remedy, for the developer's willful non-performance under the contract, to a return of the purchaser's deposit or a return of the purchaser's deposit plus interest.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.202, 718.501, 718.502, 718.503, 718.504, 718.505 FS. History—New 11-15-77, Amended 7-22-80, 10-1-85, Formerly 7D-18.01, Amended 1-27-87, Formerly 7D-18.001, Amended 4-14-99.*

#### **61B-18.002 Plot Plans and Floor Plans.**

(1) Every plot plan shall be a legible, scaled drafted map and shall indicate the following:

(a) Name of the condominium;

(b) Scale, date, and north arrow;

(c) Ingress and egress;

(d) The use and approximate size, location, and height of all existing and/or proposed buildings and other structures;

(e) Common areas and elements;

(f) Limited common elements;

(g) Easements;

(h) Parking areas;

(i) The party who prepared the map.

(2) Each item depicted on the plot plan shall be identified as existing or proposed.

(3) Every filing shall include, if applicable, a floor plan for each type of unit. For the purposes of disclosure provided to purchasers and filed with the Division pursuant to Sections 718.502, 718.503 and 718.504, Florida Statutes, the floor plan shall be legible, and shall, at a minimum, show:

(a) The perimeter boundaries of the unit and the approximate dimensions of such boundaries.

(b) The walls separating each room within the unit and the approximate dimensions of each room.

(c) The approximate location of all doorways.

(d) The dimension requirements of this rule may be achieved with a plan drawn to scale with the scale depicted on the plan.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.103, 718.104, 718.502, 718.503, 718.504 FS. History—New 11-15-77, Formerly 7D-18.02, Amended 7-10-88, Formerly 7D-18.002, Amended 1-19-97.*

#### **61B-18.004 Receipt for Condominium Documents.**

(1) Every developer who enters into a contract for the sale of a residential condominium unit or for the lease of a residential condominium unit for a lease period of more than five years shall obtain from the purchaser or lessee a receipt acknowledging that he has been provided the required documents by the developer.

(2) The developer shall itemize all items which are applicable and are to be delivered to the purchaser. Those items to be delivered shall be those documents required by the Division for filing during the examination period.

(3) Said receipt shall be in substantially the form prescribed by DBPR Form CO 6000-6, Receipt for Condominium Documents, as referenced in Rule 61B-15.0012, Florida Administrative Code, and shall include but not be limited to the items listed. A copy of the receipt form shall be submitted to the Division at the time of filing. The developer shall provide the purchaser or lessee with a copy of the signed receipt, upon request.

(4) The developer should retain a copy of the signed receipt for a period of five years after the date of closing of the transaction. Said receipt should be maintained in the official business records of the developer.

*Specific Authority 718.501(1)(f), 718.502(1)(c) FS. Law Implemented 718.502, 718.503, 718.504 FS. History—New 11-15-77, Amended 7-22-80, 10-1-85, Formerly 7D-18.04, 7D-18.004, Amended 12-23-02.*

#### **61B-18.0051 Declarations.**

A declaration of condominium in which percentage of ownership is not based upon an equal fractional basis shall include the square footage within each unit or unit type based on the perimetrical boundaries ascribed to each unit or unit type or the dimensions of each unit as elsewhere provided in the declaration of condominium or the survey or graphical description, as well as the total square footage of all units combined.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.104(4)(f), (g) FS. History—New 2-7-06.*

#### **61B-18.007 Developer Exemptions Under Condominium Documents.**

Unless otherwise expressly authorized by Chapter 718, Florida Statutes, no provision in any declaration, articles of incorporation or bylaws recorded in the public records subsequent to the effective date of this rule shall partially or totally exempt the developer, transferees or designees of the developer, or units owned by the developer or its designees from the requirements of any such document which apply to all other owners or units and which pertain to any of the following:

(1) Requirements that leases or lessees be approved by the association;

(2) Restrictions on the presence of pets;

(3) Restrictions on occupancy of units based on age;

(4) Restrictions on the type of vehicles allowed to park on condominium property or association property; however, the developer and its designees shall have the right to be exempt from any such parking restriction if the vehicle is engaged in any activity relating to construction,

maintenance, or marketing of units, if such exemption is provided in the condominium documents.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.302(4) FS. History–New 1-27-87, Formerly 7D-18.007.*

#### **61B-18.008 Disclosure of Developer’s Rental Program.**

(1) In determining whether a developer’s plan includes a program of leasing, and thus requires disclosure pursuant to Section 718.504(10), Florida Statutes, it shall be relevant, although not dispositive, whether and the extent to which:

- (a) The developer has advertised the availability of its units for rent;
- (b) The developer has listed any of its units for rent with a broker or salesman;
- (c) The developer has designated on internal marketing charts, memoranda or lists certain units as for sale and other units as for rent; and
- (d) The developer-owned units are available for rent but not for purchase.

(2) A developer shall be presumed not to have a program of leasing requiring disclosure pursuant to the above statute if the developer offers no more than 7 leases within a period of 1 year in a condominium comprised of 70 or more units. In condominiums containing fewer than 70 units, the foregoing presumption shall exist if, in any 1 year period, the developer offers 5 or fewer such leases.

(3) In describing a program of leasing in a prospectus for a residential condominium, the developer shall identify:

- (a) The total number of units to be leased;
- (b) The specific units to be leased;
- (c) The provisions and duration of the proposed leases; and
- (d) The estimated length of time in which the developer plans to lease units rather than sell them or lease units and sell them subject to such leases.

(4) Where a developer has no current intention of engaging in a program of leasing at the time the prospectus is filed with the Division and therefore does not make the disclosures required by Section 718.504(10), Florida Statutes, the developer may not subsequently engage in a program of leasing until the developer:

- (a) Files an amendment with the Division, pursuant to Rule 61B-17.006, Florida Administrative Code, fully disclosing the information noted above; and
- (b) Provides a copy of the amendment to the association and to every unit owner.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.504(10), 718.502(1),(2)(a), 718.503(1)(a) FS. History–New 1-27-87, Formerly 7D-18.008.*

### **61B-20 DEVELOPER OBLIGATIONS AND RESOLUTION GUIDELINES FOR CONDOMINIUM DEVELOPERS**

#### **61B-20.003 Escrow Agents and Escrow Agreements.**

(1) In determining whether an escrow agent, identified in an escrow agreement filed with the division, is independent of a condominium developer, the division, when it has reason to question the independence of the escrow agent, shall consider and require reasonable disclosure of factors, including any familial relationship or common financial interest between the developer and the escrow agent, which reasonably relate to the developer’s ability to directly or indirectly control or influence the escrow agent in the performance of his statutory duties. Additionally, when the division has reason to question the independence of the escrow agent, the division shall require a statement from the escrow agent attesting to the agent’s independence and affirming that there is no conflict between the agent’s duties as escrow agent and in any other capacity in which the

agent serves. One who is otherwise qualified to serve as escrow agent, however, will not be precluded from serving in such a capacity solely because:

(a) The escrow agent performs routine banking or financial services for the developer; or

(b) A non-employee attorney-client relationship exists between the developer and the escrow agent, including representation of the developer in legal matters relating to the condominium for which he serves as escrow agent, unless and until the obligations as attorney and as escrow agent result in a conflict of interest or require a violation of the respective legal duties attendant to such positions; or,

(c) The escrow agent provides brokerage services on behalf of the developer, except that such an escrow agent is not independent of the developer with respect to any deposits or payments received by the escrow agent pursuant to any sales, rental or lease agreements for which the escrow agent has also served as the developer's sales, rental, or leasing agent.

(2) At any time that the Division concludes that an escrow agent is not independent of a developer, it shall cite this as a deficiency in the developer's condominium reservation filing or residential condominium prospectus and shall order the developer to immediately obtain an independent escrow agent and have all escrow funds turned over to the new agent.

(3) If the developer is required to have an escrow agreement by the provisions of Section 718.202, Florida Statutes, in connection with a filing made pursuant to paragraph 61B-17.001(1)(a), Florida Administrative Code, the escrow agreement shall be separate from any escrow agreement used by the developer as part of a reservation filing pursuant to paragraph 61B-17.001(1)(b), Florida Administrative Code.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.202(8), 718.502 FS. History—New 10-1-85, Formerly 7D-20.03, Amended 1-27-87, 3-21-89, Formerly 7D-20.003.*

#### **61B-20.004 Definitions and Purpose.**

(1) Definitions. For the purposes of Rules 61B-20.004, 61B-20.005 and 62B-20.006, F.A.C., the following definitions shall apply:

(a) "Accepted Complaint" means a complaint received by the division containing sufficient documentation and addressing a subject within the jurisdiction of the division, pursuant to Section 718.501(1), F.S.

(b) "Affirmative or corrective action" means putting remedial procedures in place to ensure that the violation does not recur, making any injured person whole as to the harm suffered in relation to the violation, or taking any other appropriate measures to redress the harm caused.

(c) "Bad check" means any worthless check, draft, or order of payment identified under Section 68.065, F.S.

(d) "Developer," for purposes of these guidelines, shall have the same meaning as stated in Section 718.103(16), F.S.

(2) Purpose. The purpose of the resolution guidelines is to implement the division's responsibility to ensure compliance with the provisions of Chapter 718, F.S., and the division's administrative rules. For those statutory or rule violations identified as minor in these rules, the division will first and foremost attempt to seek compliance through an educational resolution. For repeated statutory or rule violations, where the violations have not been corrected or otherwise resolved by the developer, or for violations identified as major in these rules, the division will seek statutory or rule compliance through an enforcement resolution. The guidelines detail the educational and enforcement procedures the division will use to seek statutory or rule compliance. The guidelines are also intended to implement the division's statutory authority to give reasonable and meaningful notice to persons regulated by Chapter 718, F.S., and the administrative rules of the range of penalties that normally will be imposed, if an enforcement resolution is taken by the division. Finally, the rules are intended, pursuant to statutory mandate,

to distinguish between minor and major violations based upon the potential harm that the violation may cause.

(3) The division shall apply these guidelines against the developer pursuant to the division's authority in Section 718.301(5), F.S. Therefore, the developer is responsible for the cost of affirmative or corrective action, or assessed penalties imposed under these guidelines, regardless of whether turnover has occurred. The developer shall not pass the cost of affirmative or corrective action or penalties on to the unit owners.

(4) These penalty guidelines are promulgated pursuant to the division's authority in Section 718.501(1)(d), (f), and (k), F.S. These rules do not preclude the division from imposing affirmative or corrective action pursuant to Section 718.501(1)(d)2., F.S. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Rules 61B-20.004, 61B-20.005, and 61B-20.006, F.A.C., are necessary to explicate the division's education and enforcement policy. These rules are not intended to cover, or be applied to, willful and knowing violations of Chapter 718, F.S., or the administrative rules by an officer or association board member, pursuant to Section 718.501(1)(d)4., F.S. Such violations shall be strictly governed by the provisions of Section 718.501(1)(d)4., F.S. These rules are not intended to cover, or be applied to violations of Chapter 718, F.S., or the administrative rules by a unit owner controlled association. Such violations shall be strictly governed by the provisions of Chapter 61B-21, F.A.C.

*Specific Authority 718.501(1)(d)4., (f) FS. Law Implemented 718.501(1)(d)4. FS. History--New 6-4-98.*

#### **61B-20.005 Educational Resolution.**

An initial accepted complaint, directed at a developer and involving a possible violation identified as minor in these guidelines, will be resolved as follows:

If based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the developer. The Warning Letter will give the developer 15 business days in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator's name so that the developer may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the developer to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will lead to further investigation. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the educational resolution.

*Specific Authority 718.501(1)(d)4.,(f) FS. Law Implemented 718.501(1)(d)4.,(k) FS. History--New 6-4-98.*

#### **61B-20.006 Enforcement Resolution and Civil Penalties.**

(1) The division will seek compliance through an enforcement resolution for repeated minor violations, for the failure to correct or address a violation or provide unit owner redress as requested by the division, or for a major violation. These guidelines list aggravating and mitigating factors that will reduce or increase the penalty amounts within the specified range and those circumstances that justify a departure from range. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of \$5,000. The guidelines in this rule section are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement,

or consent order.

(2) General Provisions.

(a) Rule Not All-Inclusive. This rule section contains illustrative violations. It does not, and is not intended to, encompass all possible violations of statute or division rule that might be committed by a developer. The absence of any violation from this rule section shall in no way be construed to indicate that the violation does not cause substantial harm or is not subject to a penalty. In any instance where the violation is not listed in this rule section, the penalty will be determined by consideration of:

1. The closest analogous violation, if any, that is listed in this rule section; and
2. The mitigating or aggravating factors listed in this rule section.

(b) Violations Included. This rule section applies to all statutory and rule violations subject to a penalty authorized by Chapter 718, F.S.

(c) Rule Establishes Norm. These guidelines do not supersede the division's authority to order a developer to cease and desist from any unlawful practice, or order other affirmative action in situations where the imposition of administrative penalties is not adequate. For example, notwithstanding the specification of relatively smaller penalties for particular violations, the division will suspend the imposition of a penalty and impose other remedies where aggravating or mitigating factors warrant it. If an enforcement resolution is utilized, the total penalty to be assessed shall be calculated according to these guidelines or \$500, whichever amount is greater.

(d) Description of Violations. Although the violations in Rule 61B-20.006, F.A.C., include specific references to statutes and administrative rules, the violations are described in general language and are not necessarily stated in the same language that would be used to formally allege a violation in a specific case. If any statutory or rule citation in Rule 61B-20.006, F.A.C., is changed, then the use of the previous statutory citation will not invalidate this rule section.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining penalties for violations listed in this rule section. The factors are not necessarily listed in order of importance, and they shall be applied against each single count of the listed violation.

(a) Aggravating Factors:

1. Filing or causing to be filed any materially incorrect document in response to any division request or subpoena.
2. Financial loss to parties or persons affected by the violation.
3. Financial gain to parties or persons who perpetrated the violation.
4. The same violation was committed after a Notice of Deficiency was issued.
5. The disciplinary history of the developer, including such action resulting in settlement or pending resolution.
6. The violation caused substantial harm, or has the potential to cause substantial harm to condominium residents or other persons.
7. Undue delay in initiating or completing, or failure to take affirmative or corrective action after the developer received the division's written notifications of the violation.
8. The violation had occurred for a long period of time.
9. The violation was repeated within a short period of time.
10. The developer impeded the division's investigation or authority.
11. The investigation involved the issuance of a notice to show cause or other proceeding.

(b) Mitigating Factors:

1. Reliance on written professional or expert counsel and advice.
2. Acts of God or nature.
3. The violation caused no harm to condominium residents or other persons.
4. The developer took affirmative or corrective action before it received the division's written

notification of the violation.

5. The developer expeditiously took affirmative or corrective action after it received the division's written notification of the violation.

6. The developer cooperated with the division during the investigation.

7. The investigation was concluded through consent proceedings.

(4) The provisions of this rule section shall not be construed so as to prohibit or limit any other civil or criminal prosecution that may be brought.

(5) The imposition of a penalty does not preclude the division from imposing additional sanctions or remedies provided under Chapter 718, F.S.

(6) In addition to the penalties established in this rule section, the division reserves the right to seek to recover any other costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages allowed by law. Additionally, the division reserves the right to seek to recover any costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages imposed by law if a developer submits a bad check to the division.

(7) Penalties.

(a) Minor Violations. The following violations shall be considered minor due to their lower potential for consumer harm. If an enforcement resolution is utilized, the division shall impose a civil penalty between \$1 and \$5, per unit, for each minor violation. The penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$500, whichever amount is greater. Finally, in no event shall a penalty of more than \$5,000 be imposed for a single violation. The following are identified as minor violations:

Category	Statute or Rule Cite	Description of Conduct/Violation
Board	718.110(1)(b), F.S. 718.112(2)(h)2., F.S.	Failure of amendment to declaration or bylaws to contain full text showing underlined or language; etc.
Board	718.111(1)(a), F.S.	Failure to maintain corporate status
Board	718.111(1)(b), F.S.	Improper use of secret ballot, or use of proxy, by board members at a board meeting.
Board	718.112(2)(a)2., F.S.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
Board	718.112(2)(b)1., F.S.	Improper quorum at unit owner meeting.
Board	718.112(2)(b)2., F.S.	Failure of proxy to contain required elements.
Board	718.112(2)(c), F.S. 61B-23.002(9), F.A.C.	Failure to properly notice and conduct board of administration or committee meetings: notice failed to indicate assessment would be considered; failure to maintain affidavit by person who gave notice of special assessment meeting; failure to ratify emergency action at next meeting; failure to adopt a rule regarding posting of notices; failure to notice meeting; non-emergency action taken at board meeting, not on agenda; no meeting agenda; failure to allow unit owners to speak at meeting or speech is limited to less than three minutes.
Board	718.112(2)(d)2., F.S.	Failure to provide notice of the annual meeting

		not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings.
Board	718.112(2)(d)4., F.S.	Failure to hold a unit owner meeting to obtain unit owners' approval when written agreements are not authorized.
Board	718.112(2)(i), F.S.	Failure to have the authority in the documents when levying transfer fees or security deposits.
Board	718.113(5), F.S.	Failure to comply with hurricane shutter requirements.
Board	718.116(3), F.S.	Failure to have the authority in the documents when levying late fees.
Board	718.3026(1), F.S.	Failure to obtain competitive bids on contracts that exceed five percent of the association's budget.
Board	718.303(3), F.S.	Failure to have the authority in the documents when levying fines. Failure to provide proper notice of fines.
Board	61B-23.001(2), F.A.C.	Failure to allow unit owners to attend board or committee meetings.
Board	718.112(2)(b)5., F.S.	Failure to provide a speaker phone for board or committee meetings held by teleconference.
Board	61B-23.001(4), F.A.C.	Failure to employ a licensed manager when licensure is required.
Board	61B-23.002(10), F.A.C.	Failure to permit a unit owner to tape record or video tape meetings.
Board	61B-23.0021(1)(d)2., F.A.C.	Failure to fill vacancy properly.
Budgets	718.112(2)(e), F.S.	Failure to timely notice budget meeting. Failure to timely deliver proposed budget. Failure of board to call a unit owners' meeting to consider alternate budget.
Budgets	718.112(2)(f)1., F.S. 718.504(21), F.S.	Failure to include applicable line items in proposed budget.
Budgets	718.112(2)(f)1., F.S. 61B-22.003(5), F.A.C.	Failure to show limited common element expenses in proposed budget.
Budgets	61B-22.003(1)(b), F.A.C.	Failure to disclose the beginning and ending dates of the period covered by the proposed budget.
Budgets	61B-22.003(1)(c), F.A.C.	Failure to disclose periodic assessments for each unit type in proposed budget.
Budgets	61B-22.003(1)(d), F.A.C.	Failure to propose full reserve funding in proposed budget.
Budgets	61B-22.003(1)(e), (f), (g), F.A.C. 61B-22.005(1), F.A.C.	Failure to provide for funding of one or more reserve fund categories in the proposed budget.

Budgets	61B-22.003(4)(a), F.A.C.	Failure to provide the required separate proposed budget for each condominium operated by the association.
Elections	718.112(2)(d)3., F.S. 61B-23.0021(3), FAC	Improper nomination procedures in election.
Elections	718.112(2)(d)3., F.S. 61B-23.0021(5), F.A.C.	Including a candidate who did not provide timely notice of candidacy.
Elections	61B-23.0021(6), F.A.C.	Failure to provide candidate a receipt for written notice of intent to be a candidate.
Elections	61B-23.0021(8), F.A.C.	(10), Counting ballots not cast in inner and outer envelopes. Failure to provide space for name and signature on outer envelope.
Elections	61B-23.0021(10)(c), F.A.C.	Failure to timely hold runoff election.
Records	718.111(1)(b), F.S.	Failure of minutes to reflect how board members voted at board meeting. Failure to record a vote or an abstention in the minutes for each board member present at the board meeting.
Records	718.111(12)(a)2., F.S.	Failure to maintain a copy of recorded declaration and amendments.
Records	718.111(12)(a)3., F.S.	Failure to maintain a copy of recorded bylaws and amendments.
Records	718.111(12)(a)4., F.S.	Failure to maintain a certified copy of articles of incorporation and amendments.
Records	718.111(12)(a)7., F.S.	Failure to maintain a current unit owner roster. Failure of roster to include all elements.
Records	718.111(12)(a)14., F.S.	Failure to maintain or annually update the question and answer sheet.
Records	61B-23.002(7)(a), F.A.C. 718.111(12)(a)15., F.S.	Failure to maintain other association records related to the operation of the association.
Records	718.111(12)(b), (c), F.S.	Failure to provide access to records.
Records	61B-22.003(3), F.A.C.	Failure of budget meeting minutes to reflect adoption of the proposed budget.
Records	61B-23.003(6), F.A.C.	Failure to maintain a copy of the receipt for delivery of association records upon transfer of control.
Reporting	718.111(13), F.S.	Failure to timely provide the annual financial report.
Reporting	61B-22.006(3)(a)5., F.A.C.	Failure to disclose in the year-end financial statements the manner by which reserve items were estimated and/or the date the estimates were last made.
Reporting	61B-22.006(3)(b), F.A.C.	(c), Improper disclosure in the year-end financial statements of method of allocating revenues and expenses. Improper special assessment disclosures in the year-end financial statements.
Reporting	61B-22.006(3)(d), F.A.C.	Improper disclosure in the year-end financial statements of revenues and expenses related to

Reporting	61B-22.006(4), F.A.C.	limited common elements. Improper multi-condominium reserve fund disclosures in the year-end financial statements. Multi-condominium revenues, expenses, and changes in fund balance not shown for each condominium in the year-end financial statements. Disclosure of multi-condominium revenues/expenses for the association not specific to a condominium, is omitted, or is incomplete in the year-end financial statements.
Reporting	61B-22.006(5), F.A.C.	Failure to show developer assessments separately from non-developer owners in the year-end financial statements or annual financial report.
Reporting	61B-22.006(3)(a), F.A.C.	Failure to include the required reserve fund disclosures in the annual financial report.
Reporting	61B-22.006(6)(b), F.A.C.	Improper disclosure of receipts and expenditures in the annual financial report in a multi-condominium association.
Reporting	61B-22.0062(2)(b), F.A.C.	Failure to include in the turnover financial statements a statement of total cash payments made by the developer to the association.

(b) Major Violations. The following violations shall be considered major due to their increased potential for consumer harm. If an enforcement resolution is utilized, the penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$500, whichever amount is greater. Finally, in no event shall a penalty of more than \$5,000 be imposed for a single violation. The penalties are set forth in categories 1, 2, and 3, for each violation as follows:

Category 1: \$10 – \$18 per unit.

Category 2: \$20 – \$50 per unit.

Category 3: \$100 – \$300 for each unit offered/created; deposit or contract.

