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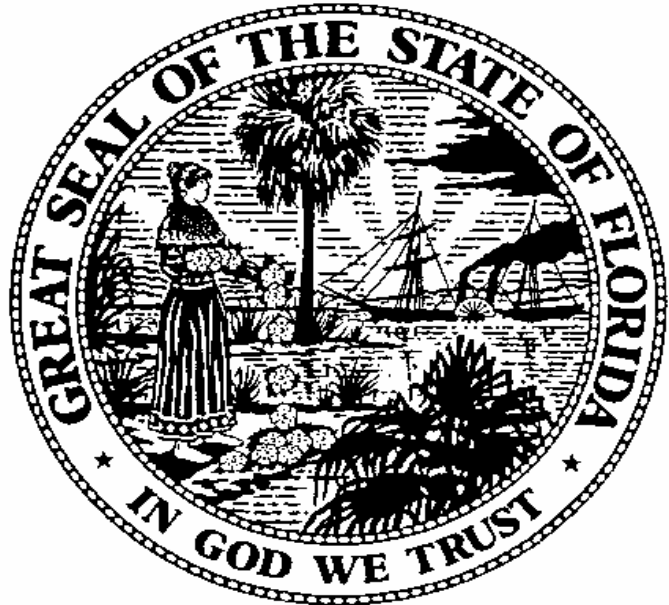
*Division of Florida  
Condominiums,  
Timeshares, and  
Mobile Homes*

*Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida  
32399-1030*

**CHAPTER 719  
FLORIDA STATUTES**

**THE COOPERATIVE ACT**

*And  
Chapters 61B-75 through 79,  
Florida Administrative Code*



Includes laws enacted through the 2013 Legislative Session

## **NOTICE TO RECIPIENT**

**Chapter 719 of the Florida Statutes, also known as the Cooperative Act, is a chapter of law that governs cooperatives in the State of Florida. The Cooperative Act should be read in conjunction with Chapters 61B-75 through 79, Florida Administrative Code. These administrative rules are promulgated by the Division of Florida Condominiums, Timeshares, and Mobile Homes to interpret, enforce, and implement Chapter 719, Florida Statutes. Due to the numerous changes to the administrative rules, readers should inquire periodically to ensure that they are referring to the most recently revised copy.**

**Division of Florida Condominiums, Timeshares, and Mobile Homes  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, FL 32399-1030  
(850) 488-1122  
(800) 226-9101**

**This publication was undertaken expressly for the convenience of those who frequently refer to the Florida Statutes and Florida Administrative Code, and is not in any way intended to be an official published version of the statute and code.**

## CHAPTER 719 COOPERATIVES

### PART I GENERAL PROVISIONS

**719.101 Short title.**—This chapter shall be known and may be cited as the “Cooperative Act.”

History.—s. 2, ch. 76-222.

**719.102 Purpose.**—The purpose of this chapter is to give statutory recognition to the cooperative form of ownership of real property. It shall not be construed as repealing or amending any law now in effect, except those in conflict herewith, and any such conflicting laws shall be affected only insofar as they apply to cooperatives.

History.—s. 2, ch. 76-222.

**719.103 Definitions.**—As used in this chapter:

- (1) “Assessment” means a share of the funds required for the payment of common expenses, which from time to time is assessed against the unit owner.
- (2) “Association” means the corporation for profit or not for profit that owns the record interest in the cooperative property or a leasehold of the property of a cooperative and that is responsible for the operation of the cooperative.
- (3) “Board of administration” means the board of directors or other representative body responsible for administration of the association.
- (4) “Buyer” means a person who purchases a cooperative. The term “purchaser” may be used interchangeably with the term “buyer.”
- (5) “Bylaws” means the bylaws of the association existing from time to time.
- (6) “Committee” means 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.
- (7) “Common areas” means the portions of the cooperative property not included in the units.
- (8) “Common areas” includes within its meaning the following:
  - (a) The cooperative property which is not included within the units.
  - (b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common areas.
  - (c) An easement of support in every portion of a unit which contributes to the support of a building.
  - (d) The property and installations required for the furnishing of utilities and other services to more than one unit or to the common areas.
  - (e) Any other part of the cooperative property designated in the cooperative documents as common areas.
- (9) “Common expenses” means all expenses and assessments properly incurred by the association for the cooperative.
- (10) “Common surplus” means the excess of all receipts of the association—including, but not limited to, assessments, rents, profits, and revenues on account of the common areas—over the amount of common expenses.

(11) “Conspicuous type” means type in capital letters no smaller than the largest type on the page on which it appears.

(12) “Cooperative” means that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

(13) “Cooperative documents” means:

(a) The documents that create a cooperative, including, but not limited to, articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any.

(b) The document evidencing a unit owner’s membership or share in the association.

(c) The document recognizing a unit owner’s title or right of possession to his or her unit.

(14) “Cooperative parcel” means the shares or other evidence of ownership in a cooperative representing an undivided share in the assets of the association, together with the lease or other muniment of title or possession.

(15) “Cooperative property” means the lands, leaseholds, and personal property owned by a cooperative association.

(16) “Developer” means a person who creates a cooperative or who offers cooperative parcels for sale or lease in the ordinary course of business, but does not include the owner or lessee of a unit who has acquired or leased the unit for his or her own occupancy, nor does it include a condominium association which creates a cooperative by conversion of an existing residential condominium after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons.

(17) “Division” means the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

(18) “Equity facilities club” means a club comprised of recreational facilities in which proprietary membership interests are sold to individuals, which membership interests entitle the individuals to use certain physical facilities owned by the equity club. Such physical facilities do not include a residential unit or accommodation. For purposes of this definition, the term “accommodation” shall include, but is not limited to, any apartment, residential cooperative unit, residential condominium unit, cabin, lodge, hotel or motel room, or other accommodation designed for overnight occupancy for one or more individuals.

(19) “Limited common areas” means those common areas which are reserved for the use of a certain cooperative unit or units to the exclusion of other units, as specified in the cooperative documents.

(20) “Operation” or “operation of the cooperative” includes the administration and management of the cooperative property.

(21) “Rental agreement” means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

(22) “Residential cooperative” means a cooperative consisting of cooperative units, any of which are intended for use as a private residence. A cooperative is not a residential cooperative if the use of the units is intended as primarily commercial or industrial and not more than three units are intended to be used for private residence, domicile, or homestead, or if the units are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the cooperative. If a cooperative is a residential cooperative under this definition, but has units intended to be commercial or industrial, then the cooperative is a residential cooperative with respect to those units intended for use as a private residence, domicile, or homestead, but not a residential cooperative with respect to those units intended

for use commercially or industrially. With respect to a timeshare cooperative, the timeshare instrument as defined in s. 721.05 shall govern the intended use of each unit in the cooperative.

(23) “Special assessment” means any assessment levied against unit owners other than the assessment required by a budget adopted annually.

(24) “Timeshare estate” means any interest in a unit under which the exclusive right of use, possession, or occupancy of the unit circulates among the various purchasers of a timeshare plan pursuant to chapter 721 on a recurring basis for a period of time.

(25) “Unit” means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents.

(26) “Unit owner” or “owner of a unit” means the person holding a share in the cooperative association and a lease or other muniment of title or possession of a unit that is granted by the association as the owner of the cooperative property.

(27) “Voting certificate” means a document which designates one of the record title owners, or the corporate, partnership, or entity representative who is authorized to vote on behalf of a cooperative unit that is owned by more than one owner or by any entity.

(28) “Voting interests” means the voting rights distributed to the association members as provided for in the articles of incorporation.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 80-3; s. 10, ch. 86-175; s. 17, ch. 92-49; s. 874, ch. 97-102; s. 8, ch. 98-322; s. 5, ch. 99-382; s. 1, ch. 2000-302; s. 6, ch. 2007-173; s. 55, ch. 2008-240.

#### **719.1035 Creation of cooperatives.—**

(1) The date when cooperative existence shall commence is upon commencement of corporate existence of the cooperative association as provided in s. 607.0203. The cooperative documents must be recorded in the county in which the cooperative is located before property may be conveyed or transferred to the cooperative. All persons who have any record interest in any mortgage encumbering the interest in the land being submitted to cooperative ownership must either join in the execution of the cooperative documents or execute, with the requirements for deed, and record, a consent to the cooperative documents or an agreement subordinating their mortgage interest to the cooperative documents. Upon creation of a cooperative, the developer or association shall file the recording information with the division within 30 working days on a form prescribed by the division.

(2) All provisions of the cooperative documents are enforceable equitable servitudes, run with the land, and are effective until the cooperative is terminated.

History.—s. 11, ch. 86-175; s. 188, ch. 90-179; s. 41, ch. 95-274; s. 9, ch. 98-322; s. 6, ch. 99-382.

#### **719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—**

(1) RIGHT OF ACCESS TO UNITS.—The association has the irrevocable right of access to each unit from time to time during reasonable hours when necessary for the maintenance, repair, or replacement of any structural components of the building or of any mechanical, electrical, or plumbing elements necessary to prevent damage to the building or to another unit.

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners, which minutes shall be retained for a period of not less than 7 years.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All other records of the association not specifically included in the foregoing which are related to the operation of the association.

(b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the cooperative property or within the county in which the cooperative property is located within 5 working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the cooperative property or the association may offer the option of making the records available to a unit owner electronically via the Internet or by

allowing the records to be viewed in an electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are \$50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements

with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements.

Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and telephone number of each parcel owner. However, an owner may exclude his or her telephone number from the directory by so requesting in writing to the association. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(d) The association or its authorized agent shall not be required to provide a prospective purchaser or lienholder with information about the cooperative or association other than the information or documents required by this chapter to be made available or disclosed. The association or its authorized agent shall be entitled to charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, provided that such fee shall not exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the association's response.

(3) **INSURANCE.**—The association shall use its best efforts to obtain and maintain adequate insurance to protect the association property. The association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance. A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times.

(a) Windstorm insurance coverage for a group of no fewer than three communities created and operating under chapter 718, this chapter, chapter 720, or chapter 721 may be obtained and maintained for the communities if the insurance coverage is sufficient to cover an amount equal to the probable maximum loss for the communities for a 250-year windstorm event. 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. Such insurance coverage is deemed adequate windstorm insurance for the purposes of this section.

(b) An association or group of associations may self-insure against claims against the association, the association property, and the cooperative property required to be insured by an association, upon compliance with the applicable provisions of ss. 624.460-624.488, which shall be considered adequate insurance for purposes of this section.

