

FINAL REPORT



**ADVISORY COUNCIL ON CONDOMINIUMS
JANUARY - DECEMBER 2007**

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INTRODUCTION

Created by the Florida Legislature in 2004, the Condominium Advisory Council consists of seven members. The implementing legislation, Chapter 2004-345, Laws of Florida, provides that two members shall be appointed by the President of the Senate, two members by the Speaker of the House of Representatives, and three members by the Governor. At least one member appointed by the Governor is to represent timeshare condominiums. The members are appointed for two year terms, except that one of the members initially appointed by the Governor, the President of the Senate and the Speaker of the House of Representatives shall each serve one year terms. The Director of the Division of Florida Land Sales, Condominiums, and Mobile Homes serves as an ex officio nonvoting member. The Council is located within the Division for administrative purposes.

A majority of the Council constitutes a quorum and action may be taken by a vote of a majority of the voting members who are present at a meeting where there is a quorum.

The functions of the Advisory Council are to:

- Receive, from the public, input regarding issues of concern with respect to condominiums and recommendations for changes in condominium law. The issues that the Council may consider include, but are not limited to, the rights and responsibilities of the unit owners in relation to the rights and responsibilities of the association.
- Review, evaluate, and advise the division concerning revisions and adoption of rules affecting condominiums.
- Recommend improvements, if needed, in the education programs offered by the division.

CONDOMINIUM ADVISORY COUNCIL MEMBERS

JOSEPH ADAMS, Attorney – Appointed by the Speaker of the House

MICHAEL ANDREW, Vice President and Assistant General Counsel, Marriott International, Inc. – Appointed by the Governor

MICHAEL COCHRAN, Director, Division of Florida Land Sales, Condominiums, and Mobile Homes (ex officio)

PETER DUNBAR, Attorney – Appointed by the Senate President

MELISSA VAN DINE – Appointed by the Speaker of the House

GEORGE GEISLER, Consumer Advocate – Appointed by the Governor

KAREN GOTTLIEB, Consumer Advocate – Appointed by the Governor

PAUL WEAN, Attorney – Appointed by the Senate President

Mr. Andrew served as Chair during 2007 and will continue to serve as Chair during 2008. Mr. Dunbar served as Vice Chair during 2007 and will continue to serve as Vice Chair during 2008.

Two new members are welcomed to the Council and will serve during 2008.

GERALD KOENIG, Koenig Sports Consulting – Appointed by the Speaker of the House to replace outgoing member Joseph Adams.

JANE CORNETT, Attorney – Appointed by the Senate President to replace outgoing member Paul Wean.

Chairman's Note: On behalf of the members of the Council, I would like to take this opportunity to thank and recognize three individuals who have been involved in the Council's work.

First Joseph Adams, Esq., was originally appointed to the Council in November 2004, and served for three years, including being the first Chair of this council. During his time on the Council, Joe brought a dedicated and passionate approach to serving the Council. His experience in Florida condominium law in general and particular insights dealing with hurricane recovery impacts to Florida condominium associations, honed following the 2004 storm season, were an invaluable addition to the Council's efforts over the past three years.

Another experienced condominium practitioner who served ably is Orlando lawyer Paul Wean. Paul's term also expired during the 2007 calendar year. With more than twenty years experience in Florida condominium and homeowners association law, Paul brought his keen focus and unique perspectives to the Council, all of which enhanced the effectiveness of the Council in 2007.

Finally, Carol Windham, who was the primary staff support for the Council for its first three years, left the Division of Florida Land Sales in 2007 to take a job with the Florida Department of Agriculture. Carol was dedicated and consistently represented and supported the Council with aplomb and a sense of humor. Carol's smile and professionalism will be missed.

To Joe, Paul and Carol, thank you for support and efforts on behalf of the Council

EXECUTIVE SUMMARY

Consistent with its charge to gather public input, the Council conducted nine public meetings in Aventura, Clearwater, Destin, Orlando, Sarasota and Tallahassee between January 26, 2007, and December 28, 2007.

The most significant achievement of the Council this year was the enactment into law of the Council's 2006 recommendation to strengthen and clarify the laws regarding condominium conversions. This was done, with the sponsorship of SB 396, by Senator Margolis, which became Chapter 2007-80, Laws of Florida, effective May 24, 2007.