Category	Statute or Rule Cite	Description of Conduct/Violation	Suggested Penalty
Accounting Records	718.111(12)(a)11., F.S. 61B-22.002, F.A.C.	Insufficient detail in the accounting records Failure to maintain sufficient accounting records.	2
Assessing	718.112(2)(g), F.S.	Failure to assess at sufficient amounts.	1
Assessing	718.115(2), F.S.	Failure to assess based upon proportionate share or as stated in the declaration of condominium.	2
Assessing	718.116(1), (9), F.S.	Failure by developer to pay assessments or to pay in timely manner.	2
Board	718.110, F.S. 718.112, F.S.	Failure to follow method of amendment.	2

Board	718.112(2)(a)1., F.S.	Improper compensation of officers or directors.	1
Board	718.112(2)(d)1., F.S.	Failure to hold annual meeting.	2
Board	718.111(11)(d), F.S.	Failure to maintain adequate fidelity bonding for all persons who control or distribute association funds.	2
Board	718.501(2)(a), F.S.	Failure to pay annual fees to the division.	2
Budgets	718.112(2)(e), F.S.	Failure to propose/adopt budget for a given year.	2
Budgets	61B-22.003(1)(e), (f), (g), F.A.C.	Failure to include reserve schedule in the proposed budget.	1
Commingle	718.111(14), F.S.	Commingle association funds with non-association funds.	2
Commingle	718.111(14), F.S. 61B-22.005(2), F.A.C.	Commingle reserve funds with operating funds.	1
Common Expenses	718.115(1), F.S. 61B-23.003(3), F.A.C.	Using association funds for other than common expenses.	2
Converter Reserves	718.618(1), F.S. 61B-24.007, F.A.C.	Failure to calculate converter reserves properly.	2
Converter Reserves	718.618(2)(a), F.S.	Failure to fund converter reserves in a timely manner.	2
Converter Reserves	718.618(3)(b), F.S.	Improper use of converter reserves.	1
Converter Reserves	61B-22.003(1)(e)5., F.A.C. 61B-22.006(3)(a)6., F.A.C.	Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report.	1
Development	718.202(1), F.S. 61B-17.009(1), F.A.C.	Developer using an alternative assurance, such as a Letter of Credit or Surety Bond, in lieu of an escrow account, without the prior approval of the Director.	3
Development	718.202(1) or (6), F.S.	Failure to establish an escrow account or place funds therein.	3
Development	718.301(1), (2), (4), F.S.	Failure to transfer association control.	2
Development	718.403(1), F.S.	Continuing to develop phases after expiration of phase deadline.	3
Development	718.403(1), (2), F.S. 61B-17.003(9), F.A.C.	Failure to follow proper method to amend documents to alter phase development plan.	3
Development	718.502(2)(a), F.S.	Accepting deposits prior to filing reservation and escrow agreements with the division.	3
Development	718.502(2)(a), F.S. 61B-17.001(1)(a), F.A.C.	Offering sales contracts prior to initial filing with division and acceptance for form.	3
Development	718.502(3), F.S. 61B-17.006(2), F.A.C.	Failure to file amendments to documents previously filed with the division.	1
Development	718.503(1)(a), F.S. 61B-18.001(10), F.A.C.	Using sales contracts without required disclosures.	3
Development	718.503(1)(b), F.S.	Failure to provide documents to purchasers.	3
Development	61B-17.001(6), F.A.C.	Closing on sales of units prior to filing with division and acceptance for content.	3

Development	61B-17.001(3), F.A.C.	Failure to provide recording information to the division.	1
Development	61B-17.003(3), F.A.C.	Offering sales contracts on units within a phase prior to filing phase documents with the division.	3
Elections	718.112(2)(d), F.S. 718.301(1), (2), F.S. 61B-23.0021(2), F.A.C.	Failure to hold election to permit participation on board by non-developer owners. Failure to permit participation on board by non-developer owners after 15 percent of units have been sold.	2
Elections	718.112(2)(d)3., F.S. 61B-23.0021(4), F.A.C.	Failure to provide, or timely provide, first notice of election.	1
Elections	718.112(2)(d)3., F.S. 61B-23.0021(7), (8), F.A.C.	Failure to provide, or timely provide, second notice of election or omitting materials such as ballots, envelopes, and candidate information sheets.	1
Elections	718.112(2)(d)3., F.S.	Failure to use ballots or voting machines.	2
Elections	718.112(2)(d)3., F.S. 61B-23.0021(9), F.A.C.	Failure to include all timely submitted names of eligible candidates on the ballot.	1
Elections	61B-23.0021(10)(a), (b), F.A.C.	Counting ineligible ballots. Not counting ballots in the presence of unit owners.	1
Elections	61B-23.0021(10)(c), F.A.C.	Failure to hold runoff election.	2
Elections	61B-23.003(7)(f), F.A.C.	Improperly permitting a developer to vote for a majority of the board.	2
Final Order	718.501(1)(d)4., F.S.	Failure to comply with final order of the division.	2
Guarantee	718.116(9), F.S. 61B-22.004(1), FAC	Guarantee not properly established.	2
Guarantee	718.116(9)(a), F.S. 61B-22.004(3), FAC	Improperly assessing unit owners.	2
Guarantee	718.116(9)(a), F.S. 61B-22.004(5), FAC	Guarantee deficit not funded.	2
Guarantee	61B-22.004(2), F.A.C.	Guarantee period unclear/not specified, not properly extended.	2
Guarantee	61B-22.004(4)(a), F.A.C.	Not providing sufficient cash/resources to provide payment on a timely basis of all common expenses including full funding of reserves.	2
Guarantee	61B-22.004(4)(b), F.A.C. 61B-22.004(5), F.A.C.	Amount owed by the guarantor for the guarantee period not properly calculated.	2
Records	718.111(12)(a)12., F.S.	Failure to maintain election materials for one year.	1
Records	718.111(12)(a)6., F.S.	Failure to maintain minutes of meetings.	1
Records	718.111(12)(b), F.S.	Failure to maintain records within Florida.	2
Records	718.301(4), F.S.	Failure to deliver one or more association records upon transfer of association control.	2
Reporting	718.111(13), F.S.	Failure to provide the annual financial report.	2

Reporting	718.111(13), F.S.	Failure to provide year-end financial statements in a timely manner.	1
Reporting	718.111(13), F.S.	Failure to provide year-end financial statements.	2
Reporting	718.111(13), F.S.	Prior to turnover of control of the association, developer was included in vote to waive audit requirement after the first two years of operation.	2
Reporting	718.301(4)(c), F.S.	Failure to provide turnover financial statements in a timely manner.	1
Reporting	718.301(4)(c), F.S. 61B-22.0062(1), F.A.C.	Failure to provide turnover financial statements. Turnover financial statements not audited. Failure of turnover financial statements to cover entire period.	2
Reporting	61B-22.006(1), F.A.C.	Failure to prepare year-end financial statements using fund accounting. Failure to prepare year-end financial statements on accrual basis.	1
Reporting	61B-22.006(1), F.A.C.	Failure to prepare year-end financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Failure to have reviewed or audited year-end financial statements prepared by a Florida licensed CPA.	2
Reporting	61B-22.006(2), F.A.C.	Failure to include one or more components of the year-end financial statements (incomplete).	1
Reporting	61B-22.006(3)(a)1.-6., F.A.C.	Failure to make significant reserve fund disclosures in the year-end financial statements or annual financial report.	1
Reporting	61B-22.006(3)(e), F.A.C. 61B-22.0062(2)(d), F.A.C.	Guarantee disclosures incomplete in, or missing from, turnover financial statements or year-end financial statements.	1
Reporting	61B-22.006(6)(a), (b), F.A.C. 718.111(13)(b), F.S.	Failure to prepare the annual financial report on a cash basis. Failure to include in the annual financial report specified receipt or expenditure line items, or disclosures on limited common elements.	1
Reporting	718.111(13)(d), F.S.	Providing lower level of reporting for year-end financial statements than required.	2
Reporting	61B-22.0062(2), F.A.C.	Failure of turnover financial statements to present revenues and expenses for each fiscal year and interim period.	2
Reporting	61B-22.0062(2)(a)-(c), F.A.C.	Turnover financial statements omit disclosure of common expenses paid by the developer.	2
Reserves	718.112(2)(f)2., F.S. 61B-22.005(3), FAC	Failure to calculate reserve funds properly.	1

Reserves	718.112(2)(f)2., F.S. 61B-22.005(6), F.A.C.	Failure to fund reserves in a timely manner. Failure to fully fund reserves.	1
Reserves	718.112(2)(f)2., F.S. 61B-22.005(6), (8), F.A.C.	Failure to follow proper method to waive or reduce reserve funding.	1
Reserves	718.112(2)(f)2., F.S.	Prior to turnover of control of the association, developer included in vote to waive/reduce reserve funding after first two years of operation.	1
Reserves	718.112(2)(f)3., F.S. 61B-22.005(7), F.A.C.	Failure to obtain unit owner approval prior to using reserve funds for other purposes.	2
Special Assessment	718.116(10), F.S.	Failure to use special assessment funds for intended purposes.	1

*Specific Authority 718.501(1)(d)4., (f) FS. Law Implemented 718.501(1)(d)4. FS. History–New 6-4-98.*

## **61B-21 CONDOMINIUM RESOLUTION GUIDELINES FOR UNIT OWNER CONTROLLED ASSOCIATIONS**

### **61B-21.001 Definitions and Purpose.**

(1) Definitions. For the purposes of this rule chapter, the following definitions shall apply:

(a) “Accepted Complaint” means a complaint received by the division containing sufficient documentation and addressing a subject within the jurisdiction of the division, pursuant to Section 718.501(1), F.S.

(b) “Affirmative or corrective action” means putting remedial procedures in place to ensure that the violation does not recur, making any injured person whole as to the harm suffered in relation to the violation, or taking any other appropriate measures to redress the harm caused.

(c) “Alleged repeated violation” means any accepted complaint for the same or substantially similar recurring conduct received by the division within two years from the resolution of a previous complaint regarding that conduct.

(d) “Association,” for purposes of these guidelines, shall have the same meaning as stated in Section 718.103(2), F.S.

(e) “Bad check” means any worthless check, draft, or order of payment identified under Section 68.065, F.S.

(2) Purpose. The purpose of the resolution guidelines is to implement the division’s responsibility to ensure compliance with the provisions of Chapter 718, F.S., and the division’s administrative rules. The division recognizes that unit owner controlled associations are comprised of volunteer members who, in most circumstances, are lay people without specialized knowledge of the complex statutory and administrative rule structure of Chapter 718, F.S. Based upon this understanding, the division, as set forth in these rules, will first and foremost attempt to seek statutory and rule compliance through an educational resolution. For repeated statutory or rule violations, where the violations have not been corrected or otherwise resolved by the association, the division will seek statutory or rule compliance through an enforcement resolution. The guidelines are also intended to implement the division’s statutory authority to give reasonable and meaningful notice to persons regulated by Chapter 718, F.S., and the administrative rules of the range of penalties that normally will be imposed, if an enforcement resolution is taken by the division. Finally, the rules are intended, pursuant to statutory mandate, to distinguish between minor and major violations based upon the potential harm that the violation may cause.

(3) These penalty guidelines are promulgated pursuant to the division's authority in Section 718.501(1)(d) and (f), F.S. This rule chapter does not preclude the division from imposing affirmative or corrective action pursuant to Section 718.501(1)(d)2., F.S. Nothing in this rule chapter shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Rules 61B-21.001, and 61B-21.002, and 61B-21.003, F.A.C., are necessary to explicate the division's education and enforcement policy. This rule chapter is not intended to cover, or be applied to, willful and knowing violations of Chapter 718, F.S., or the administrative rules by an officer or association board member, pursuant to Section 718.501(1)(d)4., F.S. Such violations shall be strictly governed by the provisions of Section 718.501(1)(d)4., F.S. This rule chapter is not intended to cover, or be applied to, violations of Chapter 718, F.S., or the administrative rules by a condominium developer as defined by Section 718.103(16), F.S. Such violations shall be strictly governed by the provisions of Rules 61B-20.004, 61B-20.005, and 61B-20.006, F.A.C., and Section 718.301(5), F.S.

*Specific Authority 718.501(1)(d)4.,(f) FS. Law Implemented 718.501(1)(d)4. FS. History--New 6-4-98.*

#### **61B-21.002 Educational Resolution.**

(1) The educational resolution process, as detailed in this rule chapter, is only applicable to unit owner controlled associations.

(2) Alleged Initial Violation. An initial accepted complaint, directed at an association and involving a possible violation identified as minor in these guidelines, will be resolved as follows: The division will review the matter and will contact the association board by letter or telephone regarding the complaint. The division will provide educational materials or guidance to the association board to assist it with addressing the subject matter of the complaint and provide the association with the opportunity to respond. The division will notify the complainant of the educational resolution and the division's complaint file will be closed.

(3) Alleged Repeated Violations. A subsequent accepted complaint, directed at the same association involving a possible violation identified as minor in these guidelines, will be resolved as follows:

If based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the association. The Warning Letter will give the association a reasonable period of time in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator's name so that the association may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the association to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will lead to further investigation. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the educational resolution, or if applicable, alternative dispute resolution options.

(4) Alleged Major Violations. An initial accepted complaint, directed at an association and involving a possible violation identified as major in these guidelines, will be resolved as follows: If based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the association. The Warning Letter will give the association a reasonable period of time in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator's name so that the association may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the

responsibility of the association to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will lead to further investigation. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the educational resolution, or if applicable, alternative dispute resolution options.

*Specific Authority 718.501(1)(d)4.,(f) FS. Law Implemented 718.501(1)(d)4.,(k) FS. History—New 6-4-98.*

### **61B-21.003 Enforcement Resolution and Civil Penalties.**

(1) The division will seek compliance through an enforcement resolution for repeated minor or major violations, or for the failure to correct or address a violation or provide unit owner redress as requested by the division. These guidelines list aggravating and mitigating factors that will reduce or increase the listed penalty amounts within the specified range and those circumstances that justify a departure from the range. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of \$5,000. The guidelines in this rule chapter are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in this rule chapter shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order.

#### **(2) General Provisions.**

(a) Rule Not All-Inclusive. This rule chapter contains illustrative violations. It does not, and is not intended to, encompass all possible violations of statute or division rule that might be committed by an association. The absence of any violation from this rule chapter shall in no way be construed to indicate that the violation does not cause substantial harm or is not subject to a penalty. In any instance where the violation is not listed in this rule chapter, the penalty will be determined by consideration of:

1. The closest analogous violation, if any, that is listed in this rule chapter; and
2. The mitigating or aggravating factors listed in this rule chapter.

(b) Violations Included. This rule chapter applies to all statutory and rule violations subject to a penalty authorized by Chapter 718, F.S.

(c) Rule Establishes Norm. These guidelines do not supersede the division's authority to order an association to cease and desist from any unlawful practice, or order other affirmative action in situations where the imposition of administrative penalties is not adequate. For example, notwithstanding the specification of relatively smaller penalties for particular violations, the division will suspend the imposition of a penalty and impose other remedies where aggravating or mitigating factors warrant it. If an enforcement resolution is utilized, the total penalty to be assessed shall be calculated according to these guidelines or \$100, whichever amount is greater.

(d) Description of Violations. Although the violations in Rule 61B-21.003, F.A.C., include specific references to statutes and administrative rules, the violations are described in general language and are not necessarily stated in the same language that would be used to formally allege a violation in a specific case. If any statutory or rule citation in Rule 61B-21.003, F.A.C., is changed, then the use of the previous statutory citation will not invalidate this rule chapter.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining penalties for violations listed in this rule chapter. The factors are not necessarily listed in order of importance, and they shall be applied against each single count of the listed violation.

#### **(a) Aggravating Factors:**

1. Filing or causing to be filed any materially incorrect document in response to any division

request or subpoena.

2. Financial loss to parties or persons affected by the violation.
3. Financial gain to parties or persons who perpetrated the violation.
4. The disciplinary history of the association, including such action resulting in an enforcement resolution as detailed in Rule 61B-21.003, F.A.C., or Section 718.501, F.S.
5. The violation caused substantial harm, or has the potential to cause substantial harm, to condominium residents or other persons.
6. Undue delay in initiating or completing, or failure to take, affirmative or corrective action after the association received the division's written notification of the violation.
7. The violation had occurred for a long period of time.
8. The violation was repeated within a short period of time.
9. The association impeded the division's investigation or authority.
10. The investigation involved the issuance of a notice to show cause or other proceeding.

(b) Mitigating Factors:

1. Whether current members of the association board have sought and received educational training, other than information provided pursuant to Rule 61B-21.002, F.A.C., on the requirements of Chapter 718, F.S., within the past two years.
2. Reliance on written professional or expert counsel and advice.
3. Acts of God or nature.
4. The violation caused no harm to condominium residents or other persons.
5. The association took affirmative or corrective action before it received the division's written notification of the violation.
6. The association expeditiously took affirmative or corrective action after it received the division's written notification of the violation.
7. The association cooperated with the division during the investigation.
8. The investigation was concluded through consent proceedings.

(4) The provisions of this rule chapter shall not be construed so as to prohibit or limit any other civil or criminal prosecution that may be brought.

(5) The imposition of a penalty does not preclude the division from imposing additional sanctions or remedies provided under Chapter 718, F.S.

(6) In addition to the penalties established in this rule chapter, the division reserves the right to seek to recover any other costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages allowed by law. Additionally, the division reserves the right to seek to recover any costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages imposed by law if an association submits a bad check to the division.

(7) Penalties.

(a) Minor Violations. The following violations shall be considered minor due to their lower potential for consumer harm. If an enforcement resolution is utilized, the division shall impose a civil penalty between \$1 and \$5, per unit, for each minor violation. The penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$100, whichever amount is greater. Finally, in no event shall a penalty of more than \$2,500 be imposed for a single violation. The following are identified as minor violations:

Category	Statute or Rule Cite	Description of Conduct/Violation
Board	718.110(1)(b), F.S.	Failure of amendment to declaration or bylaws to contain full text showing underlined or language; etc.
Board	718.112(2)(h)2., F.S.	
Board	718.111(1)(a), F.S.	Failure to maintain corporate status

Board	718.111(1)(b), F.S.	Improper use of secret ballot, or use of proxy, by board members at a board meeting.
Board	718.112(2)(a)2., F.S.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
Board	718.112(2)(b)1., F.S.	Improper quorum at unit owner meeting.
Board	718.112(2)(b)2., F.S.	Failure of proxy to contain required elements.
Board	718.112(2)(c), F.S. 61B-23.002(9), F.A.C.	Failure to properly notice and conduct board of administration or committee meetings: notice failed to indicate assessment would be considered; failure to maintain affidavit by person who gave notice of special assessment meeting; failure to ratify emergency action at next meeting; failure to adopt a rule regarding posting of notices; failure to notice meeting; non-emergency action taken at board meeting, not on agenda; no meeting agenda; failure to allow unit owners to speak at meeting or speech is limited to less than three minutes.
Board	718.112(2)(d)2., F.S.	Failure to provide notice of the annual meeting not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings.
Board	718.112(2)(d)4., F.S.	Failure to hold a unit owner meeting to obtain unit owners' approval when written agreements are not authorized.
Board	718.112(2)(i), F.S.	Failure to have the authority in the documents when levying transfer fees or security deposits.
Board	718.113(5), F.S.	Failure to comply with hurricane shutter requirements.
Board	718.116(3), F.S.	Failure to have the authority in the documents when levying late fees.
Board	718.3026(1), F.S.	Failure to obtain competitive bids on contracts that exceed five percent of the association's budget.
Board	718.303(3), F.S.	Failure to have the authority in the documents when levying fines. Failure to provide proper notice of fines.
Board	61B-23.001(2), F.A.C.	Failure to allow unit owners to attend board or committee meetings.
Board	718.112(2)(b)5., F.A.C.	Failure to provide a speaker phone for board or committee meetings held by teleconference.
Board	61B-23.001(4), F.A.C.	Failure to employ a licensed manager when licensure is required.
Board	61B-23.002(10), F.A.C.	Failure to permit a unit owner to tape record or video tape meetings.
Board	61B-23.0021(1)(d), F.A.C.	Failure to fill vacancy properly.

Budgets	718.112(2)(d)8., F.S. 718.112(2)(e), F.S.	Failure to timely notice budget meeting. Failure to timely deliver proposed budget. Failure of board to call a unit owners' meeting to consider alternate budget.
Budgets	718.112(2)(f)1., F.S.	Failure to include applicable line items in proposed budget.
Budgets	718.112(2)(f)1., F.S.	Failure to show limited common element expenses in proposed budget.
Budgets	61B-22.003(5), F.A.C. 61B-22.003(1)(b), F.A.C.	Failure to disclose the beginning and ending dates of the period covered by the proposed budget.
Budgets	61B-22.003(1)(c), F.A.C.	Failure to disclose periodic assessments for each unit in proposed budget.
Budgets	61B-22.003(1)(d), F.A.C.	Failure to propose full reserve funding in proposed budget.
Budgets	61B-22.003(1)(e), (f), (g), F.A.C.	Failure to provide for funding of one or more reserve fund categories in the proposed budget.
Budgets	61B-22.005(1), F.A.C. 61B-22.003(4)(a), F.A.C.	Failure to provide the required separate proposed budget for each condominium operated by the association.
Elections	718.112(2)(d)3., F.S.	Improper nomination procedures in election.
Elections	61B-23.0021(3), FAC 718.112(2)(d)3., F.S.	Including a candidate who did not provide timely notice of candidacy.
Elections	61B-23.0021(5), F.A.C.	Failure to provide candidate a receipt for written notice of intent to be a candidate.
Elections	61B-23.0021(6), F.A.C.	Counting ballots not cast in inner and outer envelopes. Failure to provide space for name and signature on outer envelope.
Elections	61B-23.0021(8), (10), F.A.C.	Failure to timely hold runoff election.
Records	61B-23.0021(10)(c), F.A.C.	Failure of minutes to reflect how board members voted at board meeting. Failure to record a vote or an abstention in the minutes for each board member present at the board meeting.
Records	718.111(1)(b), F.S.	Failure to maintain a copy of recorded declaration and amendments.
Records	718.111(12)(a)2., F.S.	Failure to maintain a copy of recorded bylaws and amendments.
Records	718.111(12)(a)3., F.S.	Failure to maintain a certified copy of articles of incorporation and amendments.
Records	718.111(12)(a)4., F.S.	Failure to maintain a current unit owner roster.
Records	718.111(12)(a)7., F.S.	Failure of roster to include all elements.
Records	718.111(12)(a)14., F.S.	Failure to maintain or annually update the question and answer sheet.
Records	61B-23.002(7)(a), F.A.C. 718.111(12)(a)15., F.S.	Failure to maintain other association records related to the operation of the association.
Records	718.111(12)(b),(c), F.S.	Failure to provide access to records.
Records	61B-22.003(3), F.A.C.	Failure of budget meeting minutes to reflect

Records	61B-23.003(6), F.A.C.	adoption of the proposed budget. Failure to maintain a copy of the receipt for delivery of association records upon transfer of control.
Reporting	718.111(13), F.S.	Failure to timely provide the annual financial report.
Reporting	61B-22.006(3)(a)5., F.A.C.	Failure to disclose in the year-end financial statements the manner by which reserve items were estimated and/or the date the estimates were last made.
Reporting	61B-22.006(3)(b),(c), F.A.C.	Improper disclosure in the year-end financial statements of method of allocating revenues and expenses. Improper special assessment disclosures in the year-end financial statements.
Reporting	61B-22.006(3)(d), F.A.C.	Improper disclosure in the year-end financial statements of revenues and expenses related to limited common elements.
Reporting	61B-22.006(4), F.A.C.	Improper multi-condominium reserve fund disclosures in the year-end financial statements. Multi-condominium revenues, expenses, and changes in fund balance not shown for each condominium in the year-end financial statements. Disclosure of multi-condominium revenues/expenses for the association not specific to a condominium, is omitted, or is incomplete in the year-end financial statements.
Reporting	61B-22.006(3)(a), F.A.C.	Failure to include the required reserve fund disclosures in the annual financial report.
Reporting	61B-22.006(6)(b), F.A.C.	Improper disclosure of receipts and expenditures in the annual financial report in a multi-condominium association.

(b) Major Violations. The following violations shall be considered major due to their increased potential for consumer harm. If an enforcement resolution is utilized, the penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$100, whichever amount is greater. Finally, in no event shall a penalty of more than \$5,000 be imposed for a single violation. The penalties are set forth in categories 1 and 2, for each violation as follows:

Category 1: \$6 – \$10 per unit.

Category 2: \$12 – \$20 per unit.

Category	Statute or Rule Cite	Description of Conduct/Violation	Suggested Penalty
Accounting Records	718.111(12)(a)11., F.S. 61B-22.002, F.A.C.	Insufficient detail in the accounting records Failure to maintain sufficient accounting records.	2
Assessing	718.112(2)(g), F.S.	Failure to assess at sufficient amounts.	1

Assessing	718.115(2), F.S.	Failure to assess based upon proportionate share or as stated in the declaration of condominium.	2
Board	718.110, F.S.	Failure to follow method of amendment.	2
Board	718.112, FS 718.112(2)(a)1., F.S.	Improper compensation of officers or directors.	1
Board	718.112(2)(d)1., F.S.	Failure to hold annual meeting.	2
Board	718.111(11)(d), F.S.	Failure to maintain adequate fidelity bonding for all persons who control or distribute association funds.	2
Board	718.501(2)(a), F.S.	Failure to pay annual fees to the division.	2
Budgets	718.112(2)(e), F.S.	Failure to propose/adopt budget for a given year.	2
Budgets	61B-22.003(1)(e),(f), F.A.C.	(g), Failure to include reserve schedule in the proposed budget.	1
Commingle	718.111(14), F.S.	Commingling association funds with non-association funds.	2
Commingle	718.111(14), F.S. 61B-22.005(2), F.A.C.	Commingling reserve funds with operating funds.	1
Common Expenses	718.115(1), F.S. 61B-23.003(3), F.A.C.	Using association funds for other than common expenses.	2
Converter Reserves	718.618(3)(b), F.S.	Improper use of converter reserves.	1
Converter Reserves	61B-22.003(1)(e)5., F.A.C. 61B-22.006(3)(a)6., F.A.C.	Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report.	1
Elections	718.112(2)(d), F.S. 61B-23.0021(2), FAC	Failure to hold election.	2
Elections	718.112(2)(d)3., F.S.	Failure to use ballots or voting machines.	2
Elections	718.112(2)(d)3., F.S. 61B-23.0021(4), F.A.C.	Failure to provide, or timely provide, first notice of election.	1
Elections	718.112(2)(d)3., F.S. 61B-23.0021(7),(8), F.A.C.	Failure to provide, or timely provide, second notice of election or omitting materials such as ballots, envelopes, and candidate information sheets.	1
Elections	718.112(2)(d)3., F.S. 61B-23.0021(9), F.A.C.	Failure to include all timely submitted names of eligible candidates on the ballot.	1
Elections	61B-23.0021(10)(a),(b), F.A.C.	Counting ineligible ballots. Not counting ballots in the presence of unit owners.	1
Elections	61B-23.0021(10)(c), F.A.C.	Failure to hold runoff election.	2
Final Order	718.501(1)(d)4., F.S.	Failure to comply with final order of the division.	2
Records	718.111(12)(a)12., F.S.	Failure to maintain election materials for one year.	1
Records	718.111(12)(a)6., F.S.	Failure to maintain minutes of meetings.	1
Records	718.111(12)(b), F.S.	Failure to maintain records within Florida.	2

Reporting	718.111(13), F.S.	Failure to provide the annual financial report.	2
Reporting	718.111(13), F.S. 61B-22.006(7)(b), F.A.C.	Failure to provide year-end financial statements in a timely manner.	1
Reporting	718.111(13), F.S.	Failure to provide year-end financial statements.	2
Reporting	61B-22.006(1), F.A.C.	Failure to prepare year-end financial statements using fund accounting. Failure to prepare year-end financial statements on accrual basis.	1
Reporting	61B-22.006(1), F.A.C.	Failure to prepare year-end financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Failure to have reviewed or audited year-end financial statements prepared by a Florida licensed CPA.	2
Reporting	61B-22.006(2), F.A.C.	Failure to include one or more components of the year-end financial statements (incomplete).	1
Reporting	61B-22.006(3)(a)1.-6., F.A.C.	Failure to make significant reserve fund disclosures in the year-end financial statements or annual financial report.	1
Reporting	61B-22.006(6)(a),(b), F.A.C.	Failure to prepare the annual financial report on a cash basis. Failure to include in the annual financial report specified receipt or expenditure line items, or disclosures on limited common elements.	1
Reporting	718.111(13)(d), F.S.	Providing lower level of reporting for year-end financial statements than required.	2
Reserves	718.112(2)(f)2., F.S. 61B-22.005(3), FAC	Failure to calculate reserve funds properly.	1
Reserves	718.112(2)(f)2., F.S. 61B-22.005(6), F.A.C.	Failure to fund reserves in a timely manner. Failure to fully fund reserves.	1
Reserves	718.112(2)(f)2., F.S. 61B-22.005(6), (8), F.A.C.	Failure to follow proper method to waive or reduce reserve funding.	1
Reserves	718.112(2)(f)3., F.S. 61B-22.005(7), F.A.C.	Failure to obtain unit owner approval prior to using reserve funds for other purposes.	2
Special Assessment	718.116(10), F.S.	Failure to use special assessment funds for intended purposes.	1

*Specific Authority 718.501(1)(d)4., (f) FS. Law Implemented 718.501(1)(d) FS. History–New 6-4-98.*

**61B-22 FINANCIAL AND ACCOUNTING REQUIREMENT; BUDGETS, RESERVES, AND GUARANTEES**

**61B-22.001 Definitions.**

For the purposes of this chapter the following definitions shall apply:

- (1) “Accounting records” include all of the books and records identified in Section

718.111(12)(a)11., Florida Statutes, and any other records that identify, measure, record, or communicate financial information whether the records are maintained electronically or otherwise, including, all payroll and personnel records of the association, all invoices for purchases made by the association, and all invoices for services provided to the association.