(4) **FINANCIAL REPORT.**—



(a) Within 60 days following the end of the fiscal or calendar year or annually on such date as is otherwise provided in the bylaws of the association, the board of administration of the association shall mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures for the previous 12 months, or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting procedures. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to, the following:

1. Costs for security;
2. Professional and management fees and expenses;
3. Taxes;
4. Costs for recreation facilities;
5. Expenses for refuse collection and utility services;
6. Expenses for lawn care;
7. Costs for building maintenance and repair;
8. Insurance costs;
9. Administrative and salary expenses; and
10. Reserves for capital expenditures, deferred maintenance, and any other category for which the association maintains a reserve account or accounts.

(b) The division shall adopt rules that may require that the association deliver to the unit owners, in lieu of the financial report required by this section, a complete set of financial statements for the preceding fiscal year. The financial statements shall be delivered within 90 days following the end of the previous fiscal year or annually on such other date as provided in the bylaws. The rules of the division may require that the financial statements be compiled, reviewed, or audited, and the rules shall take into consideration the criteria set forth in s. 719.501(1)(j). The requirement to have the financial statements compiled, reviewed, or audited does not apply to associations if a majority of the voting interests of the association present at a duly called meeting of the association have determined for a fiscal year to waive this requirement. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of the operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. This subsection does not apply to a cooperative that consists of 50 or fewer units.

(5) ASSESSMENTS.—The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common areas. However, the association may not charge a use fee against the unit owner for the use of common areas unless otherwise provided for in the cooperative documents or by a majority vote of the association or unless the charges relate to expenses incurred by an owner having exclusive use of common areas.

(6) PURCHASE OF LEASES.—The association has the power to purchase any land or recreation lease upon the approval of such voting interest as is required by the cooperative documents. If the cooperative documents make no provision for acquisition of the land or recreational lease, the vote required is that required to amend the cooperative documents to permit the acquisition.

(7) COMMINGLING.—All funds shall be maintained separately in the association's name. Reserve and operating funds of the association shall not be commingled unless combined for investment purposes. This subsection is not meant to prohibit prudent investment of association funds even if combined with operating or other reserve funds of the same

association, but such funds must be accounted for separately, and the combined account balance may not, at any time, be less than the amount identified as reserve funds in the combined account. No manager or business entity required to be licensed or registered under s. 468.432, or an agent, employee, officer, or director of a cooperative association may commingle any association funds with his or her own funds or with the funds of any other cooperative association or community association as defined in s. 468.431.

(8) CORPORATE ENTITY.—

(a) The officers and directors of the association have a fiduciary relationship to the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly solicits, offers to accept, or accepts any thing or service of value is subject to a civil penalty pursuant to s. 719.501(1)(d). However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs.

(b) A director of the association who is present at a meeting of its board at which action on any corporate matter is taken is presumed to have assented to the action taken unless the director votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest. Directors may not vote by proxy or by secret ballot at board meetings, except that officers may be elected by secret ballot. A vote or abstention for each member present shall be recorded in the minutes.

(c) A unit owner does not have any authority to act for the association by reason of being a unit owner.

(9) EASEMENTS.—Unless prohibited by the cooperative documents, the board of administration has the authority, without the joinder of any unit owner, to grant, modify, or move any easement, if the easement constitutes part of or crosses the common areas or association property. This subsection does not authorize the board of administration to modify, move, or vacate any easement created in whole or in part for the use or benefit of anyone other than the unit owners, or crossing the property of anyone other than the unit owners, without the consent or approval of those other persons having the use or benefit of the easement, as required by law or by the instrument creating the easement.

(10) POWERS AND DUTIES.—The powers and duties of the association include those set forth in this section and, except as expressly limited or restricted in this chapter, those set forth in the articles of incorporation and bylaws and chapters 607 and 617, as applicable.

(11) NOTIFICATION OF DIVISION.—When the board of directors intends to dissolve or merge the cooperative association, the board shall so notify the division before taking any action to dissolve or merge the cooperative association.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 1, ch. 79-284; s. 12, ch. 86-175; s. 18, ch. 92-49; s. 2, ch. 94-77; s. 236, ch. 94-218; s. 42, ch. 95-274; s. 875, ch. 97-102; s. 10, ch. 98-322; s. 7, ch. 99-382; s. 8, ch. 2003-14; s. 11, ch. 2007-80; s. 10, ch. 2013-188.

**719.105 Cooperative parcels; appurtenances; possession and enjoyment.—**

(1) Each cooperative parcel has, as appurtenances thereto:

(a) Evidence of membership, ownership of shares, or other interest in the association with the full voting rights appertaining thereto. Such evidence must include a legal description of each dwelling unit and must be recorded in the office of the clerk of the circuit court as required by s. 201.02(3).

- (b) An undivided share in the assets of the association.
  - (c) The exclusive right to use that portion of the common areas as may be provided by the cooperative documents.
  - (d) An undivided share in the common surplus attributable to the unit.
  - (e) Any other appurtenances provided for in the cooperative documents.
  - (2) Each unit owner is entitled to the exclusive possession of his or her unit. The unit owner is entitled to use the common areas in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the rights of other unit owners.
  - (3) When a unit is leased, the tenant has all use rights in the association property available for use generally by the unit owner and the unit owner does not have such rights except as a guest. This subsection does not interfere with the access rights of the unit owner as a landlord pursuant to chapter 83. The association may adopt rules to prohibit dual usage by a unit owner and a tenant of cooperative property.
- History.—s. 2, ch. 76-222; s. 13, ch. 86-175; s. 11, ch. 92-32; s. 19, ch. 92-49; s. 876, ch. 97-102.

**719.1055 Amendment of cooperative documents; alteration and acquisition of property.—**

(1) Unless otherwise provided in the original cooperative documents, no amendment thereto may change the configuration or size of any cooperative unit in any material fashion, materially alter or modify the appurtenances of the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless the record owners of all other units approve the amendment. Cooperative documents in cooperatives created after July 1, 1994, may not require less than a majority of total voting interests for amendments under this section, unless required by any governmental entity.

(2) Unless a lower number is provided in the cooperative documents or unless such action is expressly prohibited by the articles of incorporation or bylaws of the cooperative, the acquisition of real property by the association, and material alterations or substantial additions to such property by the association shall not be deemed to constitute a material alteration or modification of the appurtenances to the unit if such action is approved by two-thirds of the total voting interests of the cooperative.

(3)(a) Unless other procedures are provided in the cooperative documents or such action is expressly prohibited by the articles of incorporation or bylaws of the cooperative, the association may materially alter, convert, lease, or modify the common areas of the mobile home cooperative if the action is approved by two-thirds of the total voting interests of the cooperative.

(b) The association may change the configuration or size of a unit only if the action is approved by the affected unit owners and by two-thirds of the total voting interests of the cooperative.

(4)(a) If the cooperative documents fail to provide a method of amendment, the documents may be amended as to all matters except those described in subsection (1) if the amendment is approved by the owners of not less than two-thirds of the units.

(b) No provision of the cooperative documents shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the cooperative documents shall contain the full text of the provision to be amended, new words shall be inserted in the text and underlined, and words to be deleted shall be lined through with hyphens. However, if

the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: “Substantial rewording of document. See provision for present text.”

(c) Nonmaterial errors or omissions in the amendment process will not invalidate an otherwise properly promulgated amendment.

(5) The bylaws must include a provision whereby a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association’s board as evidence of compliance of the cooperative units with the applicable fire and life safety code.

(a)1. Notwithstanding chapter 633 or any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, a cooperative or unit owner is not obligated to retrofit the common elements or units of a residential cooperative with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected cooperative. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system before the end of 2019. By December 31, 2016, a cooperative that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the cooperative will become compliant by December 31, 2019.

2. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and is effective upon recording a certificate attesting to such vote in the public records of the county where the cooperative is located. The cooperative shall mail or hand deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the cooperative’s opt-out vote, notice of the results of the opt-out vote must be mailed or hand delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the cooperative. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.

(b) If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests. Such vote may only be called once every 3 years. Notice must be provided as required for any regularly called meeting of the unit owners, and the notice must state the purpose of the meeting. Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.

(c) As part of the information collected annually from cooperatives, the division shall require associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of cooperatives that have elected to forego retrofitting.

(6) Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation thereof, a cooperative or unit owner is not obligated to retrofit the common elements or units of a residential cooperative that meets

the definition of “housing for older persons” in s. 760.29(4)(b)3. to comply with requirements relating to handrails and guardrails in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting by the affirmative vote of two-thirds of all voting interests in the affected cooperative. However, a cooperative may not forego the retrofitting in common areas in a high-rise building. For purposes of this subsection, the term “high-rise building” means a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story. For purposes of this subsection, the term “common areas” means stairwells and exposed, outdoor walkways and corridors. In no event shall the local authority having jurisdiction require completion of retrofitting of common areas with handrails and guardrails before the end of 2014.

(a) A vote to forego retrofitting may not be obtained by general proxy or limited proxy, but shall be obtained by a vote personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the cooperative is located. The association shall provide each unit owner written notice of the vote to forego retrofitting of the required handrails or guardrails, or both, in at least 16-point bold type, by certified mail, within 20 days after the association’s vote. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

(b) As part of the information collected annually from cooperatives, the division shall require associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of cooperatives that have elected to forego retrofitting.

(7) The Legislature finds that the procurement of mortgagee consent to amendments that do not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the unit owners and that there is a compelling state interest in enabling the members of an association to approve amendments to the association’s cooperative documents through legal means. Accordingly, and notwithstanding any provision of this subsection to the contrary:

(a) As to any mortgage recorded on or after July 1, 2013, any provision in the association’s cooperative documents that requires the consent or joinder of some or all mortgagees of units or any other portion of the association’s common areas to amend the association’s cooperative documents or for any other matter is enforceable only as to amendments to the association’s cooperative documents that adversely affect the priority of the mortgagee’s lien or the mortgagee’s rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

(b) As to mortgages recorded before July 1, 2013, any existing provisions in the association’s cooperative documents requiring mortgagee consent are enforceable.

(c) In securing consent or joinder, the association is entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book and page on which the original mortgage was recorded. Once the association has identified the recorded mortgages of record, the association shall, in writing, request of each unit owner whose unit is encumbered by a mortgage of record any information that the owner has in his or her

possession regarding the name and address of the person to whom mortgage payments are currently being made. Notice shall be sent to such person if the address provided in the original recorded mortgage document is different from the name and address of the mortgagee or assignee of the mortgage as shown by the public record. The association is deemed to have complied with this requirement by making the written request of the unit owners required under this paragraph. Any notices required to be sent to the mortgagees under this paragraph shall be sent to all available addresses provided to the association.