As reported in the Council's 2005 and 2006 reports, the majority of the public input continues to be consistent as to the types of issues involved with everyday condominium living. Those who voiced complaints generally had issues with the way their elections were conducted, access to records, problems working with their management or developer. However, these issues viewed in their totality support our previous findings that, as a general matter, there do not appear to be widespread problems with respect to the quality of condominium living in Florida.

In the context of the Council's receipt of public testimony and subsequent discussions, the Council has several legislative recommendations. The most important of these concern insurance, emergency powers of the board, expanding the condominium education opportunities, and post turnover regulatory jurisdiction of condominium associations. The portions of the law regarding insurance should be clarified to address repair after casualties and allocation of repair costs when the insurance proceeds are not sufficient to pay for the repairs. The division should expand the opportunities for unit owner and board member education. The Council recommends consideration of the attached draft legislation addressing the authority of associations in post-catastrophic situations. The Council also finds that existing resources within the division could be better utilized by providing unit owner controlled associations with education and alternative dispute resolution instead of investigating complaints. Having both parties present in a proceeding under the supervision of a mediator or arbitrator to argue the merits of their claims offers a much better opportunity for customer satisfaction than the more coercive investigative approach which places the division in the position of policeman, judge, and jury.

Current drafts of legislation being recommended by the Council are found in the Appendix.

RECOMMENDED LEGISLATIVE CHANGES

The Council has taken a position on the following provisions of the laws governing condominiums. Additionally the Council determined that it should comment on current legislative proposals that did not originate in the Council.

- 1) The Council recommends that the division's regulatory jurisdiction regarding post-turnover associations be limited.
- 2) The Council recommends adoption of the draft legislation regarding insurance and post casualty reconstruction.
- 3) The Council approves the emergency powers legislation from last year.
- 4) The Council recommends adoption of the draft legislation expanding the educational opportunities for unit owners and board members.

PUBLIC COMMENTS

Public comments were received at the meetings. These comments have been topically organized and presented along with an indication as to the speaker's background.

Assessments / Foreclosure

Barbara Winn; condominium unit owner and board president, Waverly at Los Olas Condominiums. Stated that she had a few issues to share with Council; felt that in light of current economy and the increasing amount of foreclosures, associations are losing money. Since becoming president, she has stepped up referrals for foreclosure to limit the association's exposure; asks if council might consider revising statute. Currently asking owners to pay for delinquent owners and cover the costs. A community ombudsman could have grievance process to limit people's use of facilities as punishment.

Board of Administration / Management

Lisa MacGill; shareholder with Becker & Poliakoff; represents condominium and homeowners' associations in Dade, Broward and Palm Beach County. Also serves as President of South Florida Community Associations Institute (CAI). One of her concerns, not on behalf of CAI or Community Associations Leadership Lobby (CALL), related to the administrative costs incurred in complying with records inspection requests. None of her associations will argue that unit owners have rights to inspect records but thinks mandating a response within 5 days can be burdensome. Many boards don't have offices and the records are in various locations; if the request is voluminous, it is problematic for boards to comply within time restraints. It's also a cost issue – with associations that have hired managers, the CAMs have become more inclined to

charge the association a fee for tending to records inspection requests and they can be substantial. Not advocating limiting the right of owners to inspect, view or obtain copies of records. But compliance with the time restraints in the statute is burdensome and maybe alternatives should be proposed to assist associations, especially small ones, or find a way to pass the costs along to the person making the request. Member Tysenn asked if records could be placed online for easy access. Ms. MacGill stated that even if they were online, she doesn't think that would comply with statute. She appreciates the suggestion, but some owners do not have the capabilities to do this in an electronic format. Member Wean expressed concern about proposal of putting some records on online; even if password protected, could potentially allow many others to view records that are not intended for public view.

Frank Zenie; board member and unit owner at Tidy Island Condominiums in Bradenton. Stated that his condominium association is struggling with certain aspects of hurricane shutters; many people don't like them and their approach is to put narrow time frames for installation (24 hours before storm) and/or 5 days after. His units are multi-storied and thinks this is an obstacle to complying with the law. Can't find any guidance on this topic. Member Adams stated that he sees this issue in his legal practice all the time. Many year round residents don't like hurricane shutters being down because they feel it looks abandoned. Many owners use them for privacy or sun control as well. Also, stated he thinks law should encourage hurricane protection, but in reality in coastal areas there is a high percentage of snowbirds. If big hurricane is coming in 72 hours; board can't find someone to install shutters. Stated that past arbitration allowed board to adopt reasonable rules for shutter specifications. Felt that if rule is passed for time frame restrictions before storm, then association takes the liability for installing shutters in emergency situation.