(2) “Capital expenditure” means any expenditure of funds for:

(a) The purchase of an asset whose useful life is greater than one year in length;

(b) The replacement of an asset whose useful life is greater than one year in length; or

(c) The addition to an asset that extends the useful life of the previously existing asset for a period greater than one year in length.

(3) “Deferred maintenance” means any maintenance or repair that:

(a) Will be performed less frequently than yearly; and

(b) Will result in maintaining the useful life of an asset.

(4) “Funds” means money and negotiable instruments including, for example, cash, checks, notes, and securities.

(5) “Reserves” means any funds, other than operating funds, that are restricted for deferred maintenance and capital expenditures, including the items required by Section 718.112(2)(f)2., Florida Statutes, and any other funds restricted as to use by the condominium documents or the condominium association. Funds that are not restricted as to use by Section 718.112(2)(f), Florida Statutes, the condominium documents or by the association shall not be considered reserves within the meaning of this rule.

(6) “Turnover” means transfer of association control from developers to non-developer unit owners pursuant to Section 718.301, Florida Statutes.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.111(12), 718.112(2)(f), 718.301, 718.501 FS. History—New 7-11-93, Formerly 7D-22.001, Amended 12-20-95, 12-23-02.*

#### **61B-22.002 Accounting Records.**

All associations shall maintain accounting records in sufficient detail to permit determination of the revenues and expenses or receipts and disbursements attributable to separate condominiums and operating and reserve funds. Multicondominium associations shall maintain separate accounting records for the association and for each condominium operated by the association. Multicondominium associations created prior to July 1, 2000, that do not create separate ownership interests of the common surplus of the association for each unit, as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall not maintain separate fund balances for the association, and shall allocate all association revenues and expenses to each condominium operated by the association pursuant to the provisions of each condominium’s declaration.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.111(12)(a)11., (14), 718.501 FS. History—New 7-11-93, Formerly 7D-22.002, Amended 12-20-95, 12-18-01.*

#### **61B-22.003 Budgets.**

(1) Required elements for estimated operating budgets. The budget for each association shall:

(a) State the estimated common expenses or expenditures on at least an annual basis;

(b) Disclose the beginning and ending dates of the period covered by the budget;

(c) Show the total assessment for each unit type according to proportion of ownership on a monthly basis, or for any other period for which assessments will be due;

(d) Include all estimated common expenses or expenditures of the association including the categories set forth in Section 718.504(21)(c), Florida Statutes. Reserves for capital expenditures and deferred maintenance required by Section 718.112(2)(f), Florida Statutes, must be included in the proposed annual budget and shall not be waived or reduced prior to the mailing to unit owners

of a proposed annual budget. If the estimated common expense for any category set forth in the statute is not applicable, the category shall be listed followed by an indication that the expense is not applicable;

(e) Unless the association maintains a pooled account for reserves required by Section 718.112(2)(f)2., Florida Statutes, the association shall include a schedule stating each reserve account for capital expenditures and deferred maintenance as a separate line item with the following minimum disclosures:

1. The total estimated useful life of the asset;
2. The estimated remaining useful life of the asset;
3. The estimated replacement cost or deferred maintenance expense of the asset;
4. The estimated fund balance as of the beginning of the period for which the budget will be in effect; and
5. The developer's total funding obligation, when all units are sold, for each converter reserve account established pursuant to Section 718.618, Florida Statutes, if applicable.

(f) If the association maintains a pooled account for reserves required by Section 718.112(2)(f)2., Florida Statutes, the association shall include a separate schedule of any pooled reserves with the following minimum disclosures:

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

(g) Include a separate schedule of any other reserve funds to be restricted by the association as a separate line item with the following minimum disclosures:

1. The intended use of the restricted funds; and
2. The estimated fund balance of the item as of the beginning of the period for which the budget will be in effect.

(2) Unrestricted expense categories. Expense categories that are not restricted as to use shall be stated in the operating portion of the budget rather than the reserve portion of the budget.

(3) Record keeping requirements for budgets. The minutes of the association shall reflect the adoption of the budget and a copy of the proposed and adopted budgets shall be maintained as part of the financial records of the association.

(4) Multicondominium associations. Multicondominium associations shall comply with the following requirements:

(a) Provide a separate budget for each condominium operated by the association as well as for the association. Each such budget shall disclose:

1. Estimated expenses specific to a condominium such as the maintenance, deferred maintenance or replacement of the common elements of the condominium which shall be provided for in the budget of the specific condominium;

2. Estimated expenses of the association that are not specific to a condominium such as the maintenance, deferred maintenance or replacement of the property serving more than one condominium which shall be provided for in the association budget; and

3. Multicondominium associations created after June 30, 2000, or that have created separate ownership interests of the common surplus of the association for each unit as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall include each unit's share of the estimated expenses of the association, referred to in subsection (2) of this rule, which shall be shown on the individual condominium budgets. Multicondominium associations created prior to July 1, 2000, that have not created separate ownership interests of the common surplus of the

association for each unit as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall include each condominium's share of the estimated expenses of the association, referred to in subsection (2) of this rule, which shall be shown on the individual condominium budgets.

4. The budgets of multicondominium associations created after June 30, 2000 or of multicondominium associations that have created separate ownership interests of the common surplus of the association for each unit as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, shall show the estimated revenues of each condominium and of the association.

(b) Associations that operate separate condominiums in a consolidated fashion pursuant to Section 718.111(6), Florida Statutes, may utilize a single consolidated budget.

(5) Limited common elements. If an association maintains limited common elements at the expense of only those unit owners entitled to use the limited common elements pursuant to Section 718.113(1), Florida Statutes, the budget shall include a separate schedule, or schedules, conforming to the requirements for budgets as stated in this rule, of all estimated expenses specific to each of the limited common elements, including any applicable reserves for deferred maintenance and capital expenditures. The schedule or schedules may group the maintenance expense of any limited common elements for which the declaration provides that the maintenance expense is to be shared by a group of unit owners.

(6) Phase condominium budgets. By operation of law, the annual budget of a phase condominium created pursuant to Section 718.403, Florida Statutes, shall automatically be adjusted to incorporate the change in proportionate ownership of the common elements by the purchasers and to incorporate any other changes related to the addition of phases in accordance with the declaration of condominium. The adjusted annual budget shall be effective on the date that the amendment to the declaration adding a phase to a phase condominium is recorded in the official records of the county in which the condominium is located. Notwithstanding the requirements of subsection (7) of this rule, the association shall not be required to follow the provisions of Section 718.112(2)(c), Florida Statutes, unless, as a result of the budget adjustment, the assessment per unit has changed.

(7) Budget assessment amendments. The association may amend a previously approved annual budget. In order to do so the board of administration shall follow the provisions of Section 718.112(2)(e), Florida Statutes. For example, the board shall mail a meeting notice and copies of the proposed amended annual budget to the unit owners not less than 14 days prior to the meeting at which the budget amendment will be considered.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.111(6), 718.112(2)(e), (f), 718.113, 718.501, 718.618 FS. History—New 7-11-93, Formerly 7D-22.003, Amended 12-20-95, 12-18-01, 12-23-02.*

#### **61B-22.004 Guarantees of Common Expenses Under Section 718.116(9)(a)2., Florida Statutes.**

(1) Establishment of the guarantee. If a guarantee is not included in the purchase contracts, declaration, or prospectus, any agreement establishing a guarantee shall be effective only upon the approval of a majority of the voting interests of the unit owners other than the developer. Approval shall be expressed at a meeting of the unit owners, voting in person or by limited proxy; or by agreement in writing without a meeting if provided in the bylaws. Such guarantee shall meet the requirements of this rule.

(2) Guarantee period. The period of time for the guarantee shall be indicated by a specific beginning and ending date or event.

(a) The ending date or event shall be the same for all of the unit owners of a condominium, including unit owners in different phases of phase condominiums, but may vary for each condominium operated by a multicondominium association.

(b) The guarantee may provide for different intervals of time during a guarantee period with different dollar amounts for each such interval.

(c) The guarantee may provide that after the initial stated period, the developer has an option to extend the guarantee for one or more additional stated periods. The extension of a guarantee is limited to extending the ending date or event; therefore, the developer does not have the option of changing the level of assessments guaranteed.

(3) Maximum level of assessments. The stated dollar amount of the guarantee shall be an exact dollar amount for each type of unit identified in the declaration. Regardless of the stated dollar amount of the guarantee, assessments charged to a unit owner shall not exceed the maximum obligation of the unit owner based on the total amount of the adopted budget and the unit owner's proportionate ownership share of the common elements.

(4) Cash funding requirements during the guarantee. The cash payments required from the guarantor during the guarantee period shall be determined as follows:

(a) If at any time during the guarantee period the funds collected from unit owner assessments at the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of all common expenses, including the full funding of the reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due; and

(b) Expenses incurred in the production of non-assessment revenues, not in excess of the non-assessment revenues, shall not be included in the common expenses referenced in subsection (5) of this rule. If the expenses attributable to non-assessment revenues exceed non-assessment revenues only the excess expenses must be funded by the guarantor. For example, if the association operates a rental program in which rental expenses exceed rental revenues the guarantor shall fund the rental expenses in excess of the rental revenues. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such non-assessment revenue generating activity shall be considered separately. Capital contributions collected from unit owners are not revenues, and shall not be used to pay common expenses.

(5) Calculation of guarantor's final obligation. The guarantor's total financial obligation to the association at the end of the guarantee period shall be determined on the accrual basis using the following formula:

(a) The guarantor shall fund the total common expenses incurred during the guarantee period, including the full funding of the reserves unless properly waived; less

(b) The total regular periodic assessments earned by the association from the unit owners other than the guarantor during the guarantee period regardless of whether the actual level charged was less than the maximum guaranteed amount.

(c) If a guarantee pursuant to Section 718.116(9), Florida Statutes, existed within a multicondominium association created prior to July 1, 2000, the guarantor's financial obligation to the association shall be calculated as provided in paragraphs (a) and (b) for each condominium in which the guarantee existed. If a guarantee pursuant to Section 718.116(9), Florida Statutes, existed within a multicondominium association created after June 30, 2000, or within a multicondominium association created prior to July 1, 2000, that has created separate ownership interests of the common surplus of the association for each unit as provided in Sections 718.104(4)(h) and 718.110(12), Florida Statutes, the guarantor's financial obligation to the association shall include the amount calculated pursuant to Section 718.116(9)(c), Florida Statutes.

(d) Expenses incurred in the production of non-assessment revenues, not in excess of the non-assessment revenues, shall not be included in the common expenses referenced in subsection (5)

of this rule. If the expenses attributable to non-assessment revenues exceed non-assessment revenues only the excess expenses shall be funded by the guarantor. For example, if the association operates a rental program in which rental expenses exceed rental revenues the guarantor shall fund the rental expenses in excess of the rental revenues. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such non-assessment revenue generating activity shall be considered separately.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.111(2), (4), (7), (9), 718.112(2)(b)2., 718.116(9), 718.501 FS. History—New 7-11-93, Formerly 7D-22.004, Amended 12-18-01, 6-24-04.*

#### **61B-22.005 Reserves.**

(1) Reserves required by statute. Reserves required by Section 718.112(2)(f), Florida Statutes, for capital expenditures and deferred maintenance including roofing, painting, paving, and any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000 shall be included in the budget. For the purpose of determining whether the deferred maintenance expense or replacement cost of an item exceeds \$10,000, the association may consider each asset of the association separately. Alternatively, the association may group similar or related assets together. For example, an association responsible for the maintenance of two swimming pools, each of which will separately require \$6,000 of total deferred maintenance, may establish a pool reserve, but is not required to do so.

(2) Commingling operating and reserve funds. Associations that collect operating and reserve assessments as a single payment shall not be considered to have commingled the funds provided the reserve portion of the payment is transferred to a separate reserve account, or accounts, within 30 calendar days from the date such funds were deposited.

(3) Calculating reserves required by statute. Reserves for deferred maintenance and capital expenditures required by Section 718.112(2)(f), Florida Statutes, shall be calculated using a formula that will provide funds equal to the total estimated deferred maintenance expense or total estimated replacement cost for an asset or group of assets over the remaining useful life of the asset or group of assets. Funding formulas for reserves required by Section 718.112(2)(f), Florida Statutes, shall be based on either a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

(a) If the association maintains separate reserve accounts for each of the required assets, the amount of the current year contribution to each reserve account shall be the sum of the following two calculations:

1. The total amount necessary, if any, to bring a negative account balance to zero; and
2. The total estimated deferred maintenance expense or estimated replacement cost of the reserve asset less the estimated balance of the reserve account as of the beginning of the period for which the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the asset. The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may consider factors such as inflation and earnings on invested funds.

(b) If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget shall be not less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful lives of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all of

the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.

(4) Estimating reserves that are not required by statute. Reserves that are not required by Section 718.112(2)(f), Florida Statutes, are not required to be based on any specific formula.

(5) Estimating non-converter reserves when the developer is funding converter reserves. For the purpose of estimating non-converter reserves, the estimated fund balance of the non-converter reserve account related to any asset for which the developer has established converter reserves pursuant to Section 718.618, Florida Statutes, shall be the sum of:

(a) The developer's total funding obligation, when all units are sold, for the converter reserve account pursuant to Section 718.618, Florida Statutes; and

(b) The estimated fund balance of the non-converter reserve account, excluding the developer's converter obligation, as of the beginning of the period for which the budget will be in effect.

(6) Timely funding. Reserves included in the adopted budget are common expenses and must be fully funded unless properly waived or reduced. Reserves shall be funded in at least the same frequency that assessments are due from the unit owners (e.g., monthly or quarterly).

(7) Restrictions on use. In a multicondominium association, no vote to allow an association to use reserve funds for purposes other than that for which the funds were originally reserved shall be effective as to a particular condominium unless conducted at a meeting at which the same percentage of voting interests in that condominium that would otherwise be required for a quorum of the association is present in person or by proxy, and a majority of those present in person or by limited proxy, vote to use reserve funds for another purpose. Expenditure of unallocated interest income earned on reserve funds is restricted to any of the capital expenditures, deferred maintenance or other items for which reserve accounts have been established.

(8) Annual vote required to waive reserves. Any vote to waive or reduce reserves for capital expenditures and deferred maintenance required by Section 718.112(2)(f)2., Florida Statutes, shall be effective for only one annual budget. Additionally, in a multicondominium association, no waiver or reduction is effective as to a particular condominium unless conducted at a meeting at which the same percentage of voting interests in that condominium that would otherwise be required for a quorum of the association is present, in person or by proxy, and a majority of those present in person or by limited proxy vote to waive or reduce reserves. For multicondominium associations in which the developer is precluded from casting its votes to waive or reduce the funding of reserves, no waiver or reduction is effective as to a particular condominium unless conducted at a meeting at which the same percentage of non-developer voting interests in that condominium that would otherwise be required for a quorum of the association is present, in person or by proxy, and a majority of those present in person or by limited proxy vote to waive or reduce reserves.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.112(2)(f), 718.501, 718.618 FS. History—New 7-11-93, Formerly 7D-22.005, Amended 12-20-95, 1-19-97, 12-18-01, 12-23-02.*

#### **61B-22.006 Financial Reporting Requirements.**

(1) Basis of accounting. The financial statements required by Sections 718.111(13) and 718.301(4), F.S., shall be prepared on the accrual basis using fund accounting in accordance with generally accepted accounting principles. Reviewed financial statements shall be reviewed in accordance with standards for accounting and review services and audited financial statements shall be audited in accordance with generally accepted auditing standards. Reviews and audits of an association's financial statements shall be performed by an independent certified public accountant licensed by the Florida Board of Accountancy. As used in this rule the terms

“generally accepted accounting principles,” “standards for accounting and review services,” and “generally accepted auditing standards” shall have the same meaning as set forth in Chapter 61H1-20, F.A.C.

(2) Components. The financial statements required by Sections 718.111(13) and 718.301(4), F.S., shall at a minimum include the following components:

- (a) Accountant’s or Auditor’s Report;
- (b) Balance Sheet;
- (c) Statement of Revenues and Expenses;
- (d) Statement of Changes in Fund Balances;
- (e) Statement of Cash Flows; and
- (f) Notes to financial statements.

(3) Disclosure requirements. The financial statements required by Sections 718.111(13) and 718.301(4), F.S., shall contain the following disclosures within the financial statements, notes, or supplementary information:

(a) The following reserve disclosures shall be made regardless of whether reserves have been waived for the fiscal period covered by the financial statements:

1. The beginning balance in each reserve account as of the beginning of the fiscal period covered by the financial statements;

2. The amount of assessments and other additions to each reserve account including authorized transfers from other reserve accounts;

3. The amount expended or removed from each reserve account, including authorized transfers to other reserve accounts;

4. The ending balance in each reserve account as of the end of the fiscal period covered by the financial statements;

5. The amount of annual funding required to fully fund each reserve account, or pool of accounts, over the remaining useful life of the applicable asset or group of assets;

6. The manner by which reserve items were estimated, the date the estimates were last made, the association’s policies for allocating reserve fund interest, and whether reserves have been waived during the period covered by the financial statements; and

7. If the developer has established converter reserves pursuant to Section 718.618(1), F.S., each converter reserve account shall be identified and include the disclosures required by this rule.

(b) The method by which income and expenses were allocated to the unit owners;

(c) The specific purpose or purposes of any special assessments to unit owners pursuant to Section 718.116(10), F.S., and the amount of each special assessment and the disposition of the funds collected;

(d) The amount of revenues and expenses related to limited common elements shall be disclosed when the association maintains the limited common elements and the expense is apportioned to those unit owners entitled to the exclusive use of the limited common elements; and

(e) If a guarantee pursuant to Section 718.116(9), F.S., existed at any time during the fiscal year, the financial statements shall disclose the following:

1. The period of time covered by the guarantee;

2. The amount of common expenses incurred during the guarantee period;

3. The amount of assessments charged to the non-developer unit owners during the guarantee period;

4. The amount of non-assessment revenues earned by the association, with each non-assessment revenue generating activity disclosed separately, during the guarantee period;

5. The amount of expenses incurred in the production of non-assessment revenues, with each

non-assessment revenue generating activity disclosed separately, during the guarantee period;

6. The amount of the developer's payments pursuant to the guarantee; and

7. Any financial obligation due to or from the developer resulting from the guarantee.

(4) Multicondominium associations. Multicondominium associations may present the financial statements required by Sections 718.111(13) and 718.301(4), F.S., on a combined basis as long as the financial statements, notes, or supplementary information disclose the revenues, expenses, and changes in fund balance for each condominium, and the association, as applicable. The financial statements, notes, or supplementary information shall also disclose the revenues and expenses of the association that are not directly associated with specified condominiums, and the method used to allocate such expenses to the condominiums or units, as applicable. Additionally, the reserve disclosures required by this rule shall be presented separately for each condominium and for any association reserves not specifically identified with individual condominiums. The provisions of this rule shall apply to multicondominium financial reporting for fiscal periods ending on or after December 31, 2002. Earlier application of the provisions of this rule is permitted.

(5) Developer assessments. All financial reporting required by Chapter 718, F.S., shall disclose the assessment revenues from the developer separately from that of the non-developer unit owners.

(6) Financial reports required by Section 718.111(13)(b), F.S.. The financial report required by Section 718.111(13)(b), F.S., shall meet the following requirements:

(a) The report shall be prepared using a cash basis method of accounting.

(b) The report shall include the reserve disclosures required by paragraph 61B-22.006(3)(a), F.A.C.

(c) The report shall include the special assessment disclosure required by paragraph 61B-22.006(3)(c), F.A.C.

(d) If the association maintains limited common elements and the expense is apportioned to those units entitled to the exclusive use of the limited common elements the report shall contain the limited common element disclosures required by paragraph 61B-22.006(3)(d), F.A.C.

(e) The financial reports of multicondominium associations shall separately disclose the following items:

1. The receipts and expenditures directly associated with specific condominiums; and

2. The receipts and expenditures of the association that are not directly associated with specific condominiums.

(7) The minutes of the association shall reflect the number of votes cast by the membership to waive the requirement for audited, reviewed, or compiled financial statements and the type of financial reporting that the association will be preparing and disseminating to the membership.

*Specific Authority 718.111(13), 718.501(1)(f) FS. Law Implemented 718.111(12)(a)11., (13), 718.301(4) FS. History—New 7-11-93, Formerly 7D-22.006, Amended 12-20-95, 2-13-97, 12-18-01, 6-24-04, 3-26-09.*

#### **61B-22.0062 Transition Financial Statements; Turnover Audit.**

(1) Period covered. The audit required by Section 718.301(4)(c), Florida Statutes, applies to all transfers of association control from developers to unit owners pursuant to Section 718.301(4), Florida Statutes, occurring on or after April 1, 1992. The audit shall cover a period beginning with the date of incorporation of the association, or from the end of the fiscal period covered by the last audit if all fiscal periods have been audited, and ending with the date of the transfer of association control to unit owners other than the developer. Nothing herein precludes the developer from exceeding the requirements of this rule by engaging a certified public accountant to audit the entire period of developer control rather than from the period covered by the last

audit.

(2) Additional disclosure requirements for turnover audits. The financial statements, notes, or supplementary information shall present the revenues and expenses separately for each fiscal year and any interim periods included in the audit. The notes to the financial statements shall contain the following disclosures:

(a) A statement that the financial statements were prepared pursuant to Section 718.301(4)(c), Florida Statutes;

(b) A statement of total cash payments made by the developer to the association;

(c) If the developer claims to have paid common expenses of the association which do not appear on the books and records of the association, the amount and purpose of each such expenditure shall be identified separately; and,

(d) If a guarantee pursuant to Section 718.116(9), Florida Statutes, existed at any time during the period covered by the audit the financial statements shall disclose the following:

1. The period of time covered by the guarantee;

2. The amount of common expenses incurred during the guarantee period;

3. The amount of assessments charged to the non-developer unit owners during the guarantee period;

4. The amount of non-assessment revenues earned by the association, with each non-assessment revenue generating activity disclosed separately, during the guarantee period;

5. The amount of expenses incurred by the association in the production of non-assessment revenues, with each non-assessment revenue generating activity disclosed separately, during the guarantee period;

6. The amount of the developer's payments pursuant to the guarantee; and

7. Any financial obligation due to or from the developer resulting from the guarantee.

*Specific Authority 718.111(13), 718.501(1)(f) FS. Law Implemented 718.111(13), 718.301(4)(c) FS. History—New 7-11-93, Formerly 7D-22.0062, Amended 12-20-95, 6-24-04.*

## **61B-23 THE ASSOCIATION**

### **61B-23.001 Board of Administration and Committees; Fiduciary Duty.**

(1)(a) "Meeting of the board of administration" means any gathering of the members of the board of directors, at which a quorum of the members is present, for the purpose of conducting association business.

(b) "Committee meeting" means any gathering of a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the association budget or take action on behalf of the board at which a quorum of the members of that committee is present. For example, a meeting of an executive committee, as defined in Section 617.0825, Florida Statutes, or as that section may subsequently be renumbered, would be included in this definition as would a meeting of a group charged with developing a proposed budget.

(2) Unit owners have the right to attend and observe all meetings of the board of administration and its committees.

(3) Where the declaration, articles of incorporation, or bylaws preclude non-unit owners from serving on the association's board of administration, one acting under a power of attorney from a unit owner is similarly precluded from serving on the board unless he or she is a unit owner.