(d) Any notice to the mortgagees required under paragraph (c) may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the date of mailing is deemed to have consented to the amendment.

(e) For those amendments requiring mortgagee consent on or after July 1, 2013, in the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association recorded in the public records of the county in which the declaration is recorded.

(f) Any amendment adopted without the required consent of a mortgagee is voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to the statute of limitations beginning 5 years after the date of discovery as to the amendments described in paragraph (a) and 5 years after the date of recordation of the certificate of amendment for all other amendments. This paragraph applies to all mortgages, regardless of the date of recordation of the mortgage.

History.—s. 5, ch. 88-148; s. 16, ch. 94-350; s. 6, ch. 96-396; s. 8, ch. 99-382; s. 6, ch. 2003-14; s. 2, ch. 2004-80; s. 9, ch. 2004-345; s. 5, ch. 2004-353; s. 20, ch. 2010-174; s. 11, ch. 2013-188.

#### **719.106 Bylaws; cooperative ownership.—**

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(a) Administration.—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of cooperatives having five or fewer units, in which case in not-for-profit corporations, the board shall consist of not fewer than three members. In the absence of provisions to the contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of

the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may, through its board of administration, adopt reasonable rules and regulations regarding the frequency and manner of responding to the unit owners' inquiries, one of which may be that the association is obligated to respond to only one written inquiry per unit in any given 30-day period. In such case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

(b) Quorum; voting requirements; proxies.—

1. Unless otherwise provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of voting interests, and decisions shall be made by owners of a majority of the voting interests. Unless otherwise provided in this chapter, or in the articles of incorporation, bylaws, or other cooperative documents, and except as provided in subparagraph (d)1., decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, after January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (j)2., for votes taken to waive the financial reporting requirements of s. 719.104(4)(b), for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this section, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare cooperative.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

5. When some or all of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker shall be utilized so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by unit owners present at a meeting.

(c) Board of administration meetings.—Meetings of the board of administration at which a quorum of the members is present shall be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration. The right to attend such

meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt reasonable written rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings shall be posted in a conspicuous place upon the cooperative property at least 48 continuous hours preceding the meeting, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. However, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the cooperative property not less than 14 days before the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the cooperative property upon which all notices of board meetings shall be posted. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the cooperative property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the cooperative association. However, if broadcast notice is used in lieu of a notice posted physically on the cooperative property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. Meetings of a committee to take final action on behalf of the board or to make recommendations to the board regarding the association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association. Notwithstanding any other law to the contrary, the requirement that board meetings and committee meetings be open to the unit owners does not apply to board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice.

(d) Shareholder meetings.—There shall be an annual meeting of the shareholders. All members of the board of administration shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. Any unit owner desiring to be a candidate for board membership must comply with subparagraph 1. The bylaws must provide the method for calling meetings, including annual meetings. Written notice, which must incorporate an identification of agenda items, shall be given to each unit owner at least 14 days before the annual meeting and posted in a conspicuous place on the cooperative property at least 14 continuous days preceding the annual meeting. Upon notice to the unit owners, the board must by duly adopted rule designate a specific location on the cooperative property upon which all notice of unit owner meetings are posted. In lieu of



or in addition to the physical posting of the meeting notice, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the cooperative association. However, if broadcast notice is used in lieu of a posted notice, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual meeting, the notice of the annual meeting must be sent by mail, hand delivered, or electronically transmitted to each unit owner. An officer of the association must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association, affirming that notices of the association meeting were mailed, hand delivered, or electronically transmitted, in accordance with this provision, to each unit owner at the address last furnished to the association.

1. The board of administration shall be elected by written ballot or voting machine. A proxy may not be used in electing the board of administration in general elections or elections to fill vacancies caused by recall, resignation, or otherwise unless otherwise provided in this chapter.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or transmit, whether by separate association mailing, delivery, or electronic transmission or included in another association mailing, delivery, or electronic transmission, including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the board of administration must give written notice to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in this section, the association shall mail, deliver, or electronically transmit a second notice of election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, the association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, to be included with the mailing, delivery, or electronic transmission of the ballot, with the costs of mailing, delivery, or transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets provided by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There is no quorum requirement. However, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any such ballots improperly cast are invalid. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. Any unit owner violating this provision may be fined by the association in accordance with s. 719.303. The regular election must occur on the date of the annual meeting. This subparagraph does not apply to timeshare cooperatives. Notwithstanding this subparagraph, an election and balloting are not required unless more candidates file a notice of intent to run or are nominated than vacancies exist on the board. Any challenge to the election process must be commenced within 60 days after the election results are announced.

b. Within 90 days after being elected or appointed to the board, each new director shall certify in writing to the secretary of the association that he or she has read the association's bylaws, articles of incorporation, proprietary lease, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Within 90 days after being elected or appointed to the board, in lieu of this written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by an education provider as approved by the division pursuant to the requirements established in chapter 718 within 1 year before or 90 days after the date of election or appointment. The educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary of the association shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

2. Any approval by unit owners called for by this chapter, or the applicable cooperative documents, must be made at a duly noticed meeting of unit owners and is subject to this chapter or the applicable cooperative documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable cooperative documents or law which provides for the unit owner action.

3. Unit owners may waive notice of specific meetings if allowed by the applicable cooperative documents or law. If authorized by the bylaws, notice of meetings of the board of administration, shareholder meetings, except shareholder meetings called to recall board members under paragraph (f), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission.

4. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

5. Any unit owner may tape record or videotape meetings of the unit owners subject to reasonable rules adopted by the division.

6. Unless otherwise provided in the bylaws, a vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of subparagraph 1. unless the association has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this subparagraph shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (f) and rules adopted by the division.

Notwithstanding subparagraphs (b)2. and (d)1., an association may, by the affirmative vote of a majority of the total voting interests, provide for a different voting and election procedure in

its bylaws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(e) Budget procedures.—

1. The board of administration shall mail, hand deliver, or electronically transmit to each unit owner at the address last furnished to the association, a meeting notice and copies of the proposed annual budget of common expenses to the unit owners not less than 14 days prior to the meeting at which the budget will be considered. Evidence of compliance with this 14-day notice must be made by an affidavit executed by an officer of the association or the manager or other person providing notice of the meeting and filed among the official records of the association. The meeting must be open to the unit owners.

2. If an adopted budget requires assessment against the unit owners in any fiscal or calendar year which exceeds 115 percent of the assessments for the preceding year, the board upon written application of 10 percent of the voting interests to the board, shall call a special meeting of the unit owners within 30 days, upon not less than 10 days' written notice to each unit owner. At the special meeting, unit owners shall consider and enact a budget. Unless the bylaws require a larger vote, the adoption of the budget requires a vote of not less than a majority of all the voting interests.

3. The board of administration may, in any event, propose a budget to the unit owners at a meeting of members or by writing, and if the budget or proposed budget is approved by the unit owners at the meeting or by a majority of all voting interests in writing, the budget is adopted. If a meeting of the unit owners has been called and a quorum is not attained or a substitute budget is not adopted by the unit owners, the budget adopted by the board of directors goes into effect as scheduled.

4. In determining whether assessments exceed 115 percent of similar assessments for prior years, any authorized provisions for reasonable reserves for repair or replacement of cooperative property, anticipated expenses by the association which are not anticipated to be incurred on a regular or annual basis, or assessments for betterments to the cooperative property must be excluded from computation. However, as long as the developer is in control of the board of administration, the board may not impose an assessment for any year greater than 115 percent of the prior fiscal or calendar year's assessment without approval of a majority of all voting interests.

(f) Recall of board members.—Subject to s. 719.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the voting interests to recall any member of the board of administration may be called by 10 percent of the unit owners giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall shall be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed as set forth in subparagraph 3.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail

or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration pursuant to the procedures of s. 719.1255. For purposes of this paragraph, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member of the board, the recall shall be effective upon mailing of the final order of arbitration to the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 719.501. Any member so recalled shall deliver to the board any and all records and property of the association in the member's possession within 5 full business days after the effective date of the recall.

4. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board any and all records and property of the association.

5. If the board fails to duly notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition pursuant to s. 719.1255 challenging the board's failure to act. The petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

6. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this chapter. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

7. A board member who has been recalled may file a petition pursuant to s. 719.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified. The association and the unit owner representative shall be named as the respondents.

8. The division may not accept for filing a recall petition, whether filed pursuant to subparagraph 1., subparagraph 2., subparagraph 5., or subparagraph 7. and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

(g) Common expenses.—The manner of collecting from the unit owners their shares of the common expenses shall be stated. Assessments shall be made against unit owners not less

frequently than quarterly, in an amount no less than is required to provide funds in advance for payment of all of the anticipated current operating expense and for all of the unpaid operating expense previously incurred. Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses in actions taken pursuant to s. 719.104(4).

(h) Amendment of bylaws.—The method by which the bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by owners of not less than two-thirds of the voting interests. No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: “Substantial rewording of bylaw. See bylaw for present text.” Nonmaterial errors or omissions in the bylaw process shall not invalidate an otherwise properly promulgated amendment.

(i) Transfer fees.—No charge may be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the cooperative documents. Any such fee may be preset, but in no event shall it exceed \$100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. Nothing in this paragraph shall be construed to prohibit an association from requiring as a condition to permitting the letting or renting of a unit, when the association has such authority in the documents, the depositing into an escrow account maintained by the association a security deposit in an amount not to exceed the equivalent of 1 month’s rent. The security deposit shall protect against damages to the common areas or cooperative property. Within 15 days after a tenant vacates the premises, the association shall refund the full security deposit or give written notice to the tenant of any claim made against the security. Disputes under this paragraph shall be handled in the same fashion as disputes concerning security deposits under s. 83.49.

(j) Annual budget.—

1. The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20).

2. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other items for which the deferred maintenance expense or replacement cost exceeds \$10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This paragraph shall not apply to any budget in which the members of an association have, at a duly called meeting of the association, determined for a

fiscal year to provide no reserves or reserves less adequate than required by this subsection. However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 719.301, the developer may vote to waive the reserves or reduce the funding of reserves for the first 2 years of the operation of the association after which time reserves may only be waived or reduced upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests, voting in person or by limited proxy at a duly called meeting of the association. Prior to turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

(k) Insurance or fidelity bonds.—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 and insurance.