Developers

Julie Rawson; 54 units; Destin, still under developer control. Unit owners have just been notified that they are going to have turnover. Stated that she has many questions regarding financial responsibilities during developer and turnover periods. Shared her questions and concerns regarding the developer guarantee period. Insurance has gone through the roof; she discussed the "115% increase" rule for assessments; it's her understanding that the 15% is the developer's responsibility. Member Adams clarifies the 15% issue and who approves; Vice-Chair Dunbar stated that developer is going to face a business decision as to whether he pays entire amount, or turns over and pays his share based on the units that he still owns. Jon Peet described guarantee period; developer is not required to fund deficit unless there is a guarantee. Board's responsibility is to pay bills and find mechanism to fund bills; if budget is not sufficient, borrow from bank, developer loan funds, etc., in order to adopt budget while developer is in control, and expenses exceed 15%, there will need to be a meeting to vote on budget. Member Wean felt that this issue has caught attention of Florida Bar; felt that there are concerns because of insurance rates going up, it would be a material change of documents to reflect increase in insurance on budget. Thinks developers will want to exclude insurance increases from this cap. Ms. Rawson brought up second issue, regarding material changes; discussed statutory requirements of developer filing amendments if material changes are made. Her condominium documents specified there would be a lobby but it turned out there was none. Developer's lawyer threatened to keep entire deposit if she didn't close.

Division

Charlotte Greenberg; President of Broward Coalition, representing 200 HOAs and condominium associations. She believes in the balanced consideration of unit owners and board members, keeping in mind that associations are comprised of strangers who are volunteering to run a quasi government. Many are unfamiliar with process of running associations. Her group is affiliated with the Space Coast Condominium Association. Stated her support for keeping separate condominium and HOA statutes. Also felt there should be term limits for board seats on a rotating basis, but understands problems of small associations getting members to serve on board. Stated that she understands why the Ombudsman position was created but sees problems. Has seen improvement with the new Ombudsman – now it's more neutral and balanced. Thinks everyone needs to look at the Ombudsman's Office as relating to DBPR; problems with DBPR's authority and with the Ombudsman's authority – who does what? She thinks department is overwhelmed. Vice-Chair Dunbar stated that he appreciated her suggestions and felt that DBPR has fallen into a situation where it is difficult for them to respond; ten years ago there were 100 more employees. Cost cutting efforts have reduced their ability to educate and enforce. Member Wean asked her about revisions to the statute regarding insurance. Ms. Greenberg stated that unit owners carry insurance for what happens inside their condominiums, so it would be logical that the common elements outside be covered by association. Let the two insurance companies fight it out if there is a large casualty. Stated that mandatory insurance coverage for unit owners would be a good idea.

Craig Hannon; unit owner in Ft. Lauderdale, 552 units in his condominium association. Stated that he attended a town hall meeting sponsored by Representative Robaina in North Miami, and he wishes the Advisory Council had been there to hear horror stories that were discussed at that meeting. He has filed complaints and has gotten satisfaction with DBPR in getting board to fix the roof; stated that DBPR has helped him greatly. Stated that the problem is not with DBPR but with Chapter 718; felt that there are a lot of loopholes and it protects associations, not unit owners. Stated that associations have lawyers and big law firms; where does the unit owner go for help? Most average owners can barely afford maintenance fees, so they can't afford to pay for a lawyer. Also, described fraud arrests made in Hallandale, in the condominium embezzlement case. Thinks this could be going on all over South Florida. Asked Council to speak to legislature and help unit owners being abused with no term limits. Felt that term limits should be added to the law – 2 year terms. Also asked that DBPR go in and audit all the associations to show where money is going and make sure money is being spent appropriately.

Karen Gercak; unit owner in Ft. Walton Beach; Pirates Bay, 120 units (more rental units than residential). Wanted to speak regarding the state's response to owner complaints. Stated that she has had several opportunities to work with the analysts at the department and while she understands that investigators have many complaints, she has had problems with investigators getting back with her. Also, if there is a violation of condominium documents the only recourse is arbitration or lawsuit, which puts financial burden on owner and association. Would like to see DBPR investigating and enforcing condominium governing documents.