(4) In furtherance of its fiduciary duty to the unit owners, a board of administration shall employ only a licensed community association manager where licensure is required by Section 468.431, Florida Statutes.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.111(1), 718.112(2)(c),(k) FS. History—*

*New 7-22-80, Amended 7-6-81, 8-31-83, 12-4-83, 10-1-85, Formerly 7D-23.01, Amended 1-27-87, 9-7-88, 7-17-91, 12-20-92, Formerly 7D-23.001, Amended 2-22-94, 4-14-99.*

**61B-23.002 Operation of the Association.**

(1) Each association which operates more than 2 units shall pay an annual fee of \$4 for each unit in a residential condominium operated by the association. If the declaration is amended during the year to alter the number of units or to add additional phases containing units, the association shall pay the annual fee on the highest number of declared units during the year. The fee shall be paid as follows:

(a) The division shall mail to the association an annual fee statement. The fee statement is BPR form 30-005, incorporated herein by reference and effective 2-20-97. The form may be obtained by writing the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1033. The failure to receive the Annual Fee Statement shall not relieve the association of the obligation to pay the fee.

(b) The initial annual fees are due for the year in which a declaration of condominium is recorded. Payment shall be made within 30 days of recordation of the declaration or amendments creating subsequent phases. Payment shall be submitted to the division along with the notice of recordation required by subsection 61B-17.001(4), F.A.C.

(c) Subsequent annual fees are due on or before January 1 of each year.

(d) The check or money order in payment of the annual fees shall be accompanied by the annual fee statement.

(e) The postmark date shall constitute the date of payment.

(2) The association shall, within 30 days of a change of address, notify the division of its new mailing address.

(3) Each association that votes to forego retrofitting of the common elements or units of a residential condominium with a fire sprinkler system or other engineered life safety system or handrails or guardrails by the affirmative vote of two-thirds of all voting interests in the affected condominium, shall report the voting results and certification information for each affected condominium to the division on DBPR Form CO 6000-8, RETROFITTING REPORT FOR CONDOMINIUMS, incorporated herein by reference and effective 11-30-04. The form may be obtained by writing the division at 1940 North Monroe Street, Tallahassee, Florida 32399-1030. If retrofitting has been undertaken by a residential condominium, the association shall report the per-unit cost of such work to the division using DBPR Form CO 6000-8, RETROFITTING REPORT FOR CONDOMINIUMS. The division shall prepare separate reports of information obtained from associations relating to the waiver of a fire sprinkler system and the waiver of handrails and guardrails and deliver the reports to the Division of State Fire Marshal of the Department of Financial Services no later than August 1 of each year. DBPR Form CO 6000-8, RETROFITTING REPORT FOR CONDOMINIUMS must be filed with the division within 60 days of recordation of the retrofitting waiver certificate in the public records where the condominium is located or upon commencement of the retrofitting project.

(4)(a) As provided for by Sections 718.1085 and 718.112(2)(l), Florida Statutes, any vote to waive a retrofitting requirement shall be held at a duly called meeting of the membership, with members voting live and in person, or may be conducted without a membership meeting by written consents, or may be conducted by a combination of the two with the association counting written consents received along with votes cast live and in person at a duly called meeting of the membership. Effective October 1, 2004, retrofitting requirements related to a fire sprinkler system may also be waived by the use of limited proxies cast at a duly called meeting of the membership.

(b) The written consent form utilized by the association must contain a space for the authorized voter to sign and must identify the unit owned. Voting by written consents or written

agreements may be utilized by an association regardless of whether the bylaws or the declaration specifically permit voting by written consents or written agreements.

(c) There is no limitation on the number of times an association may conduct a vote to waive a retrofitting requirement. However, in order to be effective, the affirmative vote of not less than two-thirds of the total voting interests must be obtained, and a certificate attesting to such vote must be recorded in the public records, not later than December 31, 2014.

(d) In the case of an association that operates more than one condominium, in order for a waiver to be effective as to a particular condominium and the buildings located within that condominium, two-thirds of the total voting interests of that condominium must affirmatively vote in favor of waiving the retrofitting requirements.

(5) Unit owners shall not, except as provided by Section 718.112(2)(b)2., Florida Statutes, vote by general proxy, but may vote by limited proxy substantially similar to the SAMPLE LIMITED PROXY FORM adopted by the division as BPR form 33-033, incorporated herein by reference and effective 11-23-93. The form may be obtained by writing the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1033.

(6) If the declaration, articles of incorporation or association bylaws require or authorize the use of voting certificates, the voter named on such certificate is the only person authorized to appoint a proxy even though the unit is owned by more than one person or entity or is owned by an entity which is not a natural person.

(7)(a) Beginning April 1, 1992, each association must prepare and maintain as part of its official records, a completed Frequently Asked Questions and Answers Sheet substantially conforming to DBPR form CO 6000-4, as referenced in Rule 61B-17.001, F.A.C. The association shall update the information provided in the answers to the Frequently Asked Questions and Answers Sheet and prepare a revised sheet every 12 months beginning from when the sheet was last revised. The answers to the questions may be summary in nature, in which case the answer shall refer to identified portions of the condominium documents.

(b) Other records related to the operation of the association, which the association shall maintain as official records pursuant to Section 718.111(12)(a)15., Florida Statutes, or as that subparagraph may be subsequently renumbered, shall include, for example:

1. Correspondence and other written communication from the division;
2. A copy of all insurance records; and

3. Audio and video recordings made by the board or committee or at their direction. Except, however, recordings of board of directors, unit owner, or committee meetings shall be maintained as official records at least until the minutes of the meeting which was the subject of a recording are approved by the body authorized to approve said minutes. After said approval, the recording may be discarded; however, if the body authorized to approve said minutes elects to preserve the recording, it shall maintain its status as an official record under this provision. It is not the intent of this rule to require that such recordings be made but to require that if they are made that they be maintained at least until minutes of the meeting which was recorded are approved. This accommodates associations which record meetings only as an aid for preparing minutes of the meeting. Thereafter, recordings purposely preserved shall be official records.

(c) Those copies of the declaration, articles of incorporation, bylaws, and amendments to the foregoing, which the association is required to keep pursuant to Section 718.111(12)(c), Florida Statutes, are the recorded declaration, recorded articles of incorporation, recorded bylaws, including exhibits, and the recorded amendments to each. The association may charge its actual costs for preparing and furnishing these documents to those requesting the same.

(8) For the purposes of establishing a quorum at any association meeting only the voting interests present in person or by proxy shall be counted. The written joinder or absentee ballot of

a unit owner may not be utilized to establish a quorum.

(9) Subject to reasonable restrictions, any unit owner has the right to speak at unit owner meetings, with respect to all designated agenda items. On or after April 1, 1992, subject to reasonable restrictions, any unit owner has the right to speak at board meetings and committee meetings with respect to all designated agenda items.

(10) Any unit owner may tape record or videotape meetings of the board of administration, committee meetings, or unit owner meetings, subject to the following restrictions:

(a) The only audio and video equipment and devices which unit owners are authorized to utilize at any such meeting is equipment which does not produce distracting sound or light emissions.

(b) If adopted in advance by the board or unit owners as a written rule, audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting.

(c) If adopted in advance by the board or unit owners as a written rule, anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording.

(d) If adopted in advance by the board or unit owners as a written rule, advance notice shall be given to the board by any unit owner desiring to utilize any audio or video equipment.

(e) Unit owners are entitled to tape record or videotape board meetings and committee meetings occurring on or after April 1, 1992.

*Specific Authority 718.112(2)(d)3., 718.501(1)(f) FS. Law Implemented 718.1085, 718.111(12), 718.112(2)(b)2., (c), (d)3., 4., 718.117, 718.501(2)(a), 718.504 FS. History—New 7-22-80, Amended 8-31-83, 10-1-85, Formerly 7D-23.02, Amended 1-27-87, 7-10-88, 3-21-89, 2-18-92, Formerly 7D-23.002, Amended 11-23-93, 2-20-97, 4-14-99, 12-23-02, 1-28-04, 11-30-04.*

**61B-23.0021 Regular Elections; Vacancies Caused by Expiration of Term, Resignations, Death; Election Monitors.**

(1)(a) Unless otherwise provided herein, the provisions of this rule apply to all regular and run-off elections conducted by a condominium association, regardless of any provision to the contrary contained in the declaration, articles of incorporation, or bylaws of the association.

(b) Except as otherwise provided by Rules 61B-23.0027 and 61B-23.0028, F.A.C., the provisions of this rule do not apply to vacancies created by the recall of a board member or members. The method of removing board members by recall and the procedures for filling such vacancies are set forth in Rules 61B-23.0026 through 61B-23.0028, F.A.C.

(c) In order to adopt different voting and election procedures in its bylaws pursuant to Section 718.112(2)(d), Florida Statutes, an association must obtain the affirmative vote of a majority of the total voting interests even if different amendatory procedures are contained in an association's bylaws. Such vote must be taken on or after June 14, 1995. The phrase "different voting and election procedures" as used in this rule and as used in Section 718.112(2)(d), Florida Statutes, refers to procedures used only for the election of board members.

(d) Balloting is not necessary to fill any vacancy unless there are two or more eligible candidates for that vacancy. In such a case, not later than the date of the scheduled election:

1. For a regular election the association shall call and hold a meeting of the membership to announce the names of the new board members, or shall notify the unit owners of the names of the new board members or that one or more board positions remain unfilled, as appropriate under the circumstances. In the alternative, the announcement may be made at the annual meeting.

2. For an election pursuant to Section 718.112(2)(d)8., Florida Statutes, to fill a vacancy, the association shall call and hold a meeting of the membership to announce the names of the new board members or, in the alternative, shall notify the unit owners of the names of the new board

members or that one or more board positions remain unfilled, as appropriate under the circumstances.

(2) A regular or general election for purposes of this rule shall be an election to fill a vacancy caused by expiration of a term in office. A regular or general election shall occur at the time and place at which the annual meeting is scheduled to occur, regardless of whether a quorum is present. Other elections as may be required shall occur in conjunction with duly called meetings of the unit owners, regardless of whether a quorum is attained for the meeting.

(3) A board of administration shall not create or appoint any committee for the purpose of nominating a candidate or candidates for election to the board. A board may create or appoint a search committee which shall not have the authority to nominate any candidate, but may encourage qualified persons to become candidates for the board.

(4) The first notice of the date of the election, which is required to be mailed, electronically transmitted, or delivered not less than 60 days before a scheduled election, must contain the name and correct mailing address of the association. Failure to follow the procedures for giving the first notice of the date of the election shall require the association to conduct a new election, if the election has been conducted. Where the election has not occurred, the association shall mail, transmit, or deliver an amended first notice to the eligible voters, which shall explain the need for the amended notice, not less than 60 days before the scheduled election. If an amended notice cannot be mailed, transmitted or delivered not less than 60 days before the election, then the association must re-notice and reschedule the election.

(5) A unit owner or other eligible person desiring to be a candidate for the board of administration shall give written notice to the association not less than 40 days before a scheduled election. Written notice shall be effective when received by the association. Written notice shall be accomplished in accordance with one or more of the following methods:

- (a) By certified mail, return receipt requested, directed to the association; or
- (b) By personal delivery to the association; or
- (c) By regular U.S. mail, facsimile, telegram, or other method of delivery to the association.

(6) Upon receipt by the association of any timely submitted written notice by personal delivery that a unit owner or other eligible person desires to be a candidate for the board of administration, the association shall issue a written receipt acknowledging delivery of the written notice. Candidates who timely submit a written notice by mail may wish to send the written notice by certified mail in order to obtain a written receipt.

(7) Upon the timely request of a candidate as set forth in this paragraph, the association shall include, with the second notice of election described in subsection (8) below, a copy of an information sheet which may describe the candidate's background, education, and qualifications as well as other factors deemed relevant by the candidate. The information contained therein shall not exceed one side of the sheet which shall be no larger than 8 1/2 inches by 11 inches. Any candidate desiring the association to mail or personally deliver copies of an information sheet to the eligible voters must furnish the information sheet to the association not less than 35 days before the election. If two or more candidates consent in writing, the association may consolidate into a single side of a page the candidate information sheets submitted by those candidates. The failure of an association to mail, transmit or personally deliver a copy of a timely delivered information sheet of each eligible candidate to the eligible voters shall require the association to mail, transmit, or deliver an amended second notice, which shall explain the need for the amended notice and include the information within the time required by this rule. If an amended second notice cannot be timely mailed, transmitted or delivered, the association must re-notice and reschedule the election. If the election has already been conducted, the association shall conduct a new election. No association shall edit, alter, or otherwise modify the content of the information sheet. The original copy provided by the candidate shall become part of the official

records of the association.

(8) In accordance with the requirements of Section 718.112(2)(d), Florida Statutes, the association shall mail or deliver to the eligible voters at the addresses listed in the official records a second notice of the election, together with a ballot and any information sheets timely submitted by the candidates. The association shall mail or deliver the second notice no less than 14 days and no more than 34 days prior to the election. The second notice and accompanying documents shall not contain any communication by the board that endorses, disapproves, or otherwise comments on any candidate. Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the voter, and the unit or unit numbers being voted, and shall contain a signature space for the voter. Once the ballot is filled out, the voter shall place the completed ballot in the inner smaller envelope and seal the envelope. The inner envelope shall be placed within the outer larger envelope, and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person is entitled to cast more than one ballot, the separate inner envelopes required may be enclosed within a single outer envelope. The voter shall sign the exterior of the outer envelope in the space provided for such signature. The envelope shall either be mailed or hand delivered to the association. Upon receipt by the association, no ballot may be rescinded or changed.

(9) The written ballot shall indicate in alphabetical order by surname, each and every unit owner or other eligible person who desires to be a candidate for the board of administration and who gave written notice to the association not less than 40 days before a scheduled election, unless such person has, prior to the mailing of the ballot, withdrawn his candidacy in writing. The failure of the written ballot to indicate the name of each eligible person shall require the association to mail, transmit, or deliver an amended second notice, which shall explain the need for the amended notice and include a revised ballot with the names of all eligible persons within the time required by this rule. If an amended second notice cannot be timely mailed, transmitted or delivered, then the association must re-notice and reschedule the election. If the election has already been held, under these circumstances the association shall conduct a new election. No ballot shall indicate which candidates are incumbents on the board. No write-in candidates shall be permitted. No ballot shall provide a space for the signature of or any other means of identifying a voter. Except where all voting interests in a condominium are not entitled to one whole vote (fractional voting), or where all voting interests are not entitled to vote for every candidate (class voting), all ballot forms utilized by a condominium association, whether those mailed to voters or those cast at a meeting, shall be uniform in color and appearance. In the case of fractional voting, all ballot forms utilized for each fractional vote shall be uniform in color and appearance. And in class voting situations, within each separate class of voting interests all ballot forms shall be uniform in color and appearance.

(10) Envelopes containing ballots received by the association shall be retained and collected by the association and shall not be opened except in the manner and at the time provided herein.

(a) Any envelopes containing ballots shall be collected by the association and shall be transported to the location of the duly called meeting of the unit owners. The association shall have available at the meeting additional blank ballots for distribution to the eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope in the manner provided in subsection (8) of this rule. Each envelope and ballot shall be handled in the following manner. As the first order of business, ballots not yet cast shall be collected. The ballots and envelopes shall then be handled as stated below by an impartial committee as defined in paragraph (b) below appointed by the board. The business of the meeting may continue during this process. The signature and unit identification on the outer envelope shall be checked against a list of qualified voters, unless previously validated as provided in

paragraph (b) below. Any exterior envelope not signed by the eligible voter shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted. The voters shall be checked off on the list as having voted. Then, in the presence of any unit owners in attendance, and regardless of whether a quorum is present, all inner envelopes shall be first removed from the outer envelopes and shall be placed into a receptacle. Upon the commencement of the opening of the outer envelopes, the polls shall be closed, and no more ballots shall be accepted. The inner envelopes shall then be opened and the ballots shall be removed and counted in the presence of the unit owners. Any inner envelope containing more than one ballot shall be marked "Disregarded", or with words of similar import, and any ballots contained therein shall not be counted. All envelopes and ballots, whether disregarded or not, shall be retained with the official records of the association.

(b) Any association desiring to verify outer envelope information in advance of the meeting may do so as provided herein. An impartial committee designated by the board may, at a meeting noticed in the manner required for the noticing of board meetings, which shall be open to all unit owners and which shall be held on the date of the election, proceed as follows. For purposes of this rule, "impartial" shall mean a committee whose members do not include any of the following or their spouses:

1. Current board members;
2. Officers; and
3. Candidates for the board.

At the committee meeting, the signature and unit identification on the outer envelope shall be checked against the list of qualified voters. The voters shall be checked off on the list as having voted. Any exterior envelope not signed by the eligible voter shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted.

(c) If two or more candidates for the same position receive the same number of votes, which would result in one or more candidates not serving or serving a lesser period of time, the association shall, unless otherwise provided in the bylaws, conduct a runoff election in accordance with the procedures set forth herein. Within 7 days of the date of the election at which the tie vote occurred, the board shall mail or personally deliver to the voters, a notice of a runoff election. The only candidates eligible for the runoff election to the board position are the runoff candidates who received the tie vote at the previous election. The notice shall inform the voters of the date scheduled for the runoff election to occur, shall include a ballot conforming to the requirements of this rule, and shall include copies of any candidate information sheets previously submitted by those candidates to the association. The runoff election must be held not less than 21 days, nor more than 30 days, after the date of the election at which the tie vote occurred.

(11) Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write, may request the assistance of a member of the board of administration or other unit owner to assist in casting his vote. If the election is by voting machine, any such voter, before retiring to the voting booth, may have a member of the board of administration or other unit owner or representative, without suggestion or interference, identify the specific vacancy or vacancies and the candidates for each. If a voter requests the aid of any such individual, the two shall retire to the voting booth for the purpose of casting the vote according to the voter's choice.

(12) At a minimum, all voting machines shall meet the following requirements:

- (a) Shall secure to the voter secrecy in the act of voting;
- (b) Shall permit the voter to vote for as many persons and offices as he is lawfully entitled to vote for, but no more;
- (c) Shall correctly register or record, and accurately count all votes cast for any and all persons;
- (d) Shall be furnished with an electric light or proper substitute, which will give sufficient

light to enable voters to read the ballots; and

(e) Shall be provided with a screen, hood, or curtain which shall be made and adjusted so as to conceal the voter and his actions while voting.

(13) Notices of election, notices of candidacy for election, information sheets, voting envelopes, written approval of budgets, written agreements for recall of board members, ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners shall be maintained as part of the official records of the association for a period of 1 year from the date of the election, vote, or meeting to which the document relates.

(14) Election Monitors. As provided by Section 718.5012(9), Florida Statutes (2004), fifteen percent of the total voting interests entitled to vote at the annual meeting of unit owners for the election of directors, or the owners of six units entitled to vote at the annual meeting of unit owners for the election of directors, whichever number is greater, may petition the ombudsman for the appointment of an election monitor. The procedures for filing a petition for the appointment of an election monitor are contained in Rule 61B-23.00215, F.A.C.

*Specific Authority 718.112(2)(d)3., 718.501(1)(f), 718.5012(9) FS. Law Implemented 718.112, 718.301, 718.5012(9) FS. History—New 1-23-92, Amended 12-20-92, Formerly 7D-23.0021, Amended 8-24-94, 12-20-95, 1-19-97, 4-14-99, 2-19-01, 12-23-02, 8-7-05, 8-28-06.*

**61B-23.00215 Ombudsman; Election Monitoring; Monitor’s Role; Scope and Extent.**

(1) Fifteen percent of the total voting interests entitled to vote at the annual meeting of unit owners for the election of directors, or the owners of six units entitled to vote at the annual meeting of unit owners for the election of directors, whichever number is greater, may petition the ombudsman for the appointment of an election monitor to attend the annual meeting of unit owners for the election of directors and conduct the election of directors. No monitor shall be appointed for a special election, an interim election, a runoff election, an election to fill vacancies caused by a recall of one or more board members, or any election other than the annual meeting of unit owners for the election of directors.

(2)(a) Form of petition. In order to file a petition for the appointment of an election monitor, a unit owner must complete DBPR FORM CO 6000-9, PETITION FOR APPOINTMENT OF ELECTION MONITOR, incorporated by reference and effective 8-7-05, available by contacting the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 North Monroe, Tallahassee, Florida 32399-1030, or shall use a substantial equivalent of the form which shall contain the following information. The form must, as applicable:

1. State that the purpose of the petition is to seek signatures for the appointment of an election monitor by the ombudsman for the annual meeting of unit owners for the election of directors;
2. Contain a signature space for authorized unit owners or voting interests to sign and must provide a space for those signing the petition to provide his or her name;
3. Identify his or her unit number;
4. Supply the date that each unit owner signed the petition;
5. Provide the name of an individual who is authorized to represent the unit owners petitioning for the appointment of an election monitor, along with the mailing address, telephone number, fax number, and email address of the representative;
6. Indicate that if a monitor is appointed, the association and all its members shall be obligated to pay the costs and fees of the monitor; and
7. State the total number of voting interests in the association.
8. Briefly state the basis for having an election monitor appointed (optional).
9. State the date, place, and time of the election.

(b) Only the signatures of those persons who are unit owners of record shall be counted in the calculation to determine whether the minimum number of votes have been cast in favor of

requesting the appointment of a monitor.

(3) Time to file. The petition for appointment of an election monitor must be filed with the ombudsman not less than 14 days in advance of a planned election to provide sufficient time to process the petition, provide for verification of the signatures, and appoint a monitor.

(4) Once the ombudsman has received a timely filed petition for appointment of an election monitor, the ombudsman shall examine the petition to ensure that all required information is provided and that a sufficient number of voting interests have signed the petition.

(a) If the petition is deficient, the ombudsman shall provide the petitioners with notice of the deficiencies, and petitioners will have 5 calendar days from receipt of such notice to timely correct the petition, or if the deficiencies cannot be corrected, the petition shall be denied and the materials shall be returned to the unit owners petitioning for appointment of an election monitor.

(b) Within 5 calendar days of the determination that a petition is complete and sufficient, the ombudsman shall provide a copy of the petition to the association by certified mail, along with a notice that a petition for appointment of election monitor has been filed with the ombudsman. Where the determination that a petition is complete and sufficient is made within 5 days of a scheduled election, the ombudsman shall immediately provide a copy of the petition to the association upon making such determination of completeness.

(5) Once a petition has been found to be adequate, the ombudsman shall appoint an election monitor as provided by the provisions of Section 718.5012(9), Florida Statutes, and this rule. Any appointment of a division employee shall be subject to the approval of the division director.

(6) The appointed monitor shall review any documents provided by the petitioners or by the association in advance of the scheduled election and shall attend and conduct the election in person.

(7) The monitor shall conduct the election, but where a division employee is appointed as monitor, the employee shall not provide direct advice or suggestions to the association or to individual owners in the course of the election. Each monitor shall submit a report regarding the election to the ombudsman, and to the parties, within 14 days following the date the election is concluded.

(8) Where a division employee has been approved to be appointed as the election monitor, the division shall prepare an itemized statement of costs and expenses and shall submit the statement and a request for reimbursement to the association along with the monitor's report. The association shall have 30 days in which to reimburse the division. It shall be considered a violation of this rule for an association not to timely reimburse the division for all costs and expenses associated with the election monitoring process.

(9) Where a monitor is appointed who is not a division employee, the division will not enforce the billing and collection of amounts owed to the monitor. Nothing in these rules prohibits a private monitor from requiring the association to pre-pay all or part of the reasonable fees and costs of the monitor.

*Specific Authority 718.5012(9) FS. Law Implemented 718.1255, 718.5012(9) FS. History—New 8-7-05.*

#### **61B-23.0022 Contracts for Bid: Employees.**

In accordance with the provisions of Section 718.3026, Florida Statutes, contracts with employees of the association shall not be subject to the provisions of that section. For purposes of this rule, a worker shall be considered an employee of an association where the association pays or deducts, for or on behalf of the worker, social security tax, unemployment compensation taxes, and federal withholding taxes.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.3026 FS. History—New 4-1-92, Formerly 7D-23.0022.*

**61B-23.0026 Right to Recall and Replace a Board Member; Developers; Other Unit Owners; Class Voting.**

(1) Developer Representatives. When both a developer and other unit owners are entitled to representation on a board of administration pursuant to Section 718.301, Florida Statutes, or Rule 61B-23.003, F.A.C., the following provisions apply to recall and replacement of board members elected or appointed by a developer:

(a) Only units owned by the developer shall be counted to establish a quorum for a meeting to recall and replace a board member who was elected or appointed by that developer.

(b) The percentage of voting interests required to recall a board member who was elected or appointed by a developer is a majority of the total units owned by that developer.

(c) A board member who is elected or appointed by a developer may be recalled only by that developer.

(d) Only the developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected or appointed by that developer.

(2) Unit Owner Representatives. When both a developer and other unit owners are entitled to representation on a board of administration pursuant to Section 718.301, Florida Statutes, or Rule 61B-23.003, F.A.C., the following provisions apply to recall and replacement of board members elected or appointed by unit owners other than a developer:

(a) Only units owned by unit owners other than a developer shall be counted to establish a quorum at a meeting to recall and replace a board member elected by unit owners other than a developer.

(b) The percentage of voting interests required to recall a board member elected by unit owners other than a developer, is a majority of the total units owned by unit owners other than a developer.