(l) Arbitration.—There shall be a provision for mandatory nonbinding arbitration of internal disputes arising from the operation of the cooperative in accordance with s. 719.1255.

(2) OPTIONAL PROVISIONS.—The bylaws may provide for the following:

(a) Administrative rules.—A method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas.

(b) Use and maintenance restrictions.—Restrictions on, and requirements for, the use, maintenance, and appearance of the units and the use of the common areas, not inconsistent with the cooperative documents, designed to prevent unreasonable interference with the use of the units and common areas.

(c) Notice of meetings.—Provisions for giving notice by electronic transmissions in a manner authorized by law of meetings of the board of directors and committees and of annual and special meetings of the members.

(d) Other matters.—Other provisions not inconsistent with this chapter or with the cooperative documents as may be desired.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 2, ch. 79-284; s. 9, ch. 81-185; s. 14, ch. 86-175; s. 23, ch. 91-103; s. 25, ch. 91-110; ss. 5, 6, ch. 91-426; s. 20, ch. 92-49; s. 17, ch. 94-350; s. 45, ch. 95-274; s. 7, ch. 96-396; s. 1775, ch. 97-102; s. 4, ch. 97-301; s. 11, ch. 98-322; s. 75, ch. 99-3; s. 9, ch. 99-382; s. 9, ch. 2003-14; s. 19, ch. 2010-174; s. 12, ch. 2013-188.

**719.1064 Failure to fill vacancies on board of administration; appointment of receiver upon petition of unit owner.**—If an association fails to fill vacancies on the board of administration sufficient to constitute a quorum in accordance with the bylaws, any unit owner may apply to the circuit court within whose jurisdiction the cooperative lies for the

appointment of a receiver to manage the affairs of the association. At least 30 days prior to applying to the circuit court, the unit owner shall mail to the association and post in a conspicuous place on the cooperative property a notice describing the intended action, giving the association the opportunity to fill the vacancies. If during such time the association fails to fill the vacancies, the unit owner may proceed with the petition. If a receiver is appointed, the association shall be responsible for the salary of the receiver, court costs, and attorney's fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until the association fills vacancies on the board sufficient to constitute a quorum.

History.—s. 8, ch. 81-185.

**719.1065 Power of attorney; compliance with chapter.**—The use of a power of attorney that affects any aspect of the operation of a cooperative shall be subject to and in compliance with the provisions of this chapter and all cooperative documents, association rules and other rules adopted pursuant to this chapter and all other covenants, conditions, and restrictions in force at the time of the execution of the power of attorney.

History.—s. 15, ch. 86-175.

**719.107 Common expenses; assessment.**—

(1)(a) Common expenses include the expenses of the operation, maintenance, repair, or replacement of the cooperative property; costs of carrying out the powers and duties of the association; and any other expense, whether or not included in this paragraph, designated as common expense by this chapter or the cooperative documents.

(b) If so provided in the bylaws, the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract shall be deemed a common expense, and if not obtained pursuant to a bulk contract, such cost shall be considered common expense if it is designated as such in a written contract between the board of administration and the company providing the master television antenna system or the cable television service. The contract shall be for a term of not less than 2 years.

1. Any contract made by the board after April 2, 1992, for a community antenna system or duly franchised cable television service may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever is sooner, following the making of the contract, then such contract shall be deemed ratified for the term therein expressed.

2. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing impaired or legally blind unit owner who does not occupy the unit with a nonhearing impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association share the expenses of cable television, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 719.108 to enforce payment of the shares of such costs by the unit owners receiving cable television.

(c) If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common

expenses or assessments are common expenses collectible from all the unit owners in the cooperative in which the unit is located.

(d) With respect to each timeshare unit, each owner of a timeshare estate therein is jointly and severally liable for the payment of all assessments and other charges levied against or with respect to that unit pursuant to the cooperative documents, except to the extent that the cooperative documents provide to the contrary. This paragraph does not apply to any unit that is not committed to a timeshare plan.

(e) Common expenses include the costs of insurance acquired by the association under the authority of s. 719.104(3), including costs and contingent expenses required to participate in a self-insurance fund authorized and approved pursuant to s. 624.462.

(2) Funds for the payment of common expenses shall be collected by assessments against unit owners in the proportions or percentages of sharing common expenses provided in the cooperative documents.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 16, ch. 86-175; s. 21, ch. 92-49; s. 2, ch. 2000-302; s. 12, ch. 2007-80.

**719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—**

(1) A unit owner, regardless of how title is acquired, including, without limitation, a purchaser at a judicial sale, shall be liable for all rents and assessments coming due while the unit owner is in exclusive possession of a unit. In a voluntary transfer, the unit owner in exclusive possession shall be jointly and severally liable with the previous unit owner for all unpaid rents and assessments against the previous unit owner for his or her share of the common expenses up to the time of the transfer, without prejudice to the rights of the unit owner in exclusive possession to recover from the previous unit owner the amounts paid by the unit owner in exclusive possession therefor.

(2) The liability for rents and assessments may not be avoided by waiver of the use or enjoyment of any common areas or by abandonment of the unit for which the rents and assessments are made.

(3) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. The foregoing applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to chapter 687 or s. 719.303(4).

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any authorized administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney's fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. The lien



expires if a claim of lien is not filed within 1 year after the date the assessment was due, and the lien does not continue for longer than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced. Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail and:

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by registered or certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by registered or certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing.

(5) Liens for rents and assessments may be foreclosed by suit brought in the name of the association, in like manner as a foreclosure of a mortgage on real property. In any foreclosure, the unit owner shall pay a reasonable rental for the cooperative parcel, if so provided in the cooperative documents, and the plaintiff in the foreclosure is entitled to the appointment of a receiver to collect the rent. The association has the power, unless prohibited by the cooperative documents, to bid on the cooperative parcel at the foreclosure sale and to acquire and hold, lease, mortgage, or convey it. Suit to recover a money judgment for unpaid rents and assessments may be maintained without waiving the lien securing them.

(6) Within 15 days after request by a unit owner or mortgagee, the association shall provide a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel. Any person other than the unit owner who relies upon such certificate shall be protected thereby. Notwithstanding any limitation on transfer fees contained in s. 719.106(1)(i), the association or its authorized agent may charge a reasonable fee for the preparation of the certificate.

(7) The remedies provided in this section do not exclude other remedies provided by the cooperative documents and permitted by law.

(8)(a) No unit owner may be excused from the payment of his or her share of the rents or assessments of a cooperative unless all unit owners are likewise proportionately excused from payment, except as provided in subsection (6) and in the following cases:

1. If the cooperative documents so provide, a developer or other person owning cooperative units offered for sale may be excused from the payment of the share of the common expenses, assessments, and rents related to those units for a stated period of time. The period must terminate no later than the first day of the fourth calendar month following the month in which the right of exclusive possession is first granted to a unit owner. However, the developer must pay the portion of common expenses incurred during that period which exceed the amount assessed against other unit owners.

2. A developer, or other person with an ownership interest in cooperative units or having an obligation to pay common expenses, may be excused from the payment of his or her share of the common expenses which would have been assessed against those units during the period of time that he or she shall have guaranteed to each purchaser in the purchase contract

or in the cooperative documents, or by agreement between the developer and a majority of the unit owners other than the developer, that the assessment for common expenses of the cooperative imposed upon the unit owners would not increase over a stated dollar amount and shall have obligated himself or herself to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners.

(b) If the purchase contract, cooperative documents, or agreement between the developer and a majority of unit owners other than the developer provides for the developer or another person to be excused from the payment of assessments pursuant to paragraph (a), no funds receivable from unit owners payable to the association or collected by the developer on behalf of the association, other than regular periodic assessments for common expenses as provided in the cooperative documents and disclosed in the estimated operating budget pursuant to s. 719.503(1)(b)6. or s. 719.504(20)(b), may be used for payment of common expenses prior to the expiration of the period during which the developer or other person is so excused. This restriction applies to funds including, but not limited to, capital contributions or startup funds collected from unit purchasers at closing.

(9) The specific purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by s. 719.104(3), approved in accordance with the cooperative documents shall be set forth in a written notice of such assessment sent or delivered to each unit owner. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice or returned to the unit owners. However, upon completion of such specific purposes, any excess funds shall be considered common surplus and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.

(10)(a) If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association. The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit.

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

Pursuant to section 719.108(10), Florida Statutes, we demand that you make your rent payments directly to the cooperative association and continue doing so until the association notifies you otherwise.

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

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

Pursuant to section 719.108(10), Florida Statutes, your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord.

2. The association must mail written notice to the unit owner of the association's demand that the tenant make payments to the association.

3. The association shall, upon request, provide the tenant with written receipts for payments made.

4. A tenant is immune from any claim by the landlord or unit owner related to the rent timely paid to the association after the association has made written demand.

(b) If the tenant paid rent to the landlord or unit owner for a given rental period before receiving the demand from the association and provides written evidence to the association of having paid the rent within 14 days after receiving the demand, the tenant shall begin making rental payments to the association for the following rental period and shall continue making rental payments to the association to be credited against the monetary obligations of the unit owner until the association releases the tenant or the tenant discontinues tenancy in the unit.

(c) The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the landlord in the amount of moneys paid to the association.

(d) The association may issue notice under s. 83.56 and sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a required payment to the association after written demand has been made to the tenant. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations under s. 83.51.

(e) The tenant does not, by virtue of payment of monetary obligations to the association, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association.

(f) A court may supersede the effect of this subsection by appointing a receiver.  
History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 17, ch. 86-175; s. 22, ch. 92-49; s. 59, ch. 95-211; s. 877, ch. 97-102; s. 10, ch. 2003-14; s. 13, ch. 2007-80; s. 5, ch. 2008-202; s. 21, ch. 2010-174; s. 14, ch. 2011-196.

#### **719.109 Right of owners to peaceably assemble.—**

(1) All common areas and recreational facilities serving any cooperative shall be available to unit owners in the cooperative or cooperatives served thereby and their invited guests for the use intended for such common areas and recreational facilities. The entity or entities responsible for the operation of the common areas and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common areas and recreational facilities. No entity or entities shall unreasonably restrict any unit owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common areas and recreational facilities.

(2) Any owner prevented from exercising rights guaranteed by subsection (1) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any cooperative document or rule which operates to deprive the owner of such rights.