Education

Harry Charles; President, Space Coast Community Association: Stated that CAI courses are good courses. However, he felt that the same people attend classes; they don't reach new faces and large percentage of directors in Florida. Has been proponent for many years of the division's educational CDs.

Elections / Voting

Beverly Kennedy; unit owner, Waverly at Los Olas, 395 unit condominium. Stated that unit owners come from around the world and some don't speak English. Felt education is lacking for boards. Her condominium was a conversion; she was a renter and bought a unit. Developer put into bylaws that each commercial unit has 16 votes; therefore the developer can pick board. Owners should only have one vote per unit regardless of residential or commercial. Developer has Becker and Poliakoff as their attorneys. Stated that the Ombudsman is nice but she has not lived in condominium. Thinks they need a local ombudsman in South Florida to help solve problems on ongoing basis.

Norman Caplan; unit owner in Sunrise. Felt that meeting notice was buried in newspaper. He lives in a senior community. Stated that term limits won't work in his community because nobody wants to serve on the board. Term limits would work if people would show up, but he can't get enough people to run for a real choice in the election, so the same people serve. Thinks majority of board members are honest and hard working volunteers. Problem is that new unit owners need to be educated (not just board members) because, for example, they don't know they need insurance or that loss assessment coverage is available. Recommends that unit owner insurance be mandatory. He also stated that meetings are poorly attended.

General Comments

Representative Ambler spoke to the Advisory Council, describing his background as an attorney, a parcel owner and a certified mediator. Explained the thinking behind the development of the Home Court Advantage Program as a hybrid of small claims court and arbitration process. Felt that boards have had problems enforcing rules without lien authority; the program provided a way for boards to enforce rules and issue fines. His idea was to fashion an alternative dispute resolution mechanism that had the "blessing" of the court process, so people felt it was more official and felt compelled to participate. Boards or parcel owners could come to the program and have a resolution within 60 days. Hold hearings in courtrooms after hours, using court infrastructure already in place. Create set of standardized forms and checklists to level the playing field. If program rolled out successfully in these two counties (Hillsborough and Pinellas) then examine data to see if program should be expanded statewide.

Roland Guidry; real estate broker and former president of local board of realtors. Part of a committee of realtors interested in amending real estate contracts that relate to sale/purchase of condominiums. Distributed handouts covering his issues: (1) CCCL (coastal construction control line); Florida law requires disclosure of CCCL from seller; newer condominium documents contain survey but older ones do not. Felt this is burdensome for sellers to hire

surveyor to produce this report; suggests that Chapter 718 be amended to require association to complete this survey and recorded with court along with condo docs. Considers very important issue, association should bear the cost of survey as common expense. (2) Discussed Chapter 718, listing documents to be provided to buyer; specifically, deleting the “if requested in writing” portion, since he thinks the intent is for the document provision to be mandatory. (3) Special assessment payment liability. When a buyer and seller agree on price to buy condominium but haven’t closed yet; during pending period between contract and closing, storm hits. There is a special assessment imposed due to storm damages, does buyer or seller pay? Only reference he can find in Chapter 718 is “owner on due date”. Thinks it’s a confusing issue. Would like Chapter 718 to be amended; insert ‘regular’ assessments and then add language to deal with special assessment responsibility for payment, such as “approval” or “levy” dates. (4) Prospectus versus recording documents. Developer gives prospectus version to first buyers in preconstruction sale. After the developer finishes and creates condominium, he removes all of the preconstruction documents and records; in a resale, that is what buyers should get. Has seen many instances of buyers get old “prospectus” versions because that’s all the unit owner has. Would like to see Chapter 718 amended to require a developer to give set to each first buyer after recording documents. Has personally seen CAMs give buyers prospectus documents that are 25 yrs old. (5) Assignees of preconstruction contracts; felt that Chapter 718 is silent as to the assignees rights. Would like Chapter 718 to address these rights and provide right of rescission. Also discussed flood insurance; stated that the most you can get from national program is \$250,000 per unit. Their last insurance appraisal was \$30 million. \$17 million is most they can get from national program and they couldn’t get additional coverage for any price. They have amended documents to state that with regards to flood insurance, following annual vote of directors/owners, the board can get only coverage available through national program (to eliminate liability of board).