(c) A board member who is elected by unit owners other than a developer may be recalled only by unit owners other than a developer.

(d) Only unit owners other than a developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected by unit owners other than a developer.

(3) Class Voting. When the declaration provides that a specific class of unit owners is entitled to elect a member or members to the board, the class of unit owners electing such member or members to the board shall constitute all the voting interests within the meaning of Section 718.112(2)(j), Florida Statutes, that may recall or remove such board member or members.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.112, 718.301 FS. History—New 12-20-92, Formerly 7D-23.0026, Amended 12-20-95.*

**61B-23.0027 Recall of One or More Members of a Board of Administration at a Unit Owner Meeting; Board Certification; Filling Vacancies.**

(1) Calling a Recall Meeting. Regardless of any provision to the contrary in the condominium documents, 10 percent of the voting interests may call a meeting of the unit owners to recall one or more members of the board by the voting interests giving the notice specified in paragraphs (2)(a) and (b) below. As utilized in this rule, the phrase “condominium documents” means the recorded declaration of condominium and all recorded exhibits and amendments thereto, and the articles of incorporation and bylaws of the condominium association in effect, and any amendments to each which are in effect.

(2) Noticing a Recall Meeting.

(a) Signature List. Prior to noticing a unit owner meeting to recall one or more members of the board, a list shall be circulated for the purpose of obtaining signatures of not less than 10 percent of the voting interests. The signature list shall:

1. State that the purpose for obtaining signatures is to call a unit owner meeting to recall one or more members of the board;

2. State that replacement board members shall be elected at the meeting if a majority or more of the existing board members are successfully recalled at the meeting; and,

3. Contain lines for the voting interest to fill in his unit number, signature and date of signature.

(b) Recall Meeting Notice. The recall meeting notice shall:

1. State that the purpose of the unit owner meeting is to recall one or more members of the board and, if a majority or more of the board is subject to recall, the notice shall also state that an election to replace recalled board members will be conducted at the meeting;

2. List by name each board member sought to be recalled at the meeting, even if every board member is sought to be recalled;

3. Specify a person, other than a board member subject to recall at the meeting, who shall determine whether a quorum is present, call the meeting to order, preside, and proceed as provided in paragraph (3)(b) of this rule;

4. List at least as many eligible persons who are willing to be candidates for replacement board members as there are board members sought to be recalled, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement board members shall not be listed when a minority of the board is sought to be recalled, as the remaining members of the board may appoint replacements. In addition, the notice must state that nominations for replacement board members may be taken from the floor at the meeting;

5. Have attached to it a copy of the signature list referred to in paragraph (2)(a) above;

6. Be mailed or delivered to all unit owners at least 10 days prior to the meeting, if the association is incorporated, unless a different time for notice of the meeting is provided in the condominium documents. If the association is unincorporated, notice shall be mailed or delivered according to the time requirements stated in the condominium documents for sending unit owner meeting notices; and,

7. Be delivered to the board at least 10 days prior to the recall meeting, unless the condominium documents provide a different notice requirement. The notice shall become an official record of the association upon actual receipt by the board.

(3) Recall Meeting; Electing Replacements.

(a) Date for Recall Meeting. If the association is incorporated, a recall meeting shall be held not less than 10 days nor more than 60 days from the date when the notice of the recall meeting is mailed or delivered, unless otherwise provided in the condominium documents. If the association is unincorporated, the meeting shall be held within the times required by the condominium documents.

(b) Conducting the Recall Meeting. After determining that a quorum exists (proxies may be used to establish a quorum) and the meeting is called to order, the voting interests shall proceed, as follows:

1. A representative to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling unit owners in the event the board disputes the recall, shall be elected or designated by the presiding officer.

2. A person to record the minutes of the recall meeting, who shall not be a board member subject to recall at that meeting, shall be elected or designated by the presiding officer.

3. The requirements of this subsection do not prohibit the voting interests from electing one person to perform one or more of these functions.

(c) Recall Meeting Minutes. The minutes of the recall meeting shall:

1. Record the date and time the recall meeting was called to order and adjourned;

2. Record the name or names of the person or persons chosen as the presiding officer, the

recorder of the official minutes and the unit owner representative's name and address;

3. Record the vote count taken on each member of the board sought to be recalled;

4. State whether the recall was effective as to each member sought to be recalled;

5. Record the vote count taken on each candidate to replace the board members subject to recall and, if applicable, the specific seat each replacement board member was elected to, in those cases where a majority or more of the existing board was subject to recall; and,

6. Be delivered to the board and, upon such delivery to the board, become an official record of the association.

(d) Separate Recall Vote. The voting interests shall vote to recall each board member separately, unless otherwise provided in the declaration or bylaws.

(e) Filling Vacancies. When the voting interests have recalled one or more board members at a unit owner meeting, the following provisions apply regarding the filling of vacancies on the board:

1. If less than a majority of the existing board is recalled at the meeting, no election of replacement board members shall be conducted at the unit owner meeting as the existing board may, in its discretion, fill these vacancies, subject to the provisions of Section 718.301, Florida Statutes, and Rules 61B-23.003 and 61B-23.0026, F.A.C., by the affirmative vote of the remaining board members. In the alternative, if less than a majority of the existing board is recalled at the unit owner meeting, the board may call and conduct an election which meets the requirements of Section 718.112(2)(d), Florida Statutes, and Rule 61B-23.0021, F.A.C., to fill a vacancy or vacancies;

2. If a majority or more of the existing board is recalled at the meeting, an election, which is subject to the provisions of Section 718.301, Florida Statutes, and Rules 61B-23.003 and 61B-23.0026, F.A.C., shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote in person or by limited proxy to elect replacement board members in an amount equal to the number of recalled board members.

(f) Taking office. When a majority or more of the board is recalled at a unit owner meeting, replacement board members shall take office:

1. Upon the expiration of five full business days after adjournment of the unit owner recall meeting, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days of the adjournment of the unit owner recall meeting; or,

2. Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or,

3. Upon certification of the recall by the board; or,

4. Upon certification of the recall by the arbitrator, in accordance with subparagraph (5)(b)4. of this rule, if the board files a petition for recall arbitration.

(g) After adjournment of the meeting to recall one or more members of the board of administration:

1. Any rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

2. Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(4) Substantial compliance with the provisions of subsections (1), (2) and (3) of this rule shall be required for the effective recall of a board member or members.

(5) Board Meeting Concerning a Recall at a Unit Owner Meeting; Filling Vacancies. The board shall properly notice the board meeting at which it will determine whether to certify the recall of one or more board members at a unit owner meeting. It shall be presumed that recall of one or more board members at a unit owner meeting shall not, in and of itself, constitute grounds

for an emergency meeting of the board if the board has been provided notice of the recall meeting as provided in subparagraph (2)(b)7. of this rule.

(a) Certified Recall. If the recall of one or more board members by vote at a unit owner meeting is certified by the board, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 718.301, Florida Statutes, and Rules 61B-23.003 and 61B-23.0026, F.A.C., regardless of whether the authority to fill vacancies in this manner is provided in the condominium documents. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote, as defined by Rule 61B-23.0021, F.A.C., on the proposed replacement member; if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by Section 718.112(2)(d)3., Florida Statutes, and Rule 61B-23.0021, F.A.C., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected at the recall meeting shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the board. If the board votes not to certify the recall of one or more board members at a unit owner meeting for any reason, the following provisions apply:

1. The board shall, subject to the provisions of Chapter 61B-50, F.A.C., file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the recall of one or more members of the board.

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (5)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected at the recall meeting shall become effective upon mailing of the final order of arbitration. The term of office of replacement board members elected at the recall meeting shall expire in accordance with the provisions of subparagraph (5)(a)3. of this rule.

(6) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall by vote at a unit owner meeting are an official record of the association and shall record the following information:

(a) The date and time the board meeting is called to order and adjourned;

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(7) Failure to duly notice and hold the board meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of the

adjournment of the unit owner recall meeting, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting.

(b) If a majority of the board is recalled, replacement board members elected at the unit owner meeting shall take office immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting, in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled, each recalled board member shall immediately return to the board all association records in his possession.

(8) Computation of five full business days. In computing the five full business days prescribed by Section 718.112(2)(j), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in Section 683.01, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in Section 683.01, Florida Statutes, shall be included.

*Specific Authority 718.112(2)(j)5., FS. Law Implemented 718.112(2)(j) FS. History—New 12-20-92, Formerly 7D-23.0027, Amended 8-24-94, 12-20-95, 2-19-01.*

**61B-23.0028 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.**

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more members of the board of administration shall:

(a) List by name each board member sought to be recalled;

(b) Provide spaces by the name of each board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained;

(c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement board members as there are board members subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement members shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are board members sought to be recalled. A space shall be provided and designated for write-in votes. The failure to comply with the requirements of this subsection shall not effect the validity of the recall of a board member or members;

(d) Provide a space for the person signing the written agreement to state his name, identify his unit and indicate the date the written agreement is signed;

(e) Provide a signature line for the person executing the written agreement to affirm that he is authorized in the manner required by the condominium documents to cast the vote for that unit;

(f) Designate a representative who shall open the written agreements, tally the votes, serve copies on the board and, in the event the board does not certify the recall by written agreement and files a petition for arbitration, receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the persons executing the written agreement;

(g) The written agreement or a copy shall be served on the board by certified mail or by personal service. Service on the board after 5:00 p.m. on a business day or on a Saturday, Sunday or legal holiday, as prescribed by Section 110.117, Florida Statutes, shall be deemed effective as

of the next business day that is not a Saturday, Sunday, or legal holiday. Service of the written agreement on an officer, association manager, board member or the association's registered agent will be deemed effective service on the association. Service upon an attorney who has represented the association in other legal matters will not be effective on the association unless that attorney is a board member, the association's registered agent, or has otherwise been retained by the association to represent it in the recall proceeding. Personal service shall be effected in accordance with the procedures set out in Chapter 48, Florida Statutes, and the procedures for service of subpoenas as set out in Rule 1.410(d), Florida Rules of Civil Procedure; and

(h) Become an official record of the association upon service upon the board.

(i) Written recall ballots in a recall by written agreement may be reused in one subsequent recall effort. Written recall ballots do not expire through the passage of time, however, written recall ballots become void with respect to the board member sought to be recalled where that board member is elected during a regularly scheduled election.

(j) Written recall ballots may be executed by an individual holding a power of attorney or limited proxy given by the unit owner(s) of record.

(k) Any rescission or revocation of a unit owner's written recall ballot or agreement must be done in writing and must be delivered to the board prior to the board being served the written recall agreements.

(2) Substantial compliance with the provisions of subsection (1) of this rule shall be required for an effective recall of a board member or members.

(3) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more board members shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 718.301, Florida Statutes, and Rules 61B-23.003 and 61B-23.0026, F.A.C., regardless of whether the authority to fill vacancies in this manner is provided in the condominium documents. As utilized in this rule, the phrase "condominium documents" means the recorded declaration of condominium and all recorded exhibits and amendments thereto, and the articles of incorporation and bylaws of the condominium association in effect, and any amendments to each which are in effect. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote, as defined by Rule 61B-23.0021, F.A.C., on the proposed replacement member; if a quorum is not obtained, or otherwise) the board may, in its discretion, call and hold an election in the manner provided by Section 718.112(2)(d)3., Florida Statutes, and Rule 61B-23.0021, F.A.C., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected by the written agreement pursuant to the procedure referenced in paragraph

(1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. The board shall, subject to the provisions of Chapter 61B-50, F.A.C., file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (3)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected by written agreement of the voting interests shall become effective upon mailing of the final order of arbitration. The term of office of those replacement board members elected by written agreement of the voting interests shall expire in accordance with the provisions of subparagraph (3)(a)3. of this rule.

5. A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a board member, regardless of any provision to the contrary in the condominium documents.

6. The failure of the association to enforce a voting certificate requirement in past association elections and unit owner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement.

(4) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall are an official record of the association and shall record the following information:

5. A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a board member, regardless of any provision to the contrary in the condominium documents.

6. The failure of the association to enforce a voting certificate requirement in past association elections and unit owner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement

(a) The date and time the board meeting is called to order and adjourned;

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(5) After service of a written agreement on the board:

(a) Any written rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

(b) Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(6) Taking Office. When a majority or more of the board is recalled by written agreement, replacement board members shall take office:

(a) Upon the expiration of five full business days after service of the written agreement on the board, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days after service of the written agreement; or,

(b) Upon the expiration of five full business days after adjournment of the board meeting to

determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or,

(c) Upon certification of the recall by the board; or,

(d) Upon certification of the recall by the arbitrator, in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(7) Failure to Duly Notice and Hold a Board Meeting. If the board fails to duly notice and hold the board meeting to determine whether to certify the recall within five full business days of service of the written agreement, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of the five full business days after service of the written agreement on the board.

(b) If a majority of the board is recalled, replacement board members elected by the written agreement shall take office upon expiration of five full business days after service of the written agreement on the board in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled, each recalled board member shall immediately return to the board all association records in his possession.

(8) Computation of Five Full Business Days. In computing the five full business days prescribed by Section 718.112(2)(j), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in Section 110.117, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in Section 110.117, Florida Statutes, shall be included.

*Specific Authority 718.112(2)(j)5. FS. Law Implemented 718.112(2)(j) FS. History—New 12-20-92, Formerly 7D-23.0028, Amended 12-20-95, 2-19-01, 6-7-04.*

#### **61B-23.0029 Electronic Transmission of Notices.**

(1) Definitions. “Electronic transmission” means any form of communication, not directly involving the physical transmission or transfer of paper, that creates a record that may be retained, retrieved, and reviewed by the recipient and that may be directly reproduced in a comprehensible and legible paper form by the recipient through an automated process such as a printer or a copy machine. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmission of images, and text that is sent via electronic mail between computers. Electronic transmission does not include oral communication by telephone.

(2) Association Notices.

(a) Associations may opt to deliver meeting notices by electronic transmission by following these rules or by adopting bylaws that are consistent with these requirements.

(b) Associations that decide to stop delivery of notices by electronic transmission shall notify all owners by electronic transmission of the date on which electronic transmission of notices will cease. Associations must mail the notice to those owners whose consent has been revoked or was never given.

(3)(a) Consent and Revocation of Consent. In order to be effective, any consent given by a unit owner to receive notices via electronic transmission, and any revocation of consent, must be in writing and must be signed by the owner of record or by a person holding a power of attorney executed by the owner of record. Consent or revocation of consent may be delivered to the association via electronic transmission, by hand-delivery, by United States mail, by certified United States mail, or by other commercial delivery service. The unit owner bears the risk of ensuring delivery.

(b) Delivery of Consent or Revocation of Consent. Any consent given by a unit owner to receive notices via electronic transmission must be actually received by a current officer, board member, or manager of the association, or by the association's registered agent. Unless otherwise agreed to by an association in advance of delivery of any consent or revocation of consent, delivery to an attorney who has represented the association in other legal matters will not be effective unless that attorney is also a board member, officer, or registered agent of the association.

(c) Automatic Revocation of Consent. Consent shall be automatically revoked if the association is unsuccessful in providing notice via electronic transmission for two consecutive transmissions to an owner, if and when the association becomes aware of such electronic failures.

(4) Attachments and Other Information. In order to be effective notice, notice of a meeting delivered via electronic transmission must contain all attachments and information required by law. For example, but not by way of limitation, the second notice of election provided by Section 718.112(2)(d)3., F.S., must contain a second notice of the election along with the ballot and any valid candidate information sheets that are timely received. As a further example, electronic transmission of the budget meeting shall only be effective if a copy of the proposed annual budget accompanies the notice of budget meeting.

(5) Effect of Sending Electronic Meeting Notice. Notice of a meeting is effective when sent by the association, regardless of when the notice is actually received by the owner, if directed to the correct address, location or number, or if posted on a web site or internet location to which the owner has consented. The owner, by consenting to notice via electronic transmission, accepts the risk of not receiving electronic notice, except as provided in paragraph (2)(c) of this rule, so long as the association correctly directed the transmission to the address, number, or location provided by the owner. An affidavit of the secretary or other authorized agent of the association filed among the official records of the association that the notice has been duly provided via electronic transmission is verification that valid electronic transmission of the notice has occurred. An association may elect to provide, but is not required to provide, notice of meetings via non-electronic transmission even if notice has been sent to the same owner or owners via electronic transmission.

(6) Official Records. The association shall maintain among its official records, which shall be accessible to the owners or their duly authorized representatives, all consent forms including electronic numbers, addresses and locations, all affidavits, all fax receipts of notice and related communications, copies of all electronic notices and attachments sent by the association, and any other record created or received by the association related to the electronic transmission of meeting notices, except as provided in Section 718.111(12)(a)7., F.S. Electronic records may be maintained in electronic or paper format, but must be available for inspection and copying upon unit owner request.

*Specific Authority 718.112(2)(d)3., 718.501(1)(f) FS. Law Implemented 718.111(12)(a)7., 718.112(2)(c), (d)2., 3., 5., (e) FS. History—New 7-27-06.*

### **61B-23.003 Transition from Developer Control.**

(1) When an association will operate more than one condominium, unit owners other than the developer are entitled to elect no less than one-third of the members of the board of administrators when they own fifteen percent of the units in any one condominium to be operated by the association. The basis upon which unit owners other than the developer are entitled to elect not less than a majority of the board of administrators is determined according to the percentage of units conveyed to purchasers in all condominiums that will be operated ultimately by the association. The developer is entitled to elect at least one member of the board of administrators as long as it holds for sale in the ordinary course of business the percentage of units provided by

law in any one condominium operated by the association.

(2) A developer may establish a transition committee or committees to involve unit owners in an advisory capacity with regard to the operation of the condominium prior to assumption of control of the association by unit owners other than the developer. However, establishment of such committee does not relieve the developer from any obligations under Section 718.301, Florida Statutes.

(3) Association funds shall be used only for association purposes and may not be expended for the purposes of the developer, including but not limited to sales and promotional activities, utilities or other costs for construction activities or repair or replacement which is within the warranty obligations of the developer, nor may association personnel be used for such purposes at association expense.

(4) The developer shall pay the costs for the preparation or duplication of the documents required by Section 718.301(4), Florida Statutes, to be provided the unit owner controlled association upon transfer of association control, including the costs and accountant's fees incurred in preparing the financial statements required by Section 718.301(4)(c), Florida Statutes.

(5) Within 10 business days after the election of the first unit owner, other than the developer, to the board of administration, the developer shall forward to the division, in writing, the name and mailing address of the unit owner board member.

(6) The developer or developer's agent shall obtain a receipt for transfer of condominium documents to the unit owner controlled association. The receipt shall include a listing of all the items for each condominium operated by the association outlined under Section 718.301(4), Florida Statutes. Said receipt shall contain the date of transfer of the records and shall be signed by both the developer and a non-developer unit owner board member. A copy of said receipt shall be given to the association. Both parties shall retain the receipt for a period of 7 years. Said receipt shall not constitute a waiver of unit owner or association rights with respect to completeness and accuracy of the transfer of condominium documents or preclude administrative remedies available to the division.

(7)(a) For purposes of computing the percentages of units conveyed to purchasers which will entitle unit owners other than the developer to elect not less than a majority of the members of the board of administration, units sold or otherwise transferred in a bulk transfer by the current developer shall be utilized in the above computation for a turnover of control of the association board unless the sale or other transfer is accompanied by an assignment of the developer's rights to the grantee or transferee. If an assignment of developer rights does not accompany the bulk transfer, in all instances the units sold or otherwise transferred shall be utilized in the computation for a turnover.

(b) As utilized in this rule, the term "bulk transfer" means any sale or other transfer of two or more units in one condominium to the same person, including but not limited to units conveyed through foreclosure, deed in lieu of foreclosure or any other transfer or sale, whether voluntary or involuntary.

(c) As utilized in this rule, the phrase "assignment of developer rights" refers only to a written agreement whereby the current developer expressly transfers to the grantee or transferee all developer rights and existing obligations under the declaration of condominium, including any exhibits thereto; under Chapter 718, Florida Statutes, including the provisions of Section 718.203, Florida Statutes; and under these rules.

(d) If the transferee or grantee receives an assignment of developer rights, the transferee or grantee shall have the voting rights of the current developer as provided in the declaration, articles of incorporation or association bylaws and the Condominium Act.

(e) If the transferee or grantee does not receive an assignment of developer rights and if the transferee or grantee is not and does not become a developer as defined by Rule 61B-15.007,

F.A.C., such transferee or grantee is entitled to vote for a majority of the members of the board of administration.

(f) If the transferee or grantee does not receive an assignment of developer rights and if the transferee or grantee, at the time of such transfer or at a subsequent time becomes a developer as defined by Rule 61B-15.007, F.A.C., such developer is entitled to vote for a majority of the members of the board of administration so long as such developer is offering units for sale in the ordinary course of business as defined in Rule 61B-15.007 and subsection 61B-15.001(6), F.A.C. If, however, such developer is not offering units for sale in the ordinary course of business as defined in Rule 61B-15.007 and subsection 61B-15.001(6), F.A.C., such developer is not entitled to vote for a majority of the members of the board of administration.

(g) If during the time such developer, pursuant to the provisions of paragraph (f) of this rule, is entitled to vote for a majority of the members of the board of administration, such developer is responsible for any violation of the Condominium Act or these rules by the association committed during the time such developer controls the association by voting more than 50 percent of the voting interests of the association. Further, such developer shall provide the association with an audit of the association financial records in the manner provided in Section 718.301(4)(c), Florida Statutes, and Rule 61B-22.0062, F.A.C., for the period such developer controls the association regardless of the fiscal period required by subsection 61B-22.0062(1), F.A.C.

(8) In accordance with Section 718.301(1)(d), Florida Statutes, after turnover of control of an association, the developer who relinquishes control may vote in the same manner as any other unit owner. However, the relinquishing developer may not vote for a majority of the board of administration; nor shall the developer vote on matters for which a vote of unit owners other than the developer is allowed or required by Chapter 718, Florida Statutes, or by division rules. For example, the developer may not vote its interests in determining whether to cancel an association agreement under Section 718.302, Florida Statutes.

(9) In condominiums created on or after January 1, 1992, unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration not later than 7 years after recordation of the declaration. In the case of an association which may ultimately operate more than one condominium, where the initial condominium operated by the association is created on or after January 1, 1992, unit owners other than the developer are entitled to elect not less than a majority of the members of the board not later than 7 years after recordation of the declaration of the initial condominium. In the case of a phase condominium created pursuant to Section 718.403, Florida Statutes, where the declaration submitting the initial phase or phases is recorded on or after January 1, 1992, unit owners other than the developer are entitled to elect not less than a majority of the members of the board not later than 7 years after the recordation of the declaration submitting the initial phase or phases.

*Specific Authority 718.301(6), 718.501(1)(f) FS. Law Implemented 718.111(1), 718.301 FS. History—New 7-22-80, Amended 3-18-82, 8-31-83, 5-21-84, 10-1-85, Formerly 7D-23.03, Amended 1-27-87, 4-1-87, 3-21-89, 4-1-92, 7-11-93, Formerly 7D-23.003, Amended 1-19-97.*

#### **61B-23.0051 Cable Television Service.**

(1) “Cable television service,” as used in Section 718.115(1)(d)2., Florida Statutes, shall mean the transmission of video programming by a duly franchised cable company, as provided in Section 166.046, Florida Statutes, or as that section may be subsequently renumbered, pursuant to a contract between the association and such duly franchised cable company. For the purposes of this rule, cable television service shall include any master antenna or community antenna television system.

(2) “Legally blind,” as used in Section 718.115(1)(b), Florida Statutes, shall mean having central visual acuity of 20/200 or less in the better eye with corrective glasses or a disqualifying

field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees.

(3) "Hearing impaired," as used in Section 718.115(1)(d)2., Florida Statutes, shall mean:

(a) An individual who has suffered a permanent hearing impairment and is not able to discriminate speech sounds in verbal communication, with or without the assistance of amplification devices; or

(b) An individual who has suffered a permanent hearing impairment which is severe enough to necessitate the use of amplification devices to discriminate speech sounds in verbal communication.

(4) A legally blind or hearing impaired unit owner seeking to discontinue cable television service in accordance with Section 718.115(1)(d)2., Florida Statutes, shall furnish proof to the board of directors of the association that the individual is legally blind or hearing impaired. The association shall accept as proof of the impairment a statement attesting to such impairment from one of the following:

(a) A licensed physician, audiologist, or speech pathologist;

(b) A state certified teacher of the visually impaired or of the hearing impaired; or

(c) An appropriate state or federal agency.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.115(1)(d) FS. History—New 11-23-93.*

## **61B-24 CREATION OF CONDOMINIUMS BY CONVERSION**

### **61B-24.001 Definitions; Creation of Condominium by Conversion.**

(1) "Tenant" means a party to a rental agreement in residential occupancy of a place rented for the purpose of maintaining a place of residence. The term "tenant" excludes a party to a rental agreement or other person in transient occupancy.

(2) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is non-transient. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

(3) Section 718.402, Florida Statutes, states that a developer creating a condominium by conversion must comply with Parts I and VI of the Condominium Act in order to create a condominium. The creation of the real property condominium ownership form is achieved when the developer complies with Part I of the Condominium Act.

*Specific Authority 718.501(1)(f) FS. Law Implemented 718.104, 718.402, 718.606, 718.608 FS. History—New 7-2-81, Formerly 7D-24.01, 7D-24.001.*

### **61B-24.002 Notices of Intended Conversion.**

(1) Prior to delivery to tenants, each developer of a conversion shall file with the division and receive acceptance of its notice of intended conversion.