History.—s. 2, ch. 77-222; s. 265, ch. 79-400; s. 10, ch. 81-185; s. 18, ch. 86-175.

**719.110 Limitation on actions by association.**—The statute of limitations for any actions in law or equity which a cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board of administration.  
History.—s. 9, ch. 77-222; s. 266, ch. 79-400; s. 19, ch. 86-175.

**719.111 Attorney's fees.**—If a contract or lease between a cooperative unit owner or association and a developer contains a provision allowing attorney's fees to the developer, should any litigation arise under the provisions of the contract or lease, the court shall also allow reasonable attorney's fees to the unit owner or association when the unit owner or association prevails in any action by or against the unit owner or association with respect to the contract or lease.  
History.—ss. 10, 11, ch. 78-340; s. 20, ch. 86-175.

**719.112 Unconscionability of certain leases; rebuttable presumption.**—

(1) The Legislature expressly finds that many leases involving use of recreational or other common facilities by residents of cooperatives were entered into by parties wholly representative of the interests of a cooperative developer at a time when the cooperative unit owners not only did not control the administration of their cooperative but also had little or no voice in such administration. Such leases often contain numerous obligations on the part of either or both a cooperative association and cooperative unit owners with relatively few obligations on the part of the lessor. Such leases may or may not be unconscionable in any given case. Nevertheless, the Legislature finds that a combination of certain onerous obligations and circumstances warrants the establishment of a rebuttable presumption of unconscionability of certain leases, as specified in subsection (2). The presumption may be rebutted by a lessor upon the showing of additional facts and circumstances to justify and validate what otherwise appears to be an unconscionable lease under this section. Failure of a lease to contain all the enumerated elements shall neither preclude a determination of unconscionability of the lease nor raise a presumption as to its conscionability. It is the intent of the Legislature that this section is remedial and does not create any new cause of action to invalidate any cooperative lease, but shall operate as a statutory prescription on procedural matters in actions brought on one or more causes of action existing at the time of the execution of such lease.

(2) A lease pertaining to use by cooperative unit owners of recreational or other common facilities, irrespective of the date on which such lease was entered into, is presumptively unconscionable if all of the following elements exist:

(a) The lease was executed by persons none of whom at the time of the execution of the lease were elected by cooperative unit owners, other than the developer, to represent their interests.

(b) The lease requires either the cooperative association or the cooperative unit owners to pay real estate taxes on the subject real property.

(c) The lease requires either the cooperative association or the cooperative unit owners to insure buildings or other facilities on the subject real property against fire or any other hazard.

(d) The lease requires either the cooperative association or the cooperative unit owners to perform some or all maintenance obligations pertaining to the subject real property or facilities located upon the subject real property.

(e) The lease requires either the cooperative association or the cooperative unit owners to pay rent to the lessor for a period of 21 years or more.

(f) The lease provides that failure of the lessee to make payment of rent due under the lease either creates, establishes, or permits establishment of a lien upon individual cooperative units of the cooperative or upon stock or other ownership interest to secure claims for rent.

(g) The lease requires an annual rental which exceeds 25 percent of the appraised value of the leased property as improved. For purposes of this paragraph, “annual rental” means the amount due during the first 12 months of the lease for all units, regardless of whether such units were in fact occupied or sold during that period, and “appraised value” means the appraised value placed upon the leased property the first tax year after the sale of a unit in the cooperative.

(h) The lease provides for a periodic rental increase.

(i) The lease or other cooperative documents require that every transferee of a cooperative unit must assume obligations under the lease.

(3) Any provision of the Florida Statutes to the contrary notwithstanding, neither the statute of limitations nor laches shall prohibit unit owners from maintaining a cause of action under the provisions of this section.

History.—s. 3, ch. 79-284; s. 21, ch. 86-175; s. 26, ch. 91-110; s. 18, ch. 94-350.

**719.1124 Failure to fill vacancies on board of administration sufficient to constitute a quorum; appointment of receiver upon petition of unit owner.—**

(1) If an association fails to fill vacancies on the board of administration sufficient to constitute a quorum in accordance with the bylaws, any unit owner may give notice of his or her intent to apply to the circuit court within whose jurisdiction the cooperative lies for the appointment of a receiver to manage the affairs of the association. The form of the notice shall be as follows:

NOTICE OF INTENT TO  
APPLY FOR RECEIVERSHIP

YOU ARE HEREBY NOTIFIED that the undersigned owner of a unit in (name of cooperative) intends to file a petition in the circuit court for appointment of a receiver to manage the affairs of the association on the grounds that the association has failed to fill vacancies on the board of administration sufficient to constitute a quorum. This petition will not be filed if the vacancies are filled within 30 days after the date on which this notice was sent or posted, whichever is later. If a receiver is appointed, the receiver shall have all of the powers of the board and shall be entitled to receive a salary and reimbursement of all costs and attorney’s fees payable from association funds.

(name and address of petitioning unit owner)

(2) The notice required by subsection (1) must be provided by the unit owner to the association by certified mail or personal delivery, must be posted in a conspicuous place on the cooperative property, and must be provided to every unit owner of the association by certified mail or personal delivery. The notice must be posted and mailed or delivered at least 30 days prior to the filing of a petition seeking receivership. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner.

(3) If the association fails to fill the vacancies within 30 days after the notice required by subsection (1) is posted and mailed or delivered, the unit owner may proceed with the petition.

(4) If a receiver is appointed, all unit owners shall be given written notice of such appointment as provided in s. 719.127.

(5) The association shall be responsible for the salary of the receiver, court costs, and attorney's fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until the association fills vacancies on the board sufficient to constitute a quorum and the court relieves the receiver of the appointment.

History.—s. 6, ch. 2008-202.

**719.114 Separate taxation of cooperative parcels; survival of contractual provisions after tax sale.—**

(1) Ad valorem taxes and special assessments by taxing authorities shall be assessed against the cooperative parcels and not upon the cooperative property as a whole. No ad valorem tax or special assessment may be separately assessed against common areas if the common areas are owned by the cooperative association or are jointly owned by the owners of the cooperative parcels. Each cooperative parcel shall be separately assessed for ad valorem taxes and special assessments as a single parcel. The property appraiser must be provided the necessary documents, as evidenced in the official records of the clerk of the circuit court of the county, to make a determination as to the ownership of a cooperative parcel for assessment and homestead tax exemption purposes. The taxes and special assessments levied against each cooperative parcel shall constitute a lien only upon the cooperative parcel assessed and upon no other portion of the cooperative property.

(2) All contractual provisions relating to a cooperative parcel which has been sold for taxes or special assessments survive and are enforceable after issuance of a tax deed or master's deed, upon foreclosure of an assessment, a certificate or lien, a tax deed, tax certificate, or tax lien, to the same extent that they would be enforceable against a voluntary grantee of the title immediately prior to the delivery of the tax deed, master's deed, or clerk's certificate of title as provided in s. 197.573.

(3) Cooperative property divided into timeshare estates shall be assessed for purposes of ad valorem taxes and special assessments as provided in s. 192.037.

History.—s. 22, ch. 86-175; s. 12, ch. 92-32; s. 3, ch. 2000-302.

**719.115 Limitation of liability.—**

(1) The liability of the owner of a unit for common expenses is limited to the amounts for which he or she is assessed for common expenses from time to time in accordance with this chapter, the cooperative documents, and the bylaws.

(2) The owner of a unit may be personally liable for acts or omissions of the association in relation to the use of the common areas, but only to the extent of his or her pro rata share of the liability in the same percentage of his or her designated portion of the common expenses and then in no case shall the liability exceed the value of his or her unit.

(3) In any legal action in which the association may be exposed to liability in excess of insurance coverage protecting it and the unit owners, the association shall give notice of the exposure within a reasonable time to all unit owners, and they shall have the right to intervene and defend.

History.—s. 10, ch. 99-382.

**719.1255 Alternative resolution of disputes.—**The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall provide for alternative dispute resolution in accordance with s. 718.1255.

History.—s. 23, ch. 86-175; s. 23, ch. 92-49; s. 237, ch. 94-218; s. 56, ch. 2008-240.

**719.127 Receivership notification.**—Upon the appointment of a receiver by a court for any reason relating to a cooperative association, the court shall direct the receiver to provide to all unit owners written notice of his or her appointment as receiver. Such notice shall be mailed or delivered within 10 days after the appointment. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner. History.—s. 7, ch. 2008-202.

## **PART II RIGHTS AND OBLIGATIONS OF DEVELOPERS**

### **719.202 Sales or reservation deposits prior to closing.**—

(1) If a developer contracts to sell a cooperative parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to cooperative ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing, the division director shall have the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from the escrow as follows:

- (a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned.
- (b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.
- (c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to the developer at the closing of the transaction.
- (d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent receives from the buyer written notice of a dispute between the buyer and developer.

(2) All payments in excess of the 10 percent of the sale price described in subsection (1) received prior to completion of construction by the developer from the buyer on a contract for purchase of a cooperative parcel shall be held in a special escrow account established as provided in subsection (1) and controlled by an escrow agent and may not be used by the developer prior to closing the transaction, except as provided in subsection (3) or except for refund to the buyer. If the money remains in this special account for more than 3 months and earns interest, the interest shall be paid as provided in subsection (1).

(3) If the contract for sale of the cooperative so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. The developer may use the funds in the actual construction and development of the cooperative property in which the unit to be sold is located. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons or for advertising purposes. A contract which

permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

(4) "Completion of construction" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and in jurisdictions where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvements according to the plans and specifications.

(5) Failure to comply with the provisions of this section renders the contract voidable by the buyer, and, if voided, all sums deposited or advanced under the contract shall be refunded with interest at the highest rate then being paid on savings accounts, excluding certificates of deposit, by savings and loan associations in the area in which the cooperative property is located.

(6) If a developer enters into a reservation agreement, the developer shall pay into an escrow account all reservation deposit payments. Reservation deposits shall be payable to the escrow agent, who shall give to the prospective purchaser a receipt for the deposit, acknowledging that the deposit is being held pursuant to the requirements of this subsection. The funds may be placed in either interest-bearing or non-interest-bearing accounts, provided that the funds shall at all reasonable times be available for withdrawal in full by the escrow agent. The developer shall maintain separate records for each cooperative parcel or proposed cooperative parcel for which deposits are being accepted. Upon written request to the escrow agent by the prospective purchaser or developer, the fund shall be immediately and without qualification refunded in full to the prospective purchaser. Upon such refund, any interest shall be paid to the prospective purchaser, unless otherwise provided in the reservation agreement. A reservation deposit shall not be released directly to the developer except as a down payment on the purchase price simultaneously with or subsequent to the execution of a contract. Upon the execution of a purchase agreement for a unit, any funds paid by the purchaser as a deposit to reserve the unit pursuant to a reservation agreement, and any interest thereon, shall cease to be subject to the provisions of this subsection and shall instead be subject to the provisions of subsections (1)-(5).