Jallele; condominium unit owner in Coconut Grove; read a statement about the law firm of Becker & Poliakoff, stating that they represent boards only, not unit owners. Felt that the firm’s employees serving on the Advisory Council are not participating to help unit owners, but only to report to other lawyers, then hurt the unit owners. Asked that member Joseph Adams remove himself from the Advisory Council. She also asked that Governor Crist and the House of Representatives close DBPR’s “CAM division” because even if a CAM is licensed or unlicensed, or steals their money, the CAM division does not enforce the statute by issuing fines or revoking licenses and allows CAMs to continue stealing their money. She also stated that in her condominium association the same board has been in place for 30 years, and no other unit owners will raise any concerns or run for the board. She filed a complaint against the board with the division; resulting in violation letters and fines, but unit owners ultimately have to pay for these fines. She also stated that she has been harassed and sued for filing a complaint with the Division.

Insurance

Lou Biron; insurance professional, Orlando. Discussed general insurance crisis in Florida and pointed out issues in Section 718.111 that need attention. Felt that it’s a question of getting Section 718.111(11) to the point where it is clear and positive to the consumer and the seller. The previous attempt to do this, and simplify, made it worse and less clear. Unit owners are dealing

with a complex legal document, regulated by a complex statute. The more the Council and Legislature can do to make it clear, the better. Section 718.111(11) needs to specify who buys what insurance and how it is adjusted when an event happens. Simplest way of getting back to it goes to bare wall approach. On inside of wall, unit owner takes care of it. Clear but not necessarily the best approach – raises the cost for consumer. How insurance would flow – what would fall to unit owner to maintain, should be insured by unit owner. Thinks this idea has merit but creates additional complexity to insurance company. Agent & adjuster will then have to be in business of reviewing documents when issuing policies or handling claims. Could create more confusion than simplicity we are searching for. Insurance professionals are not schooled in this area and will cause more inconsistencies. Letting it fall back to documents still needs something clearly defined in statute. Bare walls is pretty simple but has drawbacks. Not so sure that definitions included in statute now couldn't be spruced up and made more clear. Second major issue – deductibles. Major issues in state; when you're talking about 5% wind deductible per building – some insurance companies want that applied to each wind incident, not just named hurricanes. Creation of proper management of deductible within scope of statute is very important. Good ideas in Council's draft; the question of apportioning and management of deductible is very important. Asks that council strongly consider clarifying this in statute and make it easier for people to understand rules and responsibilities. Also discussed mandatory appraisals; if statute requires that association must maintain an appraisal every 1.5 years, 3 or 5 years, then we can establish by a professional for a minimum requirement of what a building should have. Should be basis of coverage in policy.

Lisa MacGill; Stated that her primary concern, and the concern of CAI and CALL, is the reconstruction and repair of casualty damage. Section 718.111(11), as of January 1, 2005, requires the association to insure all original construction of condominium building. The association's deductible for losses, especially wind losses, is a very large number - sometimes over a million dollar deductible. The mandate by the division (the Plaza East Declaratory Statement) has created a myriad of problems. Felt that when someone is purchasing a condominium, the buyers should be entitled to rely on the declaration to determine their exposure in terms of repair and maintenance (same for the association). Felt that this punishes unit owners who have been proactive in maintaining and improving their properties – installing code compliant shutters, maintaining shutters, impact windows, etc., to insure and protect their unit against losses in a storm. If those owners are responsible for prorated costs of repairing units belonging to owners who have not taken these steps to protect their properties, it serves as discouragement to engaging in future maintenance and protection. What is their incentive in engaging in proactive maintenance programs? Stated that some associations may want the ability to allocate expenses against owners, and this should be an option open to associations through amending their condominium documents. Stated that this issue needs to be addressed legislatively, giving unit owners and associations the ability to choose and expect what their responsibilities will be after a casualty. Member Wean asked for her suggestions to revise section 718.11(11); she stated that the association should be responsible for insuring common elements and those parts of the property that the association is responsible for maintaining, as specified in declaration.

Debbie Fowner; manager of several associations. Expressed frustration regarding recent attempts to get reimbursement (mitigation) from Citizens Insurance Company; the manager must

complete additional forms, which includes an engineer's certification as to the structural make up of the condominium structures. Frustration because this information has already been submitted to get the insurance policy in the first place.