(a) After the division receives a proposed notice of intended conversion and the \$100 filing fee it shall, within 20 days, inform the developer by mail that the division has accepted the notice or reviewed the notice and determined specific deficiencies.

(b) The developer shall have 20 days from the date of the division's notification of deficiencies in the notice to correct such deficiencies.

(c) The division shall notify the developer within 20 days from receipt of a corrected notice whether the corrected notice remains deficient or whether the corrected notice is accepted.

(2) Each developer of a conversion is required to give tenants a notice of intended conversion which has been accepted by the division. The developer is required to send the notice by certified

or registered mail. The notice is deemed given to the tenant on the date when it is mailed. A tenant's refusal of receipt of a notice of intended conversion does not affect the validity of the notice.

(a) When a tenant has refused receipt of a notice of intended conversion the developer may post the notice, personally deliver it to the tenant, mail the notice by regular mail or provide notice in any other reasonable manner.

(b) This subsection shall not be construed to require a developer to provide additional notice of intended conversion to any tenant who refuses receipt of a notice of intended conversion given in the manner prescribed by Part VI of the Condominium Act.

(3) Each notice of intended conversion shall state the address of the developer.

(a) The address stated shall be an address at which tenants may personally deliver or mail their responses to the notice of intended conversion.

(b) A developer may list more than one address in a notice of intended conversion. A developer may list a street address to which tenants may mail or personally deliver their responses to the notice and a post office box address to which tenants' responses may be mailed.

(4) Each notice of intended conversion shall state the address or specific location of the property to be converted to condominium, above the text set forth by Section 718.608, Florida Statutes.

(5) For the purpose of each notice of intended conversion the Tallahassee address and telephone number of the division is:

Division of Florida Condominiums, Timeshares, and Mobile Homes  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1033  
(800) 226-9101

(6) Each notice of intended conversion is required to include the text set forth by Section 718.608, Florida Statutes. A developer may make statements supplemental to the notice of intended conversion. These statements shall not be misleading or inconsistent with the statutory text of the notice of intended conversion or any provision of the Condominium Act, and no additional statements may be interspersed with the statutorily required text.

(7) When a developer sends a tenant more than one notice of intended conversion, any tenant who has responded to any prior notice of intended conversion shall be deemed to have responded to any subsequent notice of intended conversion as amended, provided, upon receipt of a subsequent notice of intended conversion a tenant may respond to that notice as amended, and such response shall supersede any prior response that the tenant may have given.

(8) Each notice shall be dated with the date when the notice is mailed.

*Specific Authority 718.501(1)(f), 718.608(5), 718.621 FS. Law Implemented 718.608(5) FS. History—New 7-2-81, Formerly 7D-24.02, Amended 4-1-92, Formerly 7D-24.002, Amended 12-23-02, 2-7-06.*

#### **61B-24.003 Rental Agreement Extensions.**

(1)(a) Each county is authorized by Section 718.606(6), Florida Statutes (Supp. 1980), to adopt a local ordinance extending tenants' rental agreement extension periods an additional ninety days when certain rental market conditions exist. When a county adopts such an ordinance, all tenants, including tenants who have received a notice of intended conversion, are entitled to the ninety day extension. Provided, the following classes of tenants are not entitled to the additional ninety day extension –

1. Tenants who have terminated their rental agreement or any rental agreement extension; and
2. Tenants who are not in residence under the rental agreement in effect on the date of the

notice of intended conversion or any extension of that rental agreement.

(b) When a tenant is in residence after receiving a notice of intended conversion and a local ordinance extending tenants' rental agreement extension periods an additional ninety days is adopted, a tenant will not be deemed to have accepted the ninety day extension unless the tenant remains in occupancy under the ninety day extension. A developer may request that tenants advise the developer of their plans.

(2) After the date of a notice of intended conversion a tenant may not unilaterally terminate a rental agreement unless the rental agreement was entered into, extended, or renewed after May 1, 1980. Provided, a tenant may unilaterally terminate any rental agreement when the terms of the rental agreement permit the tenant to unilaterally terminate the rental agreement.

(3) After receipt of a notice of intended conversion tenants must decide whether to extend their rental agreements. Each tenant has forty-five days to make this decision unless the right of occupancy expires sooner and the tenant has not elected to extend the rental agreement to obtain the forty-five day decision period. When a tenant's right of occupancy expires prior to the expiration of the forty-five day period, the tenant's right to extend the rental agreement lapses upon the expiration of the right of occupancy. When a tenant receives a notice of intended conversion after the expiration of a rental agreement, but is still lawfully in occupancy of the premises under a subsequent rental agreement, the tenant may remain in occupancy under the subsequent rental agreement or may extend the rental agreement under which the notice of intended conversion was given.

(4) During a tenant's rental agreement extension period the developer shall charge the tenant the same rental rate that the tenant paid prior to the beginning of the rental agreement extension period unless the tenant agrees to pay an increased rental rate.

*Specific Authority 718.501(1)(f), 718.621 FS. Law Implemented 718.606 FS. History—New 7-2-81, Formerly 7D-24.03, 7D-24.003.*

#### **61B-24.004 Disclosure of Building Condition.**

(1)(a) Disclosure of building condition is required in order that prospective purchasers be informed as to the scope and magnitude of the financial responsibility that condominium ownership entails. Section 718.616, Florida Statutes (Supp. 1980), sets forth the information that shall be disclosed and components for which disclosure of condition is made. Disclosure of condition is required for all property and each of the components listed by the statute to the extent that the improvements include any of the components.

(b) Disclosure of condition is required for all condominium property, in particular condominium property intended for use in connection with the condominium. The disclosure of condition requirement applies to property owned by an association, and applies to property owned by a master property owners' association when the repair, replacement or maintenance of such property constitutes a common expense or when such property is condominium property.

(2) The disclosure of the age of each component is measured in years from the later of:

(a) The date when the installation or construction of the existing component was completed;  
or

(b) The date when the component was replaced or substantially renewed.

It is not required that the developer certify that the replacement or renewal at least met the requirements of the then applicable building code.

(3) In a phased condominium conversion, disclosure of replacement cost information shall be stated on the basis of:

(a) All phases previously converted to condominium and all phases being offered in the documents; and

(b) All phases that may ultimately be converted to condominium and all phases that have

been converted to condominium.

(4) The disclosure of building condition statement shall include the following information:

(a) The date when the statement was prepared.

(b) The date when the improvements were inspected for the preparation of the statement.

(c) The date when the construction of the improvements was completed, evidenced by a copy of the certificate of occupancy, or equivalent authorization, issued for the improvements. When a building is located in a jurisdiction in which certificates of occupancy or equivalent authorizations are not issued, the date when substantial completion of construction of the improvements in accordance with the plans and specifications shall be stated.

(5) The copy of the disclosure statement filed with the Division shall be certified under seal of a architect or engineer authorized to practice in this State.

*Specific Authority 718.501(1)(f), 718.621 FS. Law Implemented 718.616, 718.618, 718.103(11), 718.503(2),(1), 718.504(15) FS. History–New 7-2-81, Formerly 7D-24.04, 7D-24.004.*

#### **61B-24.005 Right of First Refusal.**

(1) A developer may offer a unit to a tenant at more than one price provided that all prices are offered to the tenant during the full right of first refusal period.

(2) A developer may not require a purchasing tenant to close on a purchase prior to the expiration of the tenant’s rental agreement or any rental agreement extension period, provided, a developer may establish a higher price for the unit when a tenant elects a later closing. Time of closing shall be determined by developer and tenant negotiation.

(3) A tenant bringing an action for specific performance to enforce a right of first refusal may record a lis pendens prior to the closing on the sale of the unit to a third party.

(4) The right of first refusal exists to provide tenants the opportunity to continue their residence. Any restrictive covenant that would prevent a purchasing tenant from continuing residence in a unit purchased under the right of first refusal is unenforceable against such tenant.

*Specific Authority 718.501(1)(f), 718.621 FS. Law Implemented 718.612 FS. History–Amended 9-6-81, Formerly 7D-24.05, 7D-24.005.*

#### **61B-24.006 Economic Information (Repealed).**

*Specific Authority 718.501(1)(f), 718.614(2) FS. Law Implemented 718.501(1)(e), 718.614(2) FS. History–New 7-2-81, Formerly 7D-24.06, 7D-24.006, Amended 2-22-94, 7-14-08, Repealed 10-28-08.*

#### **61B-24.007 Converter Reserve Accounts; Warranties; Disclosures.**

(1)(a) The funding of roof reserve accounts is based on the square foot surface area of the roof. The term “roof” does not include sloped siding that is not a part of a roof structure, does not serve the purpose of a roof and the deterioration of which would not result in damage to the interior of the improvements.

(b) The age of any component or structure, for which the developer is funding a reserve account, shall be measured –

1. Beginning with the later of:

a. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then applicable building code; or

b. The date when the installation or construction of the existing component or structure was completed; and

2. Ending with the date when the first unit is sold.

(2) When a developer is deemed to have granted to the purchaser of each unit an implied

warranty, the term of the warranty is as follows:

(a)1. For a three year period beginning with the date of the notice of intended conversion; or

2. For a three year period beginning with the date of the recording of the declaration of condominium;

whichever period begins last; and continuing thereafter through.

(b) One year after the date when owners other than the developer obtain control of the association. Provided, the term of the warranty shall not exceed more than five years after later of: the date when the notice of conversion was given and the date when the declaration of condominium was recorded.

(3) The developer shall disclose in the documents required to be furnished purchasers the type of post-purchase protection that is to be provided: funded reserve accounts, warranties, or reserve accounts funded with a surety bond.

*Specific Authority 718.501(1)(f), 718.621 FS. Law Implemented 718.502(5), 718.503, 718.618 FS. History–New 7-2-81, Formerly 7D-24.07, 7D-24.007, Amended 1-26-97.*

## **61B-25 VOLUNTEER AND PAID MEDIATION RULES**

### **61B-25.001 Mediation Definitions.**

For purposes of Sections 718.501(1)(l) and 719.501(1)(n), F.S., the following definitions shall apply:

(1) “Mediation” means a process whereby a neutral third person acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, for example, assisting the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

(2) The phrase “mediated a dispute” means that the person as neutral third party assisted parties to a dispute with the goal of reaching a mutually acceptable and voluntary agreement through mediation as described in subsection (1) of this rule. The following shall not be considered as having “mediated a dispute”:

(a) Having served as counsel or adviser to a party to a mediation;

(b) Having been a party to a mediation; or

(c) Having participated in mediation as part of training or mentoring.

*Specific Authority 718.501, 719.501 FS. Law Implemented 718.501(1)(l), 719.501(1)(n) FS. History–New 3-18-93, Formerly 7D-25.001, Amended 12-2-97, 2-25-07.*

### **61B-25.002 Volunteer and Paid Mediator Lists.**

(1) The division will maintain lists of both volunteer and paid mediators who have met the requirements of Sections 718.501(1)(l) and 719.501(1)(n), F.S., and these rules. The lists will include the name, address, and telephone number of each applicant who has met the statutory and rule requirements for appearing on the lists. Names shall be removed from the lists as provided in this rule.

(2) The division will update the list of volunteer mediators on July 1 of each year by sending a letter to each individual on the list, requesting that the individual advise the division within 30 days if the individual wishes to remain on the list. The division will remove the name of any individual who fails to notify the division in writing within 30 days from the date of the notice that the individual wishes to remain on the list. The removed name will be added to the list again upon written request of the person whose name was removed.

(3)(a) The division will remove from the list of volunteer mediators the name of any person

who accepts any compensation or reimbursement for the mediation of a condominium dispute when the mediator was selected from the list or who submits false information in the application or documentation required by Rule 61B-25.003, Florida Administrative Code.

(b) The division will remove from the list of paid mediators the name of any person who submits false information in the application or documentation required by Rule 61B-25.003, Florida Administrative Code.

(4) The division does not endorse or in any way approve any volunteer or paid mediator appearing on the lists.

*Specific Authority 718.501, 719.501 FS. Law Implemented 718.501(1)(l), 719.501(1)(n) FS. History—New 3-18-93, Formerly 7D-25.002, Amended 12-2-97, 2-25-07.*

#### **61B-25.003 Procedure for Applying; Volunteer Mediators.**

(1) A person who has met the requirements of Sections 718.501(1)(l) and 719.501(1)(n), F.S., and these rules, and who wishes to be placed on a list of volunteer mediators maintained by the division, shall submit a completed BPR Form 33-035, APPLICATION FOR VOLUNTEER MEDIATOR, incorporated herein by reference and effective 3-18-93, and supporting documentation of training or experience to the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, FL 32399-1029. A copy of BPR form 33-035, may be obtained by writing to the Division of Florida Condominiums, Timeshares, and Mobile Homes at the address stated in this paragraph.

(2) The supporting documentation which shall be submitted with BPR form 33-035, Application for Volunteer Mediator, shall consist of the following:

(a) Verification of the completion of 20 hours of training in mediation techniques. Verification shall consist of a certificate of completion from a training program or a notarized statement from an instructor or entity providing the training which verifies completion of 20 hours of training in mediation techniques or other verifiable evidence of completion of the training requirement; or

(b) Verification of having mediated 20 disputes. Verification shall consist of either of the following:

1. Documentation of having mediated at least 20 disputes in a mediation program such as a County Citizen Dispute Settlement Program; or,

2. An affidavit from the applicant attesting to having mediated at least 20 disputes. If an affidavit is provided, it shall be supplemented with notarized statements attesting to the mediations from all parties of at least five disputes mediated by the applicant.

(3) Based upon the application and documentation submitted by the applicant, the division will determine if the applicant meets the requirements to be included on the list of volunteer mediators to be maintained by the division. If it is determined by the division that the applicant does not meet the minimum requirements, the division will notify the applicant by letter. The applicant's name will not be placed on the list unless the applicant demonstrates that the minimum requirements have been met.

*Specific Authority 718.501, 719.501 FS. Law Implemented 718.501(1)(l), 719.501(1)(n) FS. History—New 3-18-93, Formerly 7D-25.003, Amended 12-2-97, 2-25-07.*

#### **61B-25.004 Procedure for Applying; Paid Mediators.**

(1) A person who has met the requirements of Sections 718.501(1)(l) and 719.501(1)(n), F.S., and these rules, and is certified by the Florida Supreme Court to mediate court cases in either county or circuit courts, and who wishes to be placed on a list of paid mediators maintained by the division, shall submit a completed DBPR Form CO 6000-33-042, APPLICATION FOR PAID MEDIATOR, incorporated herein by reference and effective 12-2-97, and supporting

documentation to the Division of Florida Condominiums, Timeshares, and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, FL 32399-1029. A copy of DBPR Form CO 6000-33-042, may be obtained by writing to the Division of Florida Condominiums, Timeshares, and Mobile Homes at the address stated in this paragraph.

(2) The supporting documentation which shall be submitted with DBPR Form CO 6000-33-042, is an acknowledgment from the Florida Supreme Court that the applicant is currently certified by the Florida Supreme Court to mediate cases in either circuit or county courts.

(3) Based upon the application and documentation submitted by the applicant, the division will determine if the applicant meets the requirements to be included on the list of paid mediators to be maintained by the division. If it is determined by the division that the applicant does not meet the minimum requirements, the division will notify the applicant by letter. The applicant's name will not be placed on the list unless the applicant demonstrates that the minimum requirements have been met. If a person certified as a paid mediator by the division is no longer certified by the Florida Supreme Court to mediate court cases in either circuit or county courts, the person shall immediately so notify the division and the person's name shall be automatically deleted from the list of paid mediators.

*Specific Authority 718.501, 719.501 FS. Law Implemented 718.501(1)(l), 719.501(1)(n) FS. History—New 12-2-97, Amended 2-25-07.*

## **61B-45 THE MANDATORY NON-BINDING ARBITRATION RULES OF PROCEDURE**

### **61B-45.001 Scope, Organization, Forms, Purpose, and Title.**

(1) This chapter shall be entitled “The Mandatory Non-Binding Arbitration Rules of Procedure” and shall be construed to secure the just, speedy and inexpensive determination of every proceeding. Specifically, this chapter applies to all proceedings for mandatory non-binding arbitration held pursuant to Section 718.1255, F.S. (1991) and Section 719.1255, F.S. (1992 Supp.). This chapter does not apply to recall arbitrations commenced pursuant to Section 718.112(2)(k) or 719.106(1)(f), F.S. (1992 Supp.); recall arbitrations shall be governed by Chapter 61B-50, F.A.C.

(2) All petitions and other papers filed with the division shall be filed at the official headquarters of the Division of Florida Condominiums, Timeshares, and Mobile Homes, Attention: Arbitration Program, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1029. A subject-matter index of arbitration orders may be requested by writing to the Arbitration Clerk at this address.

(3) In order to file a petition for arbitration, a petitioner must use DBPR form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated herein by reference and effective 7-4-04. In order for someone who is not a member of the Florida Bar to represent a party in a proceeding, the person must file a completed DBPR form ARB 6000-002, QUALIFIED REPRESENTATIVE APPLICATION, incorporated herein by reference and effective 7-4-04. An answer to a petition for arbitration must be filed using DBPR form ARB 6000-003, ANSWER TO PETITION, incorporated herein by reference and effective 2-17-98, and revised April 30, 1998. A request for an expedited determination of whether jurisdiction exists to hear a particular dispute shall be filed on DBPR form ARB 6000-004, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated herein by reference and effective 7-4-04. Copies of the forms referenced in these rules may be obtained by writing: Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, Attention: Arbitration Section, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1029. All forms may be obtained online at <http://www.state.fl.us/dbpr/lsc/arbitration/index.shtml>.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—*

*New 4-1-92, Amended 2-2-93, Formerly 7D-45.001, Amended 6-19-96, 12-10-96, 2-17-98, 7-4-04.*

**61B-45.004 Who May Appear; Criteria for Other Qualified Representatives; Standards of Conduct.**

(1) Any person who appears before any arbitrator has the right, at that person's own expense, to be accompanied, represented and advised by a member of the Florida Bar or by a qualified representative who does not need to be an attorney, but who shall demonstrate his or her familiarity with and understanding of the arbitration rules of procedure, and with any relevant portions of Chapter 718 or 719, F.S., and the rules promulgated by the Division.

(2) If a person wishes to be represented by a qualified non-attorney representative, he or she shall file with the arbitrator a completed DBPR form ARB96-002, QUALIFIED REPRESENTATIVE APPLICATION, incorporated in subsection 61B-45.001(3), Florida Administration Code. Based on the information provided on the completed form, and based on the responses to any inquiries made by the arbitrator concerning the applicant's familiarity and understanding of the statute and rules applicable to the proceeding, the arbitrator shall determine whether the prospective representative is authorized and qualified to appear in the arbitration proceedings and capable of representing the rights and interests of the person.

(3) Members of The Florida Bar and certified law students are bound by a broad code of ethics. For other qualified representatives, the following standards have been written. These standards of conduct are adopted as a mandatory guide for all representatives appearing in any arbitration proceeding, except counsel subject to the disciplinary procedures of The Florida Bar.

(4) Standards of Conduct.

(a) A representative shall exercise due diligence in the filing and argument of any motion or pleading to ensure that the motion or pleading is filed and argued in good faith.

(b) The signature of a representative upon any motion or pleading shall constitute a certificate that the representative has read the motion or pleading, that to the best of the representative's knowledge it is supported by good grounds and that it has not been presented solely for delay.

(c) A representative shall advise the client to observe and to obey the law.

(d) A representative shall not:

1. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of the arbitration process;

2. File a pleading, assert a position, conduct a defense, delay an arbitration proceeding or take other action on behalf of the client when such action would serve merely to harass or maliciously injure another;

3. Handle a legal or factual matter which the representative knows or should know that the representative is not competent to handle without associating an attorney or another qualified representative; or handle a legal or factual matter without adequate preparation;

4. State or imply that he or she is able to improperly influence the arbitrator or any agency or public official;

5. Communicate or cause another to communicate with an adverse party regarding matters at issue in the arbitration proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative;

6. Disregard or advise the client to disregard a rule or statute of an agency or a ruling of an arbitrator made in the course of an arbitration proceeding;

7. Conceal or knowingly fail to disclose that which one is bound to reveal by law;

8. Knowingly use perjured testimony or false evidence, or suppress any evidence that the representative or the client should produce;

9. Knowingly make a false statement of law or fact;

10. Advise or cause a person to secrete himself or leave the jurisdiction of any agency for the purpose of making the person unavailable as a witness therein; pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' testimony or the outcome of the case; counsel or advise a witness to provide other than honest testimony.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.004, Amended 6-19-96.*

**61B-45.007 Communication with Arbitrator.**

(1) While a case is pending and within 15 days of entry of a final order, no party or other person directly or indirectly interested in an arbitration proceeding nor anyone authorized to act on behalf of a party or other interested person shall communicate verbally or in writing in the absence of all parties with an arbitrator or with the Department of Business and Professional Regulation relative to the merits of the arbitration proceeding, threaten an arbitrator, or offer an arbitrator any reward.

(2) An arbitrator who has received a communication prohibited by this rule, or who has received a threat or offer of reward by any person with respect to the conduct or outcome of a proceeding, shall place upon the record all written communications received, all written responses to such communications and a memorandum stating the substance of all oral communications received and all oral responses made, simultaneously serving all parties.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.007, Amended 6-19-96, 7-4-04.*

**61B-45.009 Computation of Time; Service by Mail.**

(1) In computing any period of time prescribed or allowed for the filing or service (i.e., mailing) of any document, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, F.S., in which event the period shall run until the end of the next business day. When the period of time allowed is 7 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(2) Additional Time After Service By Mail. Unless otherwise ordered by the arbitrator, during the pendency of a case, when a party is required or permitted by these rules or by order of the arbitrator to do an act within a prescribed period after the service of a document and that document is served by regular U.S. mail, five days shall be added to the prescribed period. No additional time shall be added to the prescribed period if service is made by hand, facsimile transmission, or other electronic transmission. No additional time is added for filing a motion for rehearing that must be filed (e.g., received by the agency) within 15 days of entry of a final order, or a motion for costs and attorney's fees that must be filed within 45 days of entry of the final order as required by Rule 61B-45.048, F.A.C., unless an appeal for trial de novo has been timely filed in the courts. Also, no additional time is added by operation of this rule for the filing of a complaint for trial de novo which must be filed in the courts within 30 days of the date of rendition of a final arbitration order as required by Section 718.1255(4)(k), F.S.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.009, Amended 6-19-96, 7-4-04.*

**61B-45.010 Filing; Service of Papers; Signing.**

(1) Filing. Unless specifically ordered, every pleading or other paper filed in the proceedings, except the initial petition, shall also be served on each party. A pleading or other paper is considered "filed" when it is received by the division.

(2) Method and Proof of Service.

(a) When service is to be made upon a party represented by an attorney or by a qualified representative, service shall be made upon the attorney or representative unless service upon the party is ordered by the arbitrator. Service shall be made by delivering or mailing, by United States mail postage prepaid, a copy of the document to the attorney, representative, or party at that person's last known address.

(b) Certificate of Service. When any attorney, representative, or unrepresented party signs a certificate of service such as the following, the certificate of service shall be taken as evidence of service in compliance with these rules:

"I certify that a copy hereof has been furnished to (here insert name or names and address or addresses) by U.S. mail this \_\_\_\_ day of \_\_\_\_, 19\_\_."

\_\_\_\_\_  
Signature

(3) Number of Copies. Only the original of all pleadings shall be filed with the arbitrator; no copies shall be filed. However, the original petition for arbitration shall be accompanied by one (1) copy for each named respondent.

(4) "Filing" shall mean receipt by the Division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or other correspondence has actually been filed with the arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the Division received the document. A facsimile copy is filed within the meaning of this rule when the facsimile copy of the document is received by the Division. No pleadings shall be faxed that exceed 30 pages in length including attachments. When a party files a facsimile document with the arbitrator, the party shall also provide a facsimile copy to the other party if the fax number is available. If a party desires to receive orders via e-mail, the party must provide its e-mail address to the arbitrator assigned to the case.

(5) Any pleading or other document received after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day.

(6) All pleadings and motions filed shall contain the following:

(a) The style of the proceeding involved;

(b) The docket number, if any;

(c) The name of the party on whose behalf the pleading is filed;

(d) The name, address, and telephone number of the person filing the pleading or motion;

(e) The signature of the person filing the pleading or motion; and

(f) A certificate of service attesting that copies have been furnished to other parties as required by subsection (2) of this rule.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.010, Amended 9-21-94, 12-20-95, 6-19-96, 7-4-04.*

**61B-45.011 Motions; Temporary or Interim Injunctive or Emergency Relief.**

(1) An application to the arbitrator for an order shall be made by motion which shall be made in writing, unless made during a hearing, shall state in detail the grounds for the relief requested and shall set forth the relief or order sought. The arbitrator shall conduct such proceedings and make such orders as are deemed necessary to dispose of issues raised by motion. Other parties may, within 7 days of service of a written motion, file a written response in opposition to the motion.

(2) A party may, either with the original petition for arbitration, or any time before entry of a final order, file a motion for emergency relief or temporary injunction, which motion or accompanying argument shall demonstrate a clear legal right to the relief requested, that irreparable harm or injury exists or will result, that no adequate remedy at law exists, and that the relief or injunction would not be adverse to the public interest. An evidentiary hearing on a motion for emergency relief shall be scheduled and held as soon as possible after the filing of the motion and supporting petition for arbitration. The hearing will be held upon due notice after the petition for arbitration and motion are served on the opposing party and may be held prior to the filing of the answer.