(7) Any developer who willfully fails to comply with the provisions of this section concerning establishment of an escrow account or deposit of funds into escrow or withdrawal therefrom is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The failure to establish an escrow account or to place funds therein shall be prima facie evidence of an intentional and purposeful violation of this section.

(8) Each escrow account required by this section shall be established with a bank, a savings and loan association, an attorney who is a member of The Florida Bar, a real estate broker registered under chapter 475, or any financial lending institution having a net worth in excess of \$5 million. The escrow agent shall not be located outside the state unless, pursuant to the escrow agreement, the escrow agent submits to the jurisdiction of the division and the courts of this state for any cause of action arising from the escrow. Each escrow agent shall be independent of the developer, and no developer or any officer, director, affiliate, subsidiary, or employee thereof may serve as escrow agent. Escrow funds may be invested only in securities of the United States or any agency thereof or in accounts in institutions the deposits of which are insured by an agency of the United States.



(9) Any developer who is subject to the provisions of this section shall not be subject to the provisions of s. 501.1375.  
History.—s. 2, ch. 76-222; s. 4, ch. 79-284; s. 11, ch. 81-185; s. 24, ch. 86-175; s. 878, ch. 97-102.

**719.203 Warranties.—**

(1) The developer shall be deemed to have granted to the purchaser of each parcel an implied warranty of fitness and merchantability for the purposes or uses intended as follows:

(a) As to each unit, a warranty for 3 years commencing with the completion of the building containing the unit.

(b) As to the personal property that is transferred with, or appurtenant to, each unit, a warranty which is for the same period as that provided by the manufacturer of the personal property, commencing with the date of closing of the purchase or the date of possession of the unit, whichever is earlier.

(c) As to all other improvements for the use of unit owners, a 3-year warranty commencing with the date of completion of the improvements.

(d) As to all other personal property for the use of unit owners, a warranty which shall be the same as that provided by the manufacturer of the personal property.

(e) As to the roof and structural components of a building or other improvements and as to mechanical, electrical, and plumbing elements serving improvements or a building, except mechanical elements serving only one unit, a warranty for a period beginning with the completion of construction of each building or improvement and continuing for 3 years thereafter or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event continuing for more than 5 years.

(f) As to all other property which is conveyed with a unit, a warranty to the initial purchaser of each unit for a period of 1 year from the date of closing of the purchase or the date of possession, whichever occurs first.

(2) The contractor and all subcontractors and suppliers grant to the developer and to the purchaser of each unit implied warranties of fitness as to the work performed or materials supplied by them as follows:

(a) For a period of 3 years from the date of completion of construction of a building or improvement, a warranty as to the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit.

(b) For a period of 1 year after completion of all construction, a warranty as to all other improvements and materials.

(3) “Completion of a building or improvement” means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and in jurisdictions where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

(4) These warranties are conditioned upon routine maintenance being performed, unless the maintenance is the obligation of the developer or a developer-controlled association.

(5) The warranties provided by this section shall inure to the benefit of each owner and his or her successor owners and to the benefit of the developer.

(6) Nothing in this section affects a cooperative as to which rights are established by contracts for sale of 10 percent or more of the units in the cooperative by the developer to

prospective unit owners prior to July 1, 1974, or as to cooperative buildings on which construction has been commenced prior to July 1, 1974.

History.—s. 1, ch. 76-222; s. 6, ch. 79-284; s. 25, ch. 86-175; s. 879, ch. 97-102.

### **PART III RIGHTS AND OBLIGATIONS OF ASSOCIATION**

#### **719.301 Transfer of association control.—**

(1) When unit owners other than the developer own 15 percent or more of the units in a cooperative that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect not less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

- (a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- (b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- (c) When all the units that will be operated ultimately by the association have been completed, some have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;
- (d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business; or
- (e) Seven years after creation of the cooperative association,

whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent in cooperatives with fewer than 500 units and 2 percent in cooperatives with 500 or more units in a cooperative operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority of the members of the board.

(2) Within 75 days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than 60 days' notice of, an election for the members of the board of administration. The election shall proceed as provided in s. 719.106(1)(d). The notice may be given by any unit owner if the association fails to do so. Upon election of the first unit owner other than the developer to the board of administration, the developer shall forward to the division the name and mailing address of the unit owner board member.

(3) If a developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

- (a) Assessment of the developer as a unit owner for capital improvements.
- (b) Any action by the association that would be detrimental to the sales of units by the developer. However, an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

(4) When unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of

paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(a)1. The original or a photocopy of the recorded cooperative documents and all amendments thereto. If a photocopy is provided, it shall be certified by affidavit of the developer, or an officer or agent of the developer, as being a complete copy of the actual recorded cooperative documents.

2. A certified copy of the association's articles of incorporation, or if it is not incorporated, then copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations which have been promulgated.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer is required to relinquish control of the association.

(c) The financial records, including financial statements of the association, and source documents since the incorporation of the association through the date of turnover. The records shall be audited for the period of the incorporation of the association or for the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, by an independent certified public accountant. All financial statements shall be prepared in accordance with generally accepted accounting standards and shall be audited in accordance with generally accepted auditing standards as prescribed by the Board of Accountancy. The accountant performing the review shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments.

(d) Association funds or control thereof.

(e) All tangible personal property that is property of the association, represented by the developer to be part of the common areas or ostensibly part of the common areas, and an inventory of that property.

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the cooperative and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer, the developer's agent, or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the cooperative property and for the construction and installation of the mechanical components serving the improvements. If the cooperative property has been organized as a cooperative more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph shall not apply.

(g) A list of the names and addresses, of which the developer had knowledge at any time in the development of the cooperative, of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping.

(h) Insurance policies.

(i) Copies of any certificates of occupancy which may have been issued for the cooperative property.

(j) Any other permits issued by governmental bodies applicable to the cooperative property in force or issued within 1 year prior to the date the unit owners other than the developer take control of the association.

(k) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(l) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(m) Leases of the common areas and other leases to which the association is a party.

(n) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

(o) All other contracts to which the association is a party.

(5) If, during the period prior to the time the developer relinquishes control of the association pursuant to subsection (4), any provision of the Cooperative Act or any rule adopted thereunder is violated by the association, the developer shall be responsible for such violation and shall be subject to the administrative action provided in this chapter for such violation, and the developer shall be liable to third parties for such violation. This subsection is intended to clarify existing law.

(6) The division may adopt rules administering the provisions of this section.  
History.—s. 2, ch. 76-222; s. 7, ch. 79-284; s. 12, ch. 81-185; s. 26, ch. 86-175; s. 25, ch. 92-49; s. 880, ch. 97-102; s. 12, ch. 98-322.

### **719.302 Agreements entered into by the association.—**

(1) Any grant or reservation made by a cooperative document, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a cooperative association or property serving the unit owners of a cooperative shall be fair and reasonable and may be canceled by unit owners other than the developer:

(a) If the association operates only one cooperative and the unit owners other than the developer have assumed control of the association, or if unit owners other than the developer own not less than 75 percent of the voting interests in the cooperative, the cancellation shall be by concurrence of the owners of not less than 75 percent of the voting interests other than the voting interests owned by the developer. If a grant, reservation, or contract is so canceled and the unit owners other than the developer have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners of not less than a majority of the voting interests in the cooperative other than the voting interests owned by the developer.

(b) If the association operates more than one cooperative and the unit owners other than the developer have not assumed control of the association, and if unit owners other than the developer own at least 75 percent of the voting interests in a cooperative operated by the association, any grant, reservation, or contract for maintenance, management, or operation of buildings containing the units in that cooperative or of improvements used only by unit owners of that cooperative may be canceled by concurrence of the owners of at least 75 percent of the voting interests in the cooperative other than the voting interests owned by the developer. No grant, reservation, or contract for maintenance, management, or operation of

recreational areas or any other property serving more than one cooperative, and operated by more than one association, may be canceled except pursuant to paragraph (d).

(c) If the association operates more than one cooperative and the unit owners other than the developer have assumed control of the association, the cancellation shall be by concurrence of the owners of not less than 75 percent of the total number of voting interests in all cooperatives operated by the association other than the voting interests owned by the developer.

(d) If the owners of units in a cooperative have the right to use property in common with owners of units in other cooperatives and those cooperatives are operated by more than one association, no grant, reservation, or contract for maintenance, management, or operation of the property serving more than one cooperative may be canceled until unit owners other than the developer have assumed control of all of the associations operating the cooperatives that are to be served by the recreational area or other property, after which cancellation may be effected by concurrence of the owners of not less than 75 percent of the total number of voting interests in those cooperatives other than voting interests owned by the developer.

(2) Any grant or reservation made by a cooperative document, lease, or other document, or any contract made by the developer or association prior to the time unit owners other than the developer elect a majority of the board of administration, which requires the association to purchase cooperative property or to lease cooperative property to another party shall be deemed ratified unless rejected by a majority of the voting interests of unit owners other than the developer within 18 months after unit owners other than the developer elect a majority of the board of administration. This subsection does not apply to any grant or reservation made by a declaration whereby persons other than the developer or the developer's heirs, assigns, affiliates, directors, officers, or employees are granted the right to use the cooperative property, so long as such persons are obligated to pay, at a minimum, a proportionate share of the cost associated with such property.

(3) Any grant or reservation made by a cooperative document, lease, or other document, and any contract made by an association, whether before or after assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a cooperative association or property serving the unit owners of a cooperative shall not be in conflict with the powers and duties of the association or the rights of unit owners as provided in this chapter. This subsection is intended only as a clarification of existing law.

(4) Any grant or reservation made by a cooperative document, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, shall be fair and reasonable.

(5) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in management contracts for cooperatives, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a cooperative management contract which provides that the fee under the contract shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(6) Any action to compel compliance with the provisions of this section or of s. 719.301 may be brought pursuant to the summary procedure provided for in s. 51.011. In any such action brought to compel compliance with the provisions of s. 719.301, the prevailing party shall be entitled to recover reasonable attorney's fees.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 79-284; s. 27, ch. 86-175; s. 881, ch. 97-102.