David Sherry: Surf dweller Condominium in Ft. Walton Beach; 83 units. Asked if ground floor units are not able to purchase flood insurance, or if they lose current insurance, would all 83 owners be assessed to rebuild? Or would only the ground floor units be assessed to rebuild? Member Adams stated that typically the condominium documents will address the repair after casualty; if it's a common element, association must pay and share cost with everyone. If it is the interior of unit – owner's insurance.

Homeowners' Associations

Tamaira Perez, parcel owner in Miramar Gardens, 530 units, homeowners' association. Stated that her major problem is the management company; she has reported the manager and his wife (a CAM complaint) to DBPR in 2004 and she is still waiting for action. The wife was acting without a license and DBPR ended up issuing her a CAM license. Asked how long does it take for this CAM to be disciplined. Vice-Chair Dunbar reminds Ms. Perez that the Advisory Council does not address HOAs or CAMs, but that division staff present will research her complaints as a courtesy. Member Wean asked if the CAM is using attorneys in these foreclosures; Ms. Perez stated yes, and Member Wean asked if she's filed complaints with Florida Bar. Ms. Perez stated yes, twice, but after receiving a complaint number she never heard from them again. She stated that someone should regulate HOAs; she felt that there is no regulation, so the criminals seek out the HOAs. She felt that when filing the CAM complaint, she had to do all the investigative work and then hand it over to DBPR. Asked to see a change in the attorneys who represent boards; instead of representing the board, they should represent the association members. Felt that association members never find out what goes on between board and attorneys. Asked for a law requiring attorney to represent the association members, because board in her community works for the management company. Stated that timely records access worries her because she's had bad experience accessing records. Felt that her association dragged out process so that they can falsify documents and provide false records to different parties – one for judge, one for DBPR, etc.

APPENDIX

Draft Legislation

Subsection (11) of 718.111, is substantially reworded to read:

(11) INSURANCE.--In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection shall be deemed to apply to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(a) Adequate hazard insurance, regardless of any requirement in the declaration of condominium for coverage by the association for "full insurable value," "replacement cost," or the like, shall be based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The full insurable value shall be determined not less frequently than every 36 months.

1. An association or group of associations may provide adequate hazard insurance through a self insurance fund that complies with the requirements of ss. 624.460-624.488.

2. The association may also provide adequate hazard insurance coverage, individually, or for a group of no fewer than three communities created and operating under this chapter, chapter 719, chapter 720, or chapter 721, by obtaining and maintaining for the communities insurance coverage sufficient to cover an amount equal to the probable maximum loss for the communities for a 250-year windstorm event provided that such probable maximum loss must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology.

3. In determining the adequate hazard insurance coverage, the association may consider deductibles as determined by this subsection.

(b) If the association is developer controlled, the association shall exercise best efforts to obtain and maintain such insurance. Failure to obtain and maintain adequate hazard insurance during any period of developer control shall constitute a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless said members can show that despite such failure, they have made their best efforts.

(c) Policies may include deductibles as determined by the board.

1. The deductibles shall be consistent with industry standards and prevailing practice for communities of like size and age, and having similar construction and facilities in the locale where the condominium property is situated.

2. The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time that the insurance is obtained.

3. The board shall establish the level of deductibles based upon the level of available funds and pre-determined assessment authority at a meeting of the board which shall be open to all unit owners in the manner set forth in subsection 718.112(2)(e). The notice of such meeting shall state the proposed deductible and the available funds and the assessment authority relied upon by the board and shall estimate any potential assessment amount against each unit, if any. The meeting described in this paragraph may be held in conjunction with a meeting to consider the proposed budget or an amendment thereto.

(d) A unit-owner controlled association operating a residential condominium shall use its best efforts to obtain and maintain adequate insurance to protect the association, the association property, the common elements, and the condominium property required to be insured by the association pursuant to this subsection.

(e) The declaration of condominium as originally recorded, or amended pursuant to procedures provided therein, may require that condominium property consisting of freestanding buildings where there is no more than one building in or on such unit need not be insured by the association if the declaration requires the unit owner to obtain adequate insurance for the condominium property. An association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for common elements, association property, and units.

(f) Every hazard insurance policy issued or renewed on or after January 1, 2009, to protect the condominium shall provide primary coverage for:

1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.