(3) No temporary injunction shall be entered unless a bond is given by the movant in an amount the arbitrator upon testimony taken deems sufficient, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Formerly 7D-45.011, Amended 6-19-96, 12-10-96, 7-4-04.*

**61B-45.013 Matters Eligible or Ineligible for Arbitration.**

(1) A “dispute” under Section 718.1255, F.S., includes a disagreement that involves use of a unit or the appurtenances thereto, including use of the common elements.

(2) No controversy shall be accepted for arbitration under these rules where the controversy is between or among unit owners, or between or among a unit owner or unit owners and tenants, except where the association is a party and the dispute is otherwise eligible for arbitration. The only disputes eligible for arbitration are those existing between a unit owner or owners and the association or its board of administration; however, pursuant to Rule 61B-45.015, F.A.C., a tenant shall be named as a party respondent where the subject matter of the dispute concerns a tenant. In addition, other unit owners having a particular interest in the proceeding shall be named as parties.

(3) Except as otherwise provided by Rule 61B-45.035, F.A.C., any party who has participated as a party in a prior arbitration, administrative or court hearing shall not be allowed, consistent with the principles of res judicata and collateral estoppel, to raise identical issues in a subsequent arbitration hearing.

(4) Where a controversy involves both matters eligible and ineligible for arbitration, the arbitrator shall determine by order whether the ineligible matters may properly be severed from the controversy so that the remaining eligible issues may be arbitrated.

(5) No petition shall be accepted for arbitration under these rules which involves issues which are moot, abstract, hypothetical, or otherwise lacking the requirements of a case or controversy; no dispute which is not a bona fide, actual and present dispute shall be accepted for arbitration.

(6) No petition shall be accepted for arbitration under these rules which alleges the failure by the association to enforce, or properly enforce, the condominium documents, unless the controversy otherwise constitutes a dispute as defined by Section 718.1255, F.S., and these rules.

(7) No petition shall be accepted for arbitration under these rules which alleges the failure of the association to properly repair, replace, or maintain the common elements, common areas, association property, or cooperative property unless the petition also alleges how the petitioner’s

use of the common elements, common areas, association property, or cooperative property has been directly affected as a result of the alleged failure.

(8) No petition shall be accepted for arbitration under these rules unless it arises in a residential cooperative or condominium, as defined by Section 719.103 or 718.103, F.S., and involves a residential unit or units.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.013, Amended 9-21-94, 6-19-96.*

**61B-45.015 Parties; Appearances; Substitution and Withdrawal of Counsel.**

(1) Parties in proceedings before the arbitrator are unit owners, associations, and tenants to the extent provided in subsection 61B-45.013(5), F.A.C. If the dispute involves a tenant, the tenant and the unit owner shall be named as party respondents. If the petition may directly affect the particular interests of a non-party unit owner, the unit owner shall be made a party to the proceeding. Parties shall be entitled to receive copies of all pleadings, motions, notices, orders and other matters filed in a proceeding. The party who files a petition shall be designated as the petitioner. The party who files an answer shall be designated as the respondent.

(2) Withdrawal of Counsel or Representative. An attorney or qualified representative who has filed a petition or has otherwise become an attorney or representative of record for any party to a proceeding under these rules shall remain attorney or representative of record in said cause and shall be permitted to withdraw from the cause only upon filing a notice with the arbitrator, which notice shall provide a correct mailing address for the client.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.015, Amended 9-21-94, 6-19-96.*

**61B-45.016 Expedited Procedure for Determination of Jurisdiction.**

(1) Any party who is in doubt as to whether a controversy falls within the jurisdiction of the division may file with the division a request for expedited determination of jurisdiction by filing a completed DBPR form ARB 6000-004, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated in subsection 61B-45.001(3), F.A.C. A request for expedited determination of jurisdiction shall be accompanied by a completed DBPR form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated in subsection 61B-45.002(3), F.A.C., which shall include the \$50 filing fee provided by Section 718.1255, F.S.

(2) If the determination of jurisdiction is subject to reasonable dispute, within 10 days of the assignment of a request for relief pursuant to this rule, the arbitrator shall deliver by U.S. mail to all other persons involved with the dispute, a copy of the request for relief, and shall provide such persons an opportunity to serve a response on the issue of whether the dispute falls within the jurisdiction of the division.

(3) The arbitrator, within 20 days of receipt of the responses permitted by subsection (2) above, shall make a determination of whether the controversy falls within the jurisdiction of the division, and shall enter an appropriate order.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.016, Amended 9-21-94, 6-19-96, 7-4-04.*

**61B-45.017 Initiation of Arbitration Proceedings; Content of Petition.**

(1) Initiation of arbitration proceedings shall be made by a unit owner or association filing the original petition for arbitration and one copy for each named respondent with the Division of Florida Condominiums, Timeshares, and Mobile Homes. All petitions shall be submitted on a completed DBPR Form ARB 6000-001, MANDATORY NON-BINDING PETITION FORM, incorporated in subsection 61B-45.001(3), F.A.C. A fee of \$50.00 shall be included with each

petition for arbitration. A petition which is not accompanied by this fee shall not be processed. Once a petition, including the filing fee, is received by the division for filing, the fee cannot be refunded.

(2) If a person other than an attorney files a petition or other pleading as a representative of a party, that person shall simultaneously file a completed DBPR Form ARB96-002, QUALIFIED REPRESENTATIVE APPLICATION, incorporated in subsection 61B-45.001(3), F.A.C.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.017, Amended 9-21-94, 12-20-95, 6-19-96, 2-17-98.*

#### **61B-45.018 Processing of Arbitration Petitions; Notification to Parties.**

(1) If, upon receipt of a petition for arbitration, the filing fee required by Section 718.1255, F.S., is not included, the division shall return the petition to the sender with an explanation for its return.

(2) After assignment of a petition for arbitration, the arbitrator shall make a preliminary determination on whether the controversy described in the petition falls within the jurisdiction of the division and whether the petition complies with Rule 61B-45.017, F.A.C.

(3) If the controversy falls within the jurisdiction of the division, and complies with Rule 61B-45.017, F.A.C., the arbitrator shall so notify the petitioner and shall proceed as set forth in subsection (4) below. The arbitrator shall reject a petition if it is determined to be outside the jurisdiction of the division.

(4) If the petition fails to comply with Rule 61B-45.017, F.A.C., the arbitrator shall enter an order requiring petitioner to amend the petition to comply with Rule 61B-45.017, F.A.C. The arbitrator shall reject a petition for noncompliance with Rule 61B-45.017, F.A.C.

(5) If the arbitrator preliminarily determines the dispute to fall within the jurisdiction of the division and determines that the petition complies with Rule 61B-45.017, F.A.C., the arbitrator shall by United States certified mail or personal service, provide the respondent with a copy of the petition and an order requiring respondent to file an answer.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.018, Amended 9-21-94, 6-19-96, 2-17-98.*

#### **61B-45.019 Answer and Defenses.**

(1) After a petition for arbitration is filed and assigned to an arbitrator, the respondent will be mailed a copy of the petition by the arbitrator, and will be given an opportunity to answer the petition. Unless a shorter time is ordered by the arbitrator in cases where the health, safety, or welfare of the resident(s) of a community is alleged to be endangered, a respondent shall file the answer with the arbitrator, and shall mail a copy to the petitioner, within 20 days after receipt of the petition. The answer shall include all defenses and objections, and shall be filed on DBPR form ARB96-003, ANSWER TO PETITION, incorporated in subsection 61B-45.001(3), F.A.C. The answer shall not include a request for relief (counterclaim) against the petitioner. Any claim or request for relief must be filed as a new petition following the procedure provided in Rule 61B-45.017, F.A.C.

(2) The service of any motion under these rules does not alter the period of time in which to file an answer, except that service of a motion in opposition to the petition postpones the time for filing of the answer until 20 days after the arbitrator's ruling on the motion. The following defenses shall be made by motion in opposition to the petition:

- (a) Lack of jurisdiction over the subject matter,
- (b) Lack of jurisdiction over the person,
- (c) Insufficiency of process,

- (d) Insufficiency of service of process,
- (e) Failure to state a cause of action, and
- (f) Failure to join indispensable parties.

A motion making any of these defenses shall be made before the filing of the answer. The grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion. Any ground not stated in the motion shall be deemed to be waived except any ground showing that the division lacks jurisdiction of the subject matter may be made at any time.

(3) Every defense in law or fact to a claim for relief in a petition shall be asserted in the answer. Unless otherwise determined by the arbitrator, any ground or defense not stated in the answer shall be deemed to be waived except any ground showing that the arbitrator lacks jurisdiction of the subject matter. Each defense shall be separately stated and shall include an identification of all facts upon which the defense is based. The defense of selective enforcement shall contain all examples of selective enforcement upon which the respondent depends, shall indicate the unit(s) to which each example pertains, shall identify the unit owner(s), how long the violation has existed, and shall indicate whether the board knew of the existence of the violation(s). The defense that the petitioner has failed to provide the pre-arbitration notice required by Section 718.1255, F.S., is deemed waived if not asserted by motion to dismiss set forth in subsection (2) above or in the answer.

(4) An answer shall separately identify all facts contained in the petition which the respondent disputes, or shall in the alternative state that no disputed facts exist. All facts not specifically denied shall be deemed admitted. A general denial does not satisfy the requirements of this paragraph. Any answer which fails to comply with this requirement shall be stricken.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.019, Amended 9-21-94, 6-19-96, 7-4-04.*

#### **61B-45.020 Defaults and Final Orders on Default.**

(1) When a party fails to file or serve any responsive document in the action or has failed to follow these rules or a lawful order of the arbitrator, the arbitrator shall enter a default against the party where the failure is deemed willful, intentional, or a result of neglect. No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them shall be served in the manner provided for service of the original petition for arbitration.

(2) Final Order. Final orders after default may be entered by the arbitrator at any time. The arbitrator shall receive affidavits as necessary to determine damages.

(3) Setting Aside Default. If a final order after default has been entered, the arbitrator may set it aside for reasons of excusable neglect, mistake, surprise, or inadvertence. A motion setting aside the final order after default must be made within a reasonable time not to exceed 1 year after the final order was entered.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.020, Amended 6-19-96, 12-10-96, 7-4-04.*

**61B-45.024 Discovery.**

(1) It is intended that the discovery process shall be used sparingly and only for the discovery of those things which are necessary for the proper disposition of the petition. Parties may obtain discovery only upon the prior approval of the arbitrator. A motion to conduct discovery shall describe with specificity the subject matter of the discovery and the method(s) by which discovery will be sought. The arbitrator may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

(2) Except as may be modified herein, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. However, a unit owner desiring to obtain copies of official association records for use in the proceeding shall utilize the owner's right of access to the official records as provided by Section 718.111(12), F.S., in lieu of formal discovery.

(3) A party may seek enforcement of an order directing discovery by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the order resides.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.024, Amended 9-21-94, 6-19-96, 7-4-04.*

**61B-45.025 Subpoenas and Witnesses; Fees.**

(1) A subpoena requiring the attendance of witnesses or the production of documents, whether for purposes of discovery or for purposes of a final hearing, may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age, as provided in Rule 1.410., Florida Rules of Civil Procedure, (1996), or as that rule may subsequently be renumbered. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(2) All witnesses, other than public employees subpoenaed to appear in their official capacity, appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as set forth in Section 92.142, F.S., (1996), or as that statute may subsequently be renumbered. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement; and, in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended*

**61B-45.030 Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.**

(1) Any dispute which does not involve a disputed issue of material fact as shown by the answer, prehearing stipulation, or otherwise, shall be arbitrated as provided in this rule.

(2) At any time after the filing of the petition and answer, if any, and if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order denying relief pursuant to the petition if the arbitrator finds that no preliminary basis for relief has been demonstrated in the petition.

(3) At any time after the filing of the answer, and if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief if the arbitrator finds that no meritorious defense exists, and that the petition is otherwise appropriate for relief.

(4) No formal evidentiary hearing as described by Rule 61B-45.039, F.A.C., shall be conducted for arbitrations determined pursuant to this rule. The arbitrator shall decide the dispute solely upon the pleadings and evidence filed by the parties.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—*

*New 4-1-92, Amended 2-2-93, Formerly 7D-45.030, Amended 6-19-96.*

**61B-45.033 Notice of Final Hearing; Scheduling; Venue; Continuances.**

(1) The arbitrator shall set the time and place for all final hearings. The arbitrator shall serve written notice of the final hearing by regular mail on all parties of record.

(2) Whenever possible, hearings shall be held by telephone conference call or at the place most convenient to all parties and witnesses as determined by the arbitrator.

(3) In the arbitrator's discretion, a continuance of a hearing may be granted for good cause shown. Requests for continuance shall be made in writing. Except in cases of emergency, requests for continuance must be made at least 10 days prior to the date noticed for the final hearing.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.033, Amended 6-19-96, 7-4-04.*

**61B-45.035 Withdrawal or Voluntary Dismissal of Petition; Settlement.**

(1) A petitioner may withdraw or voluntarily dismiss the petition for arbitration at any time. Such withdrawal or dismissal shall be in writing directed to the arbitrator and shall be without prejudice to refile. No withdrawal or voluntary dismissal of a petition shall operate as an automatic withdrawal or dismissal of any other claim or petition pending in that case.

(2) Withdrawal or voluntary dismissal of the petition for arbitration shall not constitute exhaustion of administrative remedies or otherwise relieve the petitioner of the requirement of arbitration prior to resort to the courts as provided by Section 718.1255(4)(a) or 719.1255, F.S.

(3) The petitioner may request that the arbitration be dismissed based on a settlement of the dispute. Except as otherwise provided by subsection 61B-45.048(8), F.A.C., or by the terms of a settlement agreement, the settlement of a dispute shall not preclude the filing of a petition for costs and attorney's fees pursuant to Rule 61B-45.048, F.A.C.

(4) Where a party undertakes corrective action in the case which ends the dispute between the parties, such as removing an unapproved pet or tenant, that party shall immediately notify the arbitrator of the action taken.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.035, Amended 9-21-94, 6-19-96, 7-4-04.*

**61B-45.036 Conduct of Proceedings by Arbitrator.**

(1) The failure or refusal of a petitioner to comply with any lawful order of the arbitrator or with a provision of these rules shall result in a dismissal of the petition or individual claims or imposition of costs and attorney's fees, or both, as appropriate, where such failure is deemed willful, intentional, or a result of neglect. The dismissal of any petition pursuant to this rule shall not be considered a decision on the merits of the petition.

(2) The failure or refusal of a respondent to comply with any lawful order of the arbitrator or with a provision of these rules shall result in the striking of the answer or individual defenses or imposition of costs and attorney's fees, or both, as appropriate.

(3) The arbitrator may without the agreement of the parties, conduct any proceeding permitted under these rules, including a motion hearing, by telephone conference.

(4) At any time after a petition has been filed, with the division for arbitration, the arbitrator may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibility of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a prehearing stipulation.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—*

*New 4-1-92, Formerly 7D-45.036, Amended 6-19-96, 2-17-98.*

**61B-45.037 Stenographic Record and Transcript.**

(1) Any party wishing a stenographic record shall make such arrangements directly with the court reporter and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record.

(2) Any party may have a stenographic record and transcript made of the final hearing at the party's own expense. The record transcript may be used in subsequent legal proceedings subject to the applicable rules of evidence.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.037.*

**61B-45.039 Conduct of Formal Hearing; Evidence.**

(1) Hearings shall be open to the public. However, the arbitrator shall exclude any observer, witness or party who is disruptive to the conduct of the hearing.

(2) Each party shall have the right to present evidence, cross-examine the other party's witnesses, enter objections, and to rebut the evidence presented against the party.

(3) The arbitrator is authorized to administer oaths. Oral testimony shall be taken only upon oath or affirmation.

(4) Unless otherwise ordered by the arbitrator, the petitioner shall present its evidence and witnesses, then the respondent shall present its evidence and witnesses.

(5) Evidence.

(a) An arbitration proceeding is less formal than a court proceeding, and the formal rules of evidence applicable to court proceedings do not generally apply. Any relevant evidence shall be admitted if it is the kind of evidence on which reasonable, prudent persons rely in the conduct of their affairs. Reliable, relevant evidence may be presented by the parties. Facts are to be proved through the testimony of witnesses under oath at the final hearing and through documents admitted into evidence at the request of a party. Hearsay evidence (i.e., statements not made at the final hearing under oath) may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding, unless the hearsay evidence would be admissible over objection in a civil action. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

(b) All exhibits shall be identified as petitioner's exhibits, respondent's exhibits, or as joint exhibits and shall be so marked in the order received and made a part of the record.

(c) Documentary evidence may be received in the form of a photocopy.

(6) The arbitrator shall afford the parties an opportunity to submit proposed findings of fact, conclusions of law, and proposed orders, or legal briefs or memoranda on the issues, within a time designated by the arbitrator after the final hearing.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.039, Amended 9-21-94, 6-19-96.*

**61B-45.043 Final Orders; Appeals; Stays.**

(1) Unless waived, a final order shall be entered within 45 days after the hearing, receipt by the arbitrator of the hearing transcript if one is timely filed, or receipt of any post-hearing memoranda, whichever is applicable. The final order shall be in writing and shall include a statement of any award or remedy. Failure to render a decision within such time period shall not invalidate the decision.

(2) The final order shall be mailed to the parties, if unrepresented, or to their counsel or other qualified representative of record by regular U.S. mail. The final order shall include a certificate

of service which shall show the date of mailing of the final order to the parties. The date of mailing of the final order shall be the date used to calculate the deadline for appeal by trial de novo.

(3) The final order shall include notice of the right to initiate judicial proceedings under Section 718.1255 or 719.1255, F.S.

(4) The decision shall be final and binding upon the parties, unless judicial proceedings are initiated pursuant to Section 718.1255 or 719.1255, F.S.

(5) The arbitrator in the final order may grant mandatory or prohibitory relief, monetary damages, declaratory relief, or any other remedy or relief which is deemed just and equitable. However, no final order may include the imposition of a civil penalty pursuant to Section 718.501 or 719.501, F.S.

(6) In reaching a decision, the arbitrator may take official notice of and find as true without proof, any fact which may be judicially noticed by the courts of this state, including any arbitration final order or any final order of the division involving a similar or related issue.

(7) A final order of the arbitrator does not constitute final agency action and therefore is not appealable to the district courts of appeal as otherwise provided by Section 120.68, F.S., and Rule 9.110, Florida Rules of Appellate Procedure. Appeals, if taken, shall be by trial de novo as described in subsection (4) above.

(8) The arbitrator, the division, and the Department of Business and Professional Regulation are not necessary parties in judicial proceedings relating to the arbitration, including appeals by trial de novo and actions seeking enforcement of final orders.

(9) A final or nonfinal order is effective upon its issuance unless a stay has been issued. A party who appeals from an order seeking to stay a final or nonfinal order may, within 30 days of issuance of a final or nonfinal order from which an appeal is sought, file a motion to stay with the arbitrator who shall have continuing jurisdiction to grant, modify, or deny such request for relief.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.043, Amended 9-21-94, 12-20-95, 6-19-96, 12-10-96, 7-4-04.*

#### **61B-45.044 Motions for Rehearing.**

(1) A motion for rehearing may be filed within 15 days after the date of entry of the final order. The motion shall state with particularity the points of law or fact that the arbitrator has overlooked or misapprehended and shall not reargue the merits of the final order. Any response to the motion must be filed within 10 days of service of the motion.

(2) The arbitrator shall not modify the substance of the final order except upon a showing that the decision is based on a clear error of law or fact. A motion that is timely filed pursuant to this rule shall suspend the operation of the final order, and the time for filing a complaint for trial de novo, a motion seeking to recover prevailing party costs and attorney's fees, or a petition for enforcement under Sections 718.1255 and 719.1255, F.S., shall not commence until the arbitrator either denies the motion or enters an amended final order. An untimely filed motion for rehearing does not toll or otherwise stop the time provided for the filing of a motion for prevailing party costs and attorney's fees or the time provided for the filing of a petition for trial de novo in the courts.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.044, Amended 9-21-94, 6-19-96, 7-4-04.*

**61B-45.048 Claim for Costs and Attorney’s Fees.**

(1) Any party seeking an award of costs and attorney’s fees must request the award in writing prior to the rendition of the final order.

(2) A prevailing party seeking an award of costs and attorney’s fees shall file a motion seeking the award not later than 45 days after rendition of the final order, except that if an appeal by trial de novo has been timely filed in the courts, a motion seeking prevailing party costs and attorney’s fees must be filed within 45 days following the conclusion of that appeal and any subsequent appeal. The motion is considered “filed” when it is received by the division. The motion shall:

- (a) State the basis for the petition and the total attorney’s fees and costs that are claimed;
- (b) Specify the hourly rate claimed;
- (c) Include an affidavit by the attorney who performed the work that:
  - 1. States the number of years in which the attorney has been practicing law,
  - 2. Indicates each activity for which compensation is sought, and
  - 3. States the time spent on each activity.

In a case involving multiple issues which are separate and distinct from each other, the affidavit shall identify the specific issue for which each activity was performed.

(d) If an award of costs is sought, attach receipts or other documents that provide evidence of the costs claimed. The arbitrators shall follow Florida case law and the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions in awarding costs. The cost of personal service by an authorized process server is only a recoverable cost if such personal service is either authorized or required by the arbitrator. The cost of attending a hearing by a court reporter is a recoverable cost; the cost of preparing a transcript of the hearing is only a recoverable cost if the transcript, or a portion thereof, is filed with the arbitrator prior to rendition of the final order.

(3) The failure of a party to timely file a motion complying with this rule or to timely plead for or request attorney’s fees shall preclude the party from recovering its costs and attorney’s fees incurred in the arbitration.

(4) The parties on whom a motion for costs and attorney’s fees is served shall have 20 days from receipt of the motion in which to file a response to the motion with the arbitrator.

(5) A final order on the motion for attorney’s fees or costs shall be entered in the manner and within the time prescribed by Rule 61B-45.043, F.A.C. In determining a reasonable hourly fee and a reasonable total award of costs and attorney’s fees, the arbitrator is not required to conduct any hearing or proceedings or to seek or consider expert advice or testimony.

(6) Any proceeding seeking costs and attorney’s fees shall be stayed if a party to that proceeding has timely filed a complaint for trial de novo. The party filing the complaint for trial de novo shall notify the arbitrator that such complaint has been filed. The stay shall be in force and effect until the conclusion of that litigation and any subsequent appeal.

(7) The prevailing party in a proceeding brought pursuant to Section 718.1255, F.S., is entitled to an award of reasonable costs and attorney’s fees. A prevailing party is a party that obtained a benefit from the proceeding and includes a party where the opposing party has voluntarily provided the relief requested in the petition, in which case it is deemed that the relief was provided in response to the filing of the petition. Where a respondent has provided the relief sought by the petitioner prior to the filing of the petition and service on the respondent of the order requiring answer and copy of the petition, the petitioner under these circumstances is not deemed to be a prevailing party and is not entitled to an award of reasonable costs and attorney’s fees. The factors to be considered by the arbitrator in determining a reasonable attorney’s fees include the following:

- (a) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;

- (b) The likelihood that the acceptance of the particular employment will preclude other employment by the attorney;
- (c) The fee customarily charged in the locality for similar legal services;
- (d) The amount involved and the results obtained;
- (e) The time limitations imposed by the client or by the circumstances;
- (f) The nature and length of the professional relationship with the client; and
- (g) The experience, reputation, and ability of the attorney or attorneys performing the services.

*Specific Authority 718.1255, 719.1255 FS. Law Implemented 718.1255, 719.1255 FS. History—New 4-1-92, Amended 2-2-93, Formerly 7D-45.048, Amended 9-21-94, 6-19-96, 2-17-98, 7-4-04.*

## **61B-50 THE RULES OF PROCEDURE GOVERNING RECALL ARBITRATION**

### **61B-50.101 Scope, Organization, Procedure, and Title.**

(1) This chapter shall be entitled “The Rules of Procedure Governing Recall Arbitration” and shall govern the arbitration of a recall of one or more members of a board of administration of a condominium or cooperative association. These rules shall be construed to secure the just, speedy and inexpensive determination of every proceeding. Specifically, this chapter applies to all proceedings held pursuant to Section 718.112(2)(j) or 719.106(1)(f), F.S. The provisions of Chapter 682, F.S., and Chapter 61B-45, F.A.C., do not apply.

(2) All petitions and other papers filed with the division for recall arbitration pursuant to Sections 718.112(2)(j) and 719.106(1)(f), F.S., and these rules, shall be filed at the official headquarters of the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, Attention: Arbitration Program, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1029.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.01, Amended 7-27-88, Formerly 7D-50.001, Amended 1-17-93, Formerly 7D-50.101, Amended 1-19-97, 6-24-04.*

### **61B-50.105 Initiation of Recall Arbitration.**

(1) When one or more members of a board of administration of a condominium or cooperative association have been recalled, the board of administration may initiate a recall arbitration by filing a petition for recall arbitration with the division, as follows:

(a) Recall at a Unit Owner Meeting. Where the unit owners attempt to recall one or more members of a board at a unit owner meeting, and the board does not certify the recall, the board shall file a petition for arbitration with the division within five full business days after adjournment of the board meeting at which the board determined not to certify the recall.