**719.3026 Contracts for products and services; in writing; bids; exceptions.—**

Associations with less than 100 units may opt out of the provisions of this section if two-thirds of the unit owners vote to do so, which opt-out may be accomplished by a proxy specifically setting forth the exception from this section.

(1) All contracts as further described herein or any contract that is not to be fully performed within 1 year after the making thereof, for the purchase, lease, or renting of materials or equipment to be used by the association in accomplishing its purposes under this chapter, and all contracts for the provision of services, shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the association in an amount which in the aggregate exceeds 5 percent of the association's budget, including reserves, the association shall obtain competitive bids for the materials, equipment, or services. Nothing contained herein shall be construed to require the association to accept the lowest bid.

(2)(a)1. Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services shall not be subject to the provisions of this section.

2. A contract executed before January 1, 1992, and any renewal thereof, is not subject to the competitive bid requirements of this section. If a contract was awarded under the competitive bid procedures of this section, any renewal of that contract is not subject to such competitive bid requirements if the contract contains a provision that allows the board to cancel the contract on 30 days' notice. Materials, equipment, or services provided to a cooperative pursuant to a local government franchise agreement by a franchise holder are not subject to the competitive bid requirement. A contract with a manager, if made by a competitive bid, may be made for up to 3 years. A condominium whose declaration or bylaws provides for competitive bidding for services may operate under the provisions of that declaration or bylaws in lieu of this section if those provisions are not less stringent than the requirements of this section.

(b) This section does not limit the ability of an association to obtain needed products and services in an emergency.

(c) This section does not apply if the business entity with which the association desires to enter into a contract is the only source of supply within the county serving the association.

History.—s. 26, ch. 92-49; s. 4, ch. 2000-302.

**719.303 Obligations of owners.—**

(1) Each unit owner, each tenant and other invitee, and each association shall be governed by, and shall comply with the provisions of, this chapter, the cooperative documents, the documents creating the association, and the association bylaws, and the provisions thereof shall be deemed expressly incorporated into any lease of a unit. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them prior to the time control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

(e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 719.503(1)(a) is entitled to recover reasonable attorney's fees. A unit owner prevailing in an action between the association and the unit owner under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. Actions arising under this subsection shall not be deemed to be actions for specific performance.

(2) A provision of this chapter may not be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, except that unit owners or members of a board of administration may waive notice of specific meetings in writing if provided by the bylaws. Any instrument given in writing by the unit owner or purchaser to an escrow agent may be relied upon by an escrow agent, whether or not such instruction and the payment of funds thereunder might constitute a waiver of any provision of this chapter.

(3) The association may levy reasonable fines for failure of the unit owner or the unit's occupant, licensee, or invitee to comply with any provision of the cooperative documents or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. However, the fine may not exceed \$100 per violation, or \$1,000 in the aggregate.

(a) An association may suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the cooperative documents or reasonable rules of the association. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension may not be imposed except after giving reasonable notice and opportunity for a hearing to the unit owner and, if applicable, the unit's licensee or invitee. The hearing must be held before a committee of other unit owners. If the committee does not agree with the fine or suspension, it may not be imposed.

(4) If a unit owner is more than 90 days delinquent in paying a monetary obligation due to the association, the association may suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligation is paid in full. This subsection does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. The notice and hearing requirements under subsection (3) do not apply to suspensions imposed under this subsection.

(5) An association may suspend the voting rights of a unit or member due to nonpayment of any monetary obligation due to the association which is more than 90 days delinquent. A voting interest or consent right allocated to a unit or member which has been suspended by the association may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under this chapter or pursuant to the cooperative documents, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing

requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(6) All suspensions imposed pursuant to subsection (4) or subsection (5) must be approved at a properly noticed board meeting. Upon approval, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery. History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 28, ch. 86-175; s. 6, ch. 87-117; s. 27, ch. 92-49; s. 882, ch. 97-102; s. 15, ch. 2003-14; s. 15, ch. 2011-196; s. 13, ch. 2013-188.

**719.304 Association's right to amend cooperative documents.—**

(1) If there is an omission or error in any cooperative document, or in other documents required by law to establish the cooperative, the association may correct the error or omission by an amendment to the cooperative document, or the other documents required to create a cooperative, in the manner provided in the document to amend the document, or, if none is provided, then by vote of a majority of the voting interests. The amendment is effective when passed and approved. This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of unit owners, unless the affected owners consent in writing. This subsection does not restrict the powers of the association to otherwise amend the cooperative documents, or other documentation, but authorizes a simple process of amendment requiring a lesser vote for the purpose of curing defects, errors, or omissions when the property rights of unit owners are not materially or adversely affected.

(2) If there is an omission or error in a cooperative document, or other documents required to establish the cooperative, which would affect the valid existence of the cooperative and which may not be corrected by the amendment procedures in the cooperative documents or this chapter, then the circuit courts have jurisdiction to entertain petitions of one or more of the unit owners therein, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners and the association and mortgagees of a first mortgage of record must be joined as parties to the action. Service of process on owners may be by publication, but the plaintiff shall furnish all unit owners not personally served with process with copies of the petition and final decree of the court by certified mail, return receipt requested, at their last known residence address. If an action to determine whether the cooperative documents or other documents comply with the mandatory requirements for the formation of a cooperative contained in this chapter is not brought within 3 years of the filing of the cooperative documents, the cooperative documents and other documents shall be effective under this chapter to create a cooperative, whether or not the documents substantially comply with the mandatory requirements of this chapter. However, both before and after the expiration of this 3-year period, circuit courts have jurisdiction to entertain petitions permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.

History.—s. 2, ch. 76-222; s. 224, ch. 77-104; s. 29, ch. 86-175.

**PART IV  
SPECIAL TYPES OF COOPERATIVES**

**719.401 Leaseholds.—**

(1) A cooperative may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold, if, on the



date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. However, if the cooperative constitutes a timeshare cooperative created pursuant to chapter 721, the lease must have an unexpired term of at least 30 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common areas. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(b) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association, and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the cooperative to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by anyone other than unit owners of the cooperatives to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other exactions due from users of the leased property.

(c) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association. This paragraph does not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency or any political subdivision thereof.

(d)1. In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defenses, legal or equitable, that he or she or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, it shall constitute an absolute waiver of the unit owner's or association's defenses other than payment, and the lessor shall be entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an

evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

2. When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection, and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs which the association or unit owners incurred in satisfying those liens or foreclosures.

3. Nothing in this paragraph shall affect litigation commenced prior to October 1, 1979.

(e) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

(f)1. A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977, regardless of the duration of the lease.

2. If the lessor wishes to sell his or her interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3. The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4. The provisions of this paragraph shall not apply to a nonresidential cooperative and shall not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(g) The lease or a subordination agreement executed by the lessor must provide either:

1. That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

2. That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished but shall be foreclosed and unenforceable against the mortgagee with respect to that unit's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure. This paragraph does not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency or political subdivision thereof.

(2) If rent under the lease is a fixed amount for the full duration of the lease, and the rent thereunder is payable by the association or the unit owners, the division director shall have the discretion to accept alternative assurances sufficient to secure the payment of rent, including, but not limited to, annuities with an insurance company authorized to do business in this state, the beneficiary of which shall be the association, or, cash deposits in trust, the beneficiary of which shall be the association, which deposit shall be at an amount sufficient to generate interest sufficient to meet lease payments as they occur. If alternative assurances are accepted by the division director, the following apply:

(a) Disclosures contemplated by paragraph (1)(b), if not contained within the lease, may be made by the developer.

(b) Disclosures as to the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property, if not contained in the lease, may be stated by the developer.

(c) The provisions of paragraphs (1)(d) and (e) apply, but need not be stated in the lease.

(d) The provisions of paragraph (1)(g) do not apply.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 79-284; s. 5, ch. 80-323; s. 13, ch. 81-185; s. 30, ch. 86-175; s. 8, ch. 88-148; s. 3, ch. 88-225; s. 883, ch. 97-102; s. 5, ch. 2000-302.

#### **719.4015 Cooperative leases; escalation clauses.—**

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential cooperatives, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a cooperative lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(2) This public policy prohibits the inclusion or enforcement of such escalation clauses in leases related to cooperatives for which the cooperative documents were recorded on or after June 4, 1975; it prohibits the enforcement of escalation clauses in leases related to cooperatives for which the cooperative documents were recorded prior to June 4, 1975, but which have been refused enforcement on the grounds that the parties agreed to be bound by subsequent amendments to the Florida Statutes or which have been found to be void because of a finding that such lease is unconscionable or which have been refused enforcement on the basis of the application of former s. 719.401(8); and it prohibits any further escalation of

rental fees after October 1, 1988, pursuant to escalation clauses in leases related to cooperatives for which the cooperative documents were recorded prior to June 4, 1975.

(3) The provisions of this section do not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency of any political subdivision thereof.

History.—s. 9, ch. 88-148; s. 4, ch. 88-225; s. 2, ch. 89-164.

**719.402 Conversion of existing improvements to cooperative.**—A developer may create a cooperative by converting existing, previously occupied improvements to such ownership by complying with parts I and VI of this chapter.

History.—s. 2, ch. 76-222; s. 10, ch. 79-284; s. 9, ch. 80-3.

**719.403 Phase cooperatives.**—

(1) A developer may develop a cooperative in phases, if the original cooperative documents or an amendment to the cooperative documents approved by the unit owners and unit mortgagees provides for and describes in detail all anticipated phases, the impact, if any, which the completion of subsequent phases would have upon the initial phase, and the time period within which all phases must be added to the cooperative and must comply with the requirements of this section or the right to add additional phases shall expire.

(2) The original cooperative documents shall describe:

(a) The land which may become part of the cooperative and the land on which each phase is to be built. The descriptions shall include metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys. Plot plans, attached as an exhibit, must show the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the cooperative. The plot plan may be modified by the developer as to unit or building types to the extent that such changes are described in the cooperative documents. If provided in the cooperative documents, the developer may make nonmaterial changes in the legal description of a phase.

(b) The minimum and maximum number and general size of units to be included in each phase. The general size may be expressed in terms of minimum and maximum square feet. In stating the minimum and maximum number of units, the difference between the minimum and maximum numbers shall not be greater than 20 percent of the maximum.