2. All alterations or additions made to the condominium property or association property pursuant to section 718.113(2).

3. The coverage shall exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing.

The foregoing is intended to establish the property or casualty insuring responsibilities of the association and those of the individual unit owner and do not serve to broaden or extend the perils of coverage afforded by any insurance contract provided to the individual unit owner.

(g) Every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual unit owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property and shall include special assessment coverage of not less than \$2,000.00 per occurrence. Each insurance policy issued to an individual unit owner providing such coverage shall be without rights of subrogation against the condominium association that operates the condominium in which such unit owner's unit is located.

1. All improvements or additions to the condominium property that benefit less than all unit owners shall be insured by the unit owner or owners having the use thereof, or may be insured by the association at the cost and expense of the unit owners having the use thereof.

2. The association shall require each owner to provide evidence of a currently effective policy of hazard and liability insurance upon request, but not more frequently than annually. Upon the failure of an owner to provide a certificate of insurance issued by an insurer approved to write such insurance in the state of Florida within thirty days of a written request, the association shall be entitled but shall not be obligated to purchase a policy of insurance on behalf of an owner, and the cost thereof, together with reconstruction costs undertaken by the association but which are the responsibility of the unit owner may be collected in the manner provided for collection of assessments in section 718.116.

3. All reconstruction work after a casualty loss shall be undertaken by the association except as otherwise permitted herein. A unit owner may undertake reconstruction work on portions of the unit with the prior written consent of the board of administration, which may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, and the contract that is used for that purpose. A unit owner shall obtain all required governmental permits and approvals prior to commencing reconstruction.

4. Unit owners shall be responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry casualty insurance and any such reconstruction work undertaken by the association shall be chargeable to the unit and enforceable as an assessment pursuant to section 718.116 hereof. The association is hereby designated as an additional named insured and loss payee on all casualty insurance policies issued to unit owners in the condominium operated by the association.

5. A multicondominium association may elect, by a majority vote of the collective members of the condominiums operated by the association, to operate such condominiums as a single condominium for purposes of insurance matters, including but not limited to the purchase of the hazard insurance required by this section, and the apportionment of deductibles and damages in excess of coverage. The election to aggregate the treatment of insurance premiums, deductibles and excess damages shall be treated as an amendment to the declaration of all condominiums operated by the association and the costs of insurance shall be stated in the association budget. The amendments shall be recorded as required by Section 718.110.

(h) The association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond

must cover the maximum funds that will be in the custody of the association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the association. The association shall bear the cost of bonding.

(i) The association has the authority to amend the declaration of condominium, without regard to any requirement for mortgagee approval of amendments affecting insurance requirements, to conform the declaration of condominium to the coverage requirements of this subsection.

(j) Any portion of the condominium property that the association is required to insure against casualty loss pursuant to paragraph (f) above that is damaged by casualty shall be reconstructed, repaired or replaced, as necessary, by the association as a common expense. All hazard insurance deductibles, uninsured losses and other damages in excess of hazard insurance coverage under the hazard insurance policies maintained by the association shall be a common expense of the condominium, provided however that:

1. A unit owner shall be responsible for the costs of repair or replacement of any portion of the condominium property not paid for by insurance proceeds, when such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests or invitees, and without compromise of the subrogation rights of any insurer as set forth in paragraph (g).

2. The provisions of subparagraph (j)1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also applies to the costs of repair or replacement of personal property of other unit owners or the association, as well as, other property, whether real or personal, that the unit owners are required to insure under paragraph (g).

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under paragraph (j) is reimbursed to the association by insurance proceeds, and, to the extent the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association shall not be obligated to pay for repair or reconstruction or repairs of casualty losses as a common expense where the casualty losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that casualty has been settled and resolved with finality or is considered untimely filed by the insurer and denied on that basis.

(k) An association may, upon the approval of a majority of the total voting interests in the association, opt out of the provisions in paragraph (j) for the allocation of repair or reconstruction expenses and allocate repair or reconstruction expenses in the manner provided in the declaration as originally recorded or as amended. Such vote may be approved by the voting interests of the association without regard to any mortgagee consent requirements.

(l) In a multicondominium association that has not consolidated its financial operations under Section 718.111(6), any condominium operated by the association may opt out of the provisions of paragraph (j) with the approval of a majority of the total voting interests in that condominium. Such vote may be approved by the voting interests without regard to any mortgagee consent requirements.