(b) Recall by Written Agreement. Where the unit owners attempt to recall one or more members of a board by written agreement of a majority of the voting interests, and the board does not certify the written agreement to recall, the board shall file a petition for arbitration with the division within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

(2) The time periods contained in Sections 718.112(2)(j) and 719.106(1)(f), Florida Statutes, operate, for purposes of these arbitration rules and not for enforcement purposes under Section 718.501, Florida Statutes, in the manner of statutes of limitation and are therefore subject to equitable considerations. However, where the board fails to timely comply with these rules relating to the filing of the petition for recall arbitration, the board must provide legitimate justification and must demonstrate that its actions or inactions were taken or based in good faith. The board’s claims of excusable neglect or the inability to identify defects in the recall effort

within the time provided, or other unremarkable excuses will not be considered as proper defenses. The failure of an association to timely file a petition for recall arbitration within the time limits imposed under these rules or Chapters 718 and 719, Florida Statutes, will result in the certification of the recall and the immediate removal of the board members subject to recall; however, the failure of the association to timely file a petition for recall arbitration will not validate a written recall that is otherwise void at the outset for failing to obtain a majority of the voting interests or is deemed fatally defective for failing to substantially comply with the provisions of Rule 61B-23.0028, Florida Administrative Code.

(3) Only the board of an association may file a petition for recall arbitration. Where the board fails to file a petition for recall arbitration as required by these rules and Chapters 718 and 719, Florida Statutes, the unit owners seeking to challenge the board's decision not to file for recall arbitration may file a petition for arbitration pursuant to Section 718.1255(1)(b) or 719.1255, Florida Statutes.

(4) Form of Petition. The term "petition" as used in this rule includes any application or other document that expresses a request for arbitration of a recall of one or more board members. The petition shall comply with the provisions of this rule, and be printed, typewritten or otherwise duplicated in legible form on one side of the paper only with lines double-spaced.

(5) All petitions for arbitration of a recall shall be signed by either a duly authorized board member, a member of the Florida Bar, or a qualified representative who has been retained by the board. Each petition shall contain:

(a) The name and address of the association and the number of voting interests;

(b) The name or names of the board member or members who were recalled;

(c) The name and address of the unit owner representative selected, pursuant to subparagraph 61B-23.0027(3)(b)2. or paragraph 61B-23.0028(1)(f), Florida Administrative Code, or subparagraph 61B-75.007(3)(b)2. or paragraph 61B-75.008(1)(f), Florida Administrative Code, to receive pleadings, notices, or other papers on behalf of the recalling unit owners;

(d) A statement of whether the recall was by vote at a meeting of the membership or by written agreement;

(e) If the recall was by vote at a meeting, the petition shall state the date of the meeting of the membership and the time the meeting was adjourned; if the recall was by written agreement, the petition shall state the date and time of receipt of the written agreement by the board, and a copy of the written agreement to recall shall be attached to the petition;

(f) The date of the board meeting at which the board determined not to certify the recall, and the time the meeting was called to order and adjourned;

(g) A copy of the minutes of the board meeting at which the board determined not to certify the recall;

(h) Each specific basis upon which the board based its determination not to certify the recall, including the unit number and specific defect to which each challenge applies. Any specific reason upon which the board bases its decision not to certify the recall that is stated in the petition for recall arbitration, but absent from the board meeting minutes or attachments thereto, shall be ineffective and shall not be considered by the arbitrator. A board member may be recalled with or without cause. The fact that a unit owner may have received misinformation is not a valid basis for rejecting a recall agreement and shall not be considered by the arbitrator;

(i) Any relevant sections of the bylaws, articles of incorporation, the declaration of condominium, cooperative documents, and rules, including all amendments thereto, as well as any or other documents which are pertinent to the petition; and

(j) Any other information which the petitioner contends is material.

(6) If, during the pendency of a recall arbitration, the unit owners in the condominium or cooperative attempt another recall effort and the board files another petition for arbitration, the

newly filed petition shall be consolidated with the pending case.

(7) Upon receipt and review of a petition for arbitration of a recall of one or more board members, the division shall either accept or deny the petition. If the petition is accepted, within 10 days the arbitrator shall serve the respondent unit owners by mailing a copy of the petition and an order allowing answer by United States certified mail to the representative of the recalling unit owners identified in the petition.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f) FS. History—New 1-17-93, Formerly 7D-50.105, Amended 11-15-95, 6-24-04.*

#### **61B-50.106 Computation of Time.**

(1) In computing the five full business days prescribed by Sections 718.112(2)(j) and 719.106(1)(f), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, Florida Statutes, in which event the period shall run until the end of the next business day.

(2) Additional Time After Service By Mail. Unless otherwise ordered by the arbitrator, during the pendency of a case, when a party is required or permitted by these rules or by order of the arbitrator to do an act within a prescribed period after the service of a paper upon that party and the paper is served by regular United States mail, five days shall be added to the prescribed period. This provision does not apply to the filing of the petition for recall arbitration. No additional time shall be added to the prescribed period if service is made by hand, facsimile transmission, or other electronic transmission.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 719.106(1)(f) FS. History—New 7-1-82, Formerly 7D-50.02, 7D-50.002, Amended 1-17-93, Formerly 7D-50.106, Amended 11-15-95, 6-24-04.*

#### **61B-50.107 Parties.**

(1) Parties in any proceeding conducted in accordance with Section 718.112(2)(j) or 719.106(1)(f), Florida Statutes, are petitioners or respondents.

(2) The petitioner shall be the board of administration of an association that files a petition for binding arbitration of a recall of one or more members of the board.

(3) The respondent shall be the group of members of an association who voted at a meeting, or who executed a written agreement, to recall one or more members of the board.

(4) All parties shall receive copies of all pleadings, motions, notices, orders, and other matters filed in arbitration proceedings in the manner provided by Rule 61B-50.115, Florida Administrative Code.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 719.106(1)(f) FS. History—New 7-1-82, Formerly 7D-50.03, Amended 7-27-88, Formerly 7D-50.003, Amended 1-17-93, Formerly 7D-50.107, Amended 6-24-04.*

#### **61B-50.108 Who May Appear; Criteria for Other Qualified Representatives.**

(1) Any person who appears before any arbitrator has the right, at that person's own expense, to be accompanied, represented and advised by a member of the Florida Bar or by a qualified representative who is not a member of the Florida Bar, but who shall demonstrate his or her familiarity with and understanding of the arbitration rules of procedure, and with any relevant portions of Chapter 718 or 719, Florida Statutes, and the rules promulgated by the Division.

(2) If a person wishes to be represented by a qualified non-attorney representative, the arbitrator shall make diligent inquiry of the prospective representative during a non-adversarial proceeding, under oath, to assure that the prospective representative is qualified to appear in the

arbitration proceedings and is capable of representing the rights and interests of the person. In lieu of the above, the arbitrator may consider the prospective representative's sworn affidavit setting forth the representative's qualifications.

(3) If the arbitrator is satisfied that the prospective non-attorney representative has the necessary qualifications to render competent and responsible representation of the unit owner's interest in a manner that will not impair the fairness of the proceedings or the correctness of the action to be taken, the arbitrator shall authorize the prospective non-attorney representative to appear in the pending arbitration.

(4) The arbitrator shall make a determination of the qualifications of the prospective non-attorney representative in light of the nature, scope and extent of the proceedings, the proposed representation, the applicable federal and state laws, rules and regulations, and the factual and legal issues to be presented during the arbitration proceeding. (The prospective non-attorney representative shall not, however, be required to disclose facts and legal theories to the prejudice of his client.) In determining the qualifications of a prospective non-attorney representative, the arbitrator shall consider the following criteria to the extent they are relevant, material, and applicable to the proceeding:

(a) The prospective representative's knowledge of jurisdiction and supportive legal authority to file the initial petition;

(b) The knowledge or experience of the prospective representative regarding Chapter 61B-50, Florida Administrative Code, The Rules of Procedure Governing Recall Arbitration, Section 718.112(2)(k) or 719.106(1)(f), Florida Statutes, and the scope and remedies of the arbitration process;

(c) The knowledge or experience of the prospective representative regarding the application and interpretation of the Florida Rules of Civil Procedure as they relate to discovery in an arbitration proceeding;

(d) The knowledge or experience of the prospective representative regarding the rules of evidence, including the concept of hearsay and its use in an arbitration proceeding;

(e) The knowledge or experience of the prospective representative regarding the statutes of rules which may be at issue;

(f) The educational background, training or work experience of the prospective representative relevant to the subject matter involved in the proceeding;

(g) The relationship of the prospective representative to the person, and the need of the person to have a representative speak on the person's behalf; and

(h) Any other matters which are deemed relevant and material by the arbitrator.

(5) A representative named in the initial petition or who has filed a notice of appearance shall remain the representative of record and shall receive pleadings and continue in a representative capacity until the representative's withdrawal has been approved in writing by the arbitrator.

(6) Any successor or associated attorney or other non-attorney representative shall file a notice of appearance prior to, or at the time of, the filing of any pleading with, or appearance before, the arbitrator.

(7) Members of the Florida Bar and certified law students are bound by the Rules of Professional Conduct of the Rules Regulating the Florida Bar. For other qualified representatives, the following standards have been written. These standards of conduct are adopted as a mandatory guide for all representatives, including unit owner representatives chosen pursuant to subparagraph 61B-23.0027(3)(b)2. or paragraph 61B-23.0028(1)(f), Florida Administrative Code, appearing in any arbitration proceeding, except counsel subject to disciplinary procedures of the Florida Bar.

(8) Standards of Conduct.

(a) A representative shall exercise due diligence in the filing and argument of any motion or

pleading. All motions or pleadings shall be filed and argued in good faith.

(b) The signature of a representative upon any motion or pleading shall constitute a certificate that the representative has read the motion or pleading, that to the best of the representative's knowledge it is supported by good faith grounds and that it has not been presented solely for the purpose of delay.

(c) A representative shall advise the client to observe and to obey the law.

(d) A representative shall not:

1. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of the arbitration process;

2. File a pleading, assert a position, conduct a defense, delay an arbitration proceeding or take other action on behalf of the client when such action would serve merely to harass or maliciously injure another;

3. Handle a legal or factual matter which the representative knows or should know that the representative is not competent to handle without associating an attorney or another qualified representative; or handle a legal or factual matter without adequate preparation;

4. State or imply that he or she is able to improperly influence the arbitrator or any agency or public official;

5. Communicate or cause another to communicate with an adverse party regarding matters at issue in the arbitration proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative;

6. Disregard or advise the client to disregard a rule or statute of an agency or a ruling of an arbitrator made in the course of an arbitration proceeding;

7. Conceal or knowingly fail to disclose that which one is bound to reveal by law;

8. Knowingly use perjured testimony or false evidence, or withhold any evidence that the representative or the client should produce;

9. Knowingly make a false statement of law or fact;

10. Advise or cause a person to secret himself or leave the jurisdiction of any agency for the purpose of making the person unavailable as a witness therein; pay, offer to pay or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case; counsel or advise a witness to provide other than honest testimony.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.04, Amended 7-27-88, Formerly 7D-50.004, Amended 1-17-93, Formerly 7D-50.108, Amended 2-13-97, 6-24-04.*

#### **61B-50.110 Communication with an Arbitrator.**

(1) While a case is pending, no party or other person directly or indirectly interested in an arbitration proceeding nor anyone authorized to act on behalf of a party or other interested person shall communicate verbally or in writing in the absence of all parties with an arbitrator or with the Department of Business and Professional Regulation concerning the merits of the arbitration proceeding, threaten an arbitrator, or offer an arbitrator any reward with respect to the conduct or outcome of a proceeding.

(2) An arbitrator who has received a communication prohibited by this rule, or who has received a threat or offer of reward by any person with respect to the conduct or outcome of a proceeding, shall place upon the record all written communications received, all written responses to such communications and a memorandum stating the substance of all oral communications received and all oral responses made, simultaneously serving all parties.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 1-17-93, Formerly 7D-50.110, Amended 1-19-97, 6-24-04.*

**61B-50.112 Withdrawal of Petition.**

(1) A petition for arbitration of a recall may be withdrawn at any time prior to the commencement of the scheduled final hearing. Such withdrawal shall be in writing and directed to the arbitrator. Withdrawal may be made by telephone, but must be subsequently confirmed in writing, or by an order certifying the recall entered by the arbitrator if the petitioner fails to file written notice.

(2) Withdrawal of a petition for arbitration of a recall shall be with prejudice. If the board withdraws the petition, the recall shall be deemed certified and the board members recalled. The board member or members recalled shall turn over all association records in his or their possession within five full business days after the withdrawal is filed (i.e., received by the division).

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 718.1255, 719.1255 FS. History– New 1-17-93, Formerly 7D-50.112, Amended 11-15-95, 6-24-04.*

**61B-50.115 Filing; Service of Papers; Signing.**

(1) Filing. Unless specifically ordered, every pleading or other paper filed in the proceedings, including the initial petition, shall also be served on each party. A pleading or other paper is considered “filed” when it is received by the division.

(2) Method and Proof of Service.

(a) When service is to be made upon a party represented by an attorney or by a qualified representative, service shall be made upon the attorney or representative unless service upon the party is ordered by the arbitrator. Service shall be made by delivering or mailing, by United States mail postage prepaid, a copy of the document to the attorney, representative, or party at that person's last known address.

(b) When the unit owners have not designated a unit owner representative to represent their interest in a recall proceeding or when the unit owner representative cannot be ascertained, the arbitrator shall require that the association post a copy of the petition for recall arbitration and the order allowing answer on the condominium property in a conspicuous location as a means of notifying the unit owners of the recall arbitration.

(c) Certificate of Service. When any attorney, representative, or unrepresented party signs a certificate of service such as the following, the certificate of service shall be taken as evidence of service in compliance with these rules:

“I certify that a copy hereof has been furnished  
to (here insert name or names and address or addresses) by U.S. mail this \_\_\_ day of \_\_\_ ,  
20\_\_ .

\_\_\_\_\_  
Signature”

(3) Number of Copies. Only the original of all pleadings shall be filed with the arbitrator; no copies shall be filed. However, the initial petition for recall arbitration shall be accompanied by one (1) copy for the respondents.

(4) “Filing” shall mean receipt by the Division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or other correspondence has actually been filed with the arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the Division received the document. Except for the initial petition for recall arbitration, a facsimile copy is filed within the meaning of

this rule when the facsimile copy of the document is received by the Division. No pleadings shall be faxed that exceed 30 pages in length including attachments. When a party files a facsimile document with the arbitrator, the party shall also provide a facsimile copy to the other party if the fax number is available. If a party desires to receive orders via e-mail, the party must provide its e-mail address to the arbitrator assigned to the case.

(5) Any pleading or other document received after 5:00 p.m. shall be deemed to be filed as of 8:00 a.m. on the next regular business day.

(6) All pleadings and motions filed shall contain the following:

(a) The style of the proceeding involved;

(b) The case number, if any;

(c) The name of the party on whose behalf the pleading or motion is filed;

(d) The name, address, and telephone number of the person filing the pleading or motion;

(e) The signature of the person filing the pleading or motion; and

(f) A certificate of service attesting that copies have been furnished to other parties as required by subsection (2) of this rule.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.09, 7D-50.009, Amended 1-17-93, Formerly 7D-50.115, Amended 1-19-97, 6-24-04.*

#### **61B-50.117 Motions.**

An application to the arbitrator for an order shall be made by written motion, unless made during a hearing. The motion shall state in detail the grounds for the relief requested and shall set forth the relief or order sought. The arbitrator shall conduct such proceedings and render such orders as are deemed necessary to dispose of issues raised by motion. Other parties may, within 7 business days of service of a written motion, file a written response in opposition to the motion.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History—New 7-1-82, Formerly 7D-50.12, 7D-50.012, Amended 1-17-93, Formerly 7D-50.117, Amended 1-19-97, 6-24-04.*

#### **61B-50.119 Summary Disposition; Simplified Arbitration Procedure; No Disputed Issues of Material Fact.**

(1) Any dispute which does not involve a disputed issue of material fact shall be arbitrated as hereinafter provided.

(2) At any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order denying relief and certifying the recall if the arbitrator finds that no preliminary basis for relief has been demonstrated in the petition.

(3) At any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief and failing to certify the recall if the arbitrator finds that no meritorious defense exists or if substantial compliance with the requirements of the rules and statutes relating to recall has not been demonstrated, and the petition is otherwise appropriate for relief.

(4) No formal evidentiary hearing as described by Rule 61B-50.131, Florida Administrative Code, shall be conducted for arbitrations determined pursuant to this rule. The arbitrator shall decide the dispute based solely upon the pleadings and evidence filed by the parties.

(5) Any party may move for summary final order whenever there are no disputed issues of material fact. The motion shall be accompanied by supporting affidavits if necessary. All other parties may, within 7 days of service of the motion, file a response in opposition, with or without supporting affidavits.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255,*

719.106, 719.1255 FS. History–New 1-17-93, Formerly 7D-50.119, Amended 2-13-97, 6-24-04.

**61B-50.124 Discovery.**

(1) The discovery process shall be used sparingly and only for the discovery of those things that are necessary for the proper disposition of the petition. Parties may obtain discovery only upon the prior approval of the arbitrator. A motion to conduct discovery shall describe with specificity the subject matter of the discovery and the method(s) by which discovery will be sought. The arbitrator may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

(2) Except as otherwise specified herein, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure. However, a unit owner desiring to obtain copies of official association records for use in the proceeding shall utilize the owner’s right of access to the official records as provided by Sections 718.111(12) and 719.104(2), Florida Statutes, in lieu of formal discovery.

(3) A party may seek enforcement of an order directing discovery by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the order resides.

(4) At any time after the filing of the petition for arbitration, the arbitrator may enter an order requiring the parties to submit supplemental information, evidence or affidavits in support of or refuting the reason(s) listed in the petition as grounds for failing to certify the recall.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History–New 7-1-82, Formerly 7D-50.15, 7D-50.015, Amended 1-17-93, Formerly 7D-50.124, Amended 1-19-97, 6-24-04.*

**61B-50.126 Conduct of Proceeding by Arbitrator.**

(1) The failure or refusal of a respondent to comply with a provision of these rules or any lawful order of the arbitrator shall result in the striking of the answer including any defenses or pending claims where such failure is deemed willful, intentional, or a result of neglect.

(2) The failure or refusal of an association to comply with any lawful order of the arbitrator or with a provision of these rules shall result in a dismissal of the petition where such failure is deemed willful, intentional, or a result of neglect.

(3) In order to expedite the case, the arbitrator may, without the agreement of the parties, conduct any proceeding permitted under these rules, including a motion hearing or final hearing, by telephone or video conference.

(4) At any time after a petition has been filed with the division for arbitration, the arbitrator may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibility of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a prehearing stipulation.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(k), (l), 718.1255, 719.106(1)(f) FS. History–New 1-17-93, Formerly 7D-50.126, Amended 1-19-97.*

**61B-50.127 Subpoenas and Witnesses; Fees.**

(1) A subpoena requiring the attendance of witnesses or the production of documents, whether for purposes of discovery or for purposes of a final hearing, may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age, as provided in Rule 1.410, Florida Rules of Civil Procedure, or as that rule may subsequently be renumbered. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(2) All witnesses, other than public employees subpoenaed to appear in their official capacity, appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as set forth in Section 92.142, Florida Statutes, or as that statute may subsequently be renumbered. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement; and, in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(3) Any party or any person upon whom a subpoena is served or to whom a subpoena is directed may file a motion to quash or for protective order.

(4) Subpoenas shall be issued from the arbitrator in blank except for the case style, the case number, the name, address and telephone number of the attorney or party requesting issuance of the subpoena and the signature of the arbitrator assigned. Subpoenas shall be completed and served by the party requesting issuance of the subpoenas.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.19, 7D-50.019, Amended 1-17-93, Formerly 7D-50.127, Amended 1-19-97, 6-24-04.*

**61B-50.130 Stenographic Record and Transcript.**

(1) Any party wishing to obtain a stenographic record shall make such arrangements directly with the court reporter for such services and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall bear all the costs of obtaining such a record.

(2) Any party may have a stenographic record and transcript made of the final hearing at the party's own expense. The record transcript may be used in subsequent legal proceedings subject to the applicable rules of evidence.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History—New 1-17-93, Formerly 7D-50.130, Amended 1-19-97, 6-24-04.*

**61B-50.131 Conduct of Formal Hearing; Evidence.**

(1) Hearings shall be open to the public. However, the arbitrator shall exclude any observer, witness or party who is disruptive to the conduct of the hearing.

(2) Each party shall have the right to present evidence, cross examine the other party's witnesses, enter objections, and to rebut the evidence presented against the party.

(3) The arbitrator is authorized to administer oaths. Oral testimony shall be taken only upon oath or affirmation.

(4) Unless otherwise ordered by the arbitrator, the petitioner shall present its evidence and witnesses. Thereafter, the respondent may present its evidence and witnesses.

(5) Evidence.

(a) An arbitration proceeding is less formal than a court proceeding. The arbitrator shall admit any relevant evidence if it is the kind of evidence on which reasonable, prudent persons rely in the conduct of their affairs. Reliable, relevant evidence may be presented by the parties. Facts are to be proven through the testimony of witnesses under oath at the final hearing and through documents admitted into evidence at the request of a party. Hearsay evidence (i.e., statements not

made at the final hearing under oath, used to establish the truth of the matter asserted) may be used to supplement or explain other evidence, but is not sufficient to support a finding, unless the hearsay evidence would be admissible in a court of law. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. Irrelevant and unduly repetitious evidence shall not be admitted into evidence.

(b) All exhibits shall be identified as petitioner's exhibits, respondent's exhibits, or as joint exhibits. The exhibits shall be marked in the order that they are received and made a part of the record.

(c) Documentary evidence may be received in the form of a photocopy.

(6) The arbitrator shall afford the parties an opportunity to submit proposed findings of fact, conclusions of law, and proposed orders, or legal briefs or memoranda on the issues, within a time designated by the arbitrator after the final hearing.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.22, 7D-50.022, Amended 1-17-93, Formerly 7D-50.131, Amended 1-19-97, 6-24-04.*

#### **61B-50.136 Notice of Final Hearing; Scheduling; Venue; Continuances.**

(1) The arbitrator shall set the time and place for all final hearings. The arbitrator shall serve written notice of the final hearing by regular mail on all parties of record.

(2) All hearings shall be held in the state of Florida. Whenever possible, hearings shall be held in the area of residence of the parties and witnesses or at the place most convenient to all parties as determined by the arbitrator.

(3) In the arbitrator's discretion, a continuance of a hearing shall be granted for good cause shown. Requests for continuance shall be made in writing. Except in cases of emergency, requests for continuance must be made at least 10 days prior to the date noticed for the final hearing.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.24, 7D-50.024, Amended 1-17-93, Formerly 7D-50.136, Amended 1-19-97, 6-24-04.*

#### **61B-50.139 Final Orders.**

(1) Unless waived, a final order shall be entered within 30 days after any final hearing, receipt by the arbitrator of the hearing transcript if one is timely filed, or receipt of any post-hearing memoranda, whichever is applicable. The final order shall be in writing and shall include a statement of whether or not the recall was certified. Failure to render a decision within such time period shall not invalidate the decision.

(2) The final order shall be mailed to the parties, if unrepresented, or to their counsel or other qualified representative of record by regular U.S. mail. The final order shall include a certificate of service which shall show the date of mailing of the final order to the parties.

(3) In reaching a decision, the arbitrator may take official notice of and find as true without proof, any fact which may be judicially noticed by the courts of this state, including any arbitration final order or any final order of the division involving a similar or related issue.

(4) A final order certifying the recall of one or more board members takes effect upon the mailing of the final order. As of the moment of mailing, those board members found to be recalled cease to be authorized board members and shall not exercise the authority of the association.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106(1)(f), 719.1255 FS. History—New 7-1-82, Formerly 7D-50.25, 7D-50.025, Amended 1-17-93, Formerly 7D-50.139, Amended 1-19-97, 6-24-04.*

**61B-50.140 Technical Corrections; Rehearing.**

(1) Any party may file a motion to correct any clerical mistake or error arising from oversight or omission in any final order entered by an arbitrator within 10 days of the date on which the order was entered. "Clerical corrections" shall be generally defined as computational corrections, correction of clerical mistake or typographical error or other minor corrections of error arising from oversight or omission; or an evident miscalculation of figures or an evident mistake in the description of any thing, person, or property referred to in the order; or an award by the arbitrator upon a matter not submitted. The order may be corrected without affecting the merits of the decision upon the issues submitted. Such correction shall be achieved by the entry of a corrected order. The substance of the order itself may not be modified.

(2) The arbitrator may on his or her own motion initiate entry of a corrected order as described by subsection (1) above within 60 days of the entry of the final order.

(3) No motion for rehearing of a final order certifying the recall shall be filed.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History—New 1-17-93, Formerly 7D-50.140, Amended 1-19-97, 6-24-04.*

**61B-50.1405 Motions for Attorney's Fees and Costs.**

No party shall be entitled to recover its costs and attorney's fees in a recall proceeding initiated pursuant to Section 718.112(2)(j) or 719.106(1)(f), Florida Statutes.

*Specific Authority 718.501(1)(f), 719.501(1)(f) FS. Law Implemented 718.112(2)(j), 718.1255, 719.106, 719.1255 FS. History—New 6-24-04.*