(m) Any association or condominium voting to opt out of the guidelines for repair or reconstruction expenses in paragraph (j) must record a notice setting forth the date of the opt out vote and the official records book and page at which the declaration is recorded. The opt out shall be effective upon the date of recording of the notice in the public records by the association. An association that has voted to opt out of paragraph (j) may reverse that decision by the same vote required under paragraph (k) and (l), and notice thereof shall be recorded in the official records.

(n) The association shall not be obligated to pay for any reconstruction or repair expenses due to casualty loss to any improvements installed by a current or former owner of the unit or by the developer where the improvement benefits only the unit for which it was installed and is not part of the standard improvements installed by the developer on all units as part of original construction, whether or not such improvement is located within the unit, except to the extent of any insurance recovery specifically for any such improvements.

718.1265 Association emergency powers.—

(1) To the extent allowed by law and unless specifically prohibited by the declaration, the articles, or the bylaws of an association, and consistent with the provisions of s. 617.0830, the board of administration, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located, may, but is not required to, exercise the following powers:

(a) Conduct board meetings and membership meetings with notice given as is practicable. Such notice may be given in any practicable manner, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on the condominium property or any other means the board deems reasonable under the circumstances. Notice of board decisions may be communicated as provided in this paragraph.

(b) Cancel and reschedule any association meeting.

(c) Name as assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the association.

(d) Relocate the association's principal office or designate alternative principal offices.

(e) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared that may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners.

(g) Declare any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons.

(h) Require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located. Should any unit owner or other occupant of a condominium fail or refuse to evacuate the condominium property where the board has required evacuation, the association shall be immune from liability for injury to persons or property arising from such failure or refusal.

(i) Determine whether the condominium property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(j) Mitigate further damage, including taking action to contract for the removal of debris; and prevent or mitigate the spread of fungus, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures, on or within the condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of any unit owner or owners, for items or services for which the owner or owners are otherwise individually responsible for, but which are necessary to prevent further damage to the condominium property. In such event, the unit owner or owners on whose behalf the board has contracted are responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 718.116, Florida Statutes, to enforce collection of the charges. Without limitation, such items or services may include the drying of units, the boarding of broken windows or doors, and the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property.

(l) Regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles or bylaws of the association, a board may levy special assessments without a vote of the owners.

(m) Without unit owner approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions as are contained in the declaration, articles, or bylaws.

(2) The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the association, the unit owners, their family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage and make emergency repairs.

Subsection (1) of s. 718.501, Florida Statutes, is amended to read:

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the “division” in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division ~~has the following powers and duties:~~ has complete jurisdiction to investigate complaints and enforce compliance with the provisions of this chapter with respect to associations that are still under developer control and complaints against developers involving improper turnover or failure to turnover, pursuant to s.718.301. However, after turnover has occurred, the division shall only have jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(a) The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms hereunder.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purposes of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any book, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule

promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer, association, developer-designated officer, or developer-designated member of the board of administration, or the developer-designated assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, association, or developer-designated officer, or developer-designated member of the board of administration, or developer-designated assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring the developer to pay moneys determined to be owed to the condominium association.

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or, pursuant to s. 718.1255, an association, or its assignee or agent, for any violation of this chapter or a rule promulgated pursuant hereto. The division may impose a civil penalty individually against any developer-designated officer or developer-designated board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant hereto, or a final order of the division. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability

of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order will not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(e) The division is authorized to prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer during the period where the developer controls the association when the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing in such condominium community.

(h) The division shall furnish each association which pays the fees required by paragraph (2)(a) a copy of this act, subsequent changes to this act on an annual basis, an amended version of this act as it becomes available from the Secretary of State's office on a biennial basis, and the rules promulgated pursuant thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the Division discretion, include web-based, electronic media and live training and seminars in various locations throughout the state. The Division shall also have the authority to review and approve training and educational programs offered by outside providers. The Division shall maintain a current list of approved programs and providers and shall make such list available in a reasonable and cost-effective manner. The division shall have the authority to review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and shall make such list available to board members and unit owners in a reasonable and cost-effective manner

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(1) The division shall develop a program to utilize both certified volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. Paid mediators must be certified by the Supreme Court to mediate court cases in either county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which factors must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements imposed by rules adopted by the division.

When a complaint is made, the division shall conduct its inquiry with due regard to complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.