(c) Each unit's percentage ownership in the common areas as each phase is added. In lieu of specific percentages, a formula for reallocating each unit's proportion or percentage of ownership in the common areas and manner of sharing common expenses and owning common surplus as additional units are added to the cooperative by the addition of any land may be described. The basis for allocating percentage ownership of units in phases added shall be consistent with the basis for allocation made among the units originally in the cooperative.

(d) The recreation areas and facilities to be owned as common areas by all unit owners and all personal property to be provided as each phase is added to the cooperative, and those facilities or areas which may not be built or provided if any phase or phases are not developed and added as a part of the cooperative. The developer may reserve the right to add additional common area recreational facilities if the original cooperative documents contain a description of each type of facility and its proposed location. The cooperative documents shall set forth the circumstances under which such facilities will be added.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the cooperative.

(f) Whether or not timeshare estates will or may be created with respect to units in any phase and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be established with respect to any unit.

(3) The developer shall notify owners of existing units of the commencement of, or the decision not to add, one or more additional phases. Notice shall be by certified mail addressed to each owner at the address of the owner's unit or at his or her last known address.

(4) If one or more phases are not built, the units which are built are entitled to 100 percent ownership of all common areas within the phases actually developed and added as a part of the cooperative.

(5) If the cooperative documents require the developer to convey any additional lands or facilities to the cooperative after the completion of the first phase and the developer fails to do so within the time specified, or within a reasonable time if none is specified, then any owner of a unit or the association may enforce such obligations against the developer or bring an action against the developer for damages caused by the developer's failure to convey to the association such additional lands or facilities.

(6) Notwithstanding any other provisions of this chapter, any amendments by the developer adding any land to the cooperative shall be consistent with the provisions of the cooperative documents granting such right and shall contain or provide for the following matters:

(a) The legal description of the land being added to the cooperative.

(b) An identification by letter, name, or number, or a combination thereof, of each unit within the land added to the cooperative, to ensure that no unit in the cooperative, including the additional land, will bear the same designation as any other unit.

(c) A survey of the additional land and graphic description of the improvements in which any units are located and a plot plan thereof, and a certificate of surveyor, in conformance with <sup>1</sup>s. 719.1035(4)(e).

(d) The undivided share in the common areas appurtenant to each unit in the cooperative stated as percentages or fractions which, in the aggregate, must equal the whole and must be determined in conformance with the manner of allocation set forth in the original cooperative documents.

(e) The proportions or percentages and the manner of sharing common expenses and owning common surplus which for residential units must be the same as the undivided share in the common areas. Amendments adding phases to a cooperative shall not require the execution of such amendments or consents thereto by unit owners other than the developer, unless the amendment permits the creation of timeshare estates in any unit of the additional phase of the condominium and such creation is not authorized by the original declaration.

(7) Upon recording the cooperative documents or amendments adding phases pursuant to this section, the developer or association shall file the recording information with the division within 30 working days on a form prescribed by the division.

History.—s. 2, ch. 76-222; s. 225, ch. 77-104; s. 1, ch. 77-174; s. 31, ch. 86-175; s. 884, ch. 97-102; s. 13, ch. 98-322.

<sup>1</sup>Note.—Section 719.1035, as amended by s. 6, ch. 99-382, does not have a subsection (4).

## PART V

## **REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL COOPERATIVES**

### **719.501 Powers and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—**

(1) The Division of Florida Condominiums, Timeshares, 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 718, has the power to enforce and ensure compliance with this chapter and adopted rules relating to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units. In performing its duties, the division shall have the following powers and duties:

(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 purpose 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 books, 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 failure by a person 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 to 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 related rule has occurred, the division may institute enforcement proceedings in its own name against a developer, association, officer, or member of the board, or its 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, officer, or member of the board, or its 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 a developer to pay moneys determined to be owed to a 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 association, or its assignees or agents, for any violation of this chapter or related rule. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant to this chapter, 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 cooperative 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 Condominiums, Timeshares, 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 shall 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 may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential cooperatives 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 when the division is considering the issuance of a declaratory statement with respect to the cooperative documents governing such cooperative 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 adopted 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 cooperatives which were rendered by the division during the previous year.

(j) The division shall adopt uniform accounting principles, policies, and standards to be used by all associations in the preparation and presentation of all financial statements

required by this chapter. The principles, policies, and standards shall take into consideration the size of the association and the total revenue collected by the association.

(k) The division shall provide training and educational programs for cooperative association board members and unit owners. The training may, in the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may 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 make such list available to board members and unit owners in a reasonable and cost-effective manner.

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

(m) When a complaint is made to the division, the division shall conduct its inquiry with reasonable dispatch and with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or timely requested additional information, take action upon the 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.

(n) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of cooperative 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 voluntary mediators only persons who have received at least 20 hours of training in mediation techniques or have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in 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.

(2)(a) Each cooperative association shall pay to the division, on or before January 1 of each year, an annual fee in the amount of \$4 for each residential unit in cooperatives operated by the association. If the fee is not paid by March 1, then the association shall be assessed a penalty of 10 percent of the amount due, and the association shall not have the standing to maintain or defend any action in the courts of this state until the amount due is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 4, ch. 78-323; s. 33, ch. 79-4; s. 11, ch. 79-284; s. 6, ch. 81-172; s. 14, ch. 81-185; s. 479, ch. 81-259; s. 35, ch. 83-85; s. 155, ch. 83-216; s. 11, ch. 85-60; s. 32, ch. 86-175; s. 21, ch. 87-102; s. 28, ch. 92-49; s. 238, ch. 94-218; s. 300,



ch. 96-410; s. 1776, ch. 97-102; s. 5, ch. 97-301; s. 222, ch. 98-200; s. 1892, ch. 2003-261; s. 57, ch. 2008-240; s. 14, ch. 2013-188.

**719.502 Filing prior to sale or lease.—**

(1)(a) A developer of a residential cooperative shall file with the division one copy of each of the documents and items required to be furnished to a buyer or lessee by ss. 719.503 and 719.504, if applicable. Until the developer has so filed, a contract for sale or lease of a unit for more than 5 years shall be voidable by the purchaser or lessee prior to the closing of his or her purchase or lease of a unit. A developer shall not close on any contract for sale or contract for a lease period of more than 5 years until the developer prepares and files with the division documents complying with the requirements of this chapter and the rules promulgated by the division and until the division notifies the developer that the filing is proper. A developer shall not close on any contract for sale or contract for a lease period of more than 5 years, as further provided in s. 719.503(1)(b), until the developer prepares and delivers all documents required by s. 719.503(1)(b) to the prospective buyer.

(b) The division may by rule develop filing, review, and examination requirements and the relevant timetables necessary to ensure compliance with the notice and disclosure requirements of this section.

(2)(a) Prior to filing as required by subsection (1), and prior to acquiring an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed, a developer shall not offer a contract for purchase or lease of a unit for more than 5 years. However, the developer may accept deposits for reservations upon the approval of a fully executed escrow agreement and reservation agreement form properly filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes. Each filing of a proposed reservation program shall be accompanied by a filing fee of \$250. Reservations shall not be taken on a proposed cooperative unless the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed. The division shall notify the developer within 20 days of receipt of the reservation filing of any deficiencies contained therein. Such notification shall not preclude the determination of reservation filing deficiencies at a later date, nor shall it relieve the developer of any responsibility under the law. The escrow agreement and the reservation agreement form shall include a statement of the right of the prospective purchaser to an immediate unqualified refund of the reservation deposit moneys upon written request to the escrow agent by the prospective purchaser or the developer.

(b) The executed escrow agreement signed by the developer and the escrow agent shall contain the following information:

1. A statement that the escrow agent will grant a prospective purchaser an immediate, unqualified refund of the reservation deposit moneys upon written request either directly to the escrow agent or to the developer.
2. A statement that the escrow agent is responsible for not releasing moneys directly to the developer except as a down payment on the purchase price at the time a contract is signed by the purchaser, if provided for in the contract.

(c) The reservation agreement form shall include the following:

1. A statement of the obligation of the developer to file cooperative documents with the division prior to entering into a binding purchase or lease agreement for more than 5 years.
2. A statement of the right of the prospective purchaser to receive all cooperative documents as required by this chapter.

3. The name and address of the escrow agent.

4. A statement as to whether the developer assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for purchase and sale or that the price represented may be exceeded within a stated amount or percentage or that no assurance is given as to the price in the contract for purchase and sale.

5. A statement that the deposit must be payable to the escrow agent and that the escrow agent must provide a receipt to the prospective purchaser.

(3) Upon filing as required by subsection (1), the developer shall pay to the division a filing fee of \$20 for each residential unit to be sold by the developer which is described in the documents filed. If the cooperative is to be built or sold in phases, the fee shall be paid prior to offering for sale units in any subsequent phase. Every developer who holds a unit or units for sale in a cooperative shall submit to the division any amendments to documents or items on file with the division and deliver to purchasers all amendments prior to closing, but in no event later than 10 days after the amendment. Upon filing of amendments to documents currently on file with the division, the developer shall pay to the division a filing fee of up to \$100 per filing, with the exact fee to be set by the division rule.

(4) Any developer who complies with this section shall not be required to file with any other division or agency of this state for approval to sell the units in the cooperative, the information for the cooperative for which he or she filed.

History.—s. 2, ch. 76-222; s. 5, ch. 79-284; s. 15, ch. 81-185; s. 12, ch. 85-60; s. 33, ch. 86-175; s. 22, ch. 87-102; s. 29, ch. 92-49; s. 885, ch. 97-102; s. 14, ch. 98-322; s. 58, ch. 2008-240.

### **719.503 Disclosure prior to sale.—**

#### **(1) DEVELOPER DISCLOSURE.—**

(a) Contents of contracts.—Any contracts for the sale of a unit or a lease thereof for an unexpired term of more than 5 years shall contain:

1. The following legend in conspicuous type: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 719.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE COOPERATIVE ACT ARE ESTIMATES ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

2. The following caveat in conspicuous type shall be placed upon the first page of the contract: **ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.**

3. If the unit has been occupied by someone other than the buyer, a statement that the unit has been occupied.

4. If the contract is for the sale or transfer of a unit subject to a lease, the contract shall include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: **THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).**

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

6. If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other common areas, the contract shall contain within the text the following statement in conspicuous type: **THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMON AREAS. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.**

7. The contract shall state the name and address of the escrow agent required by s. 719.202 and shall state that the purchaser may obtain a receipt for his or her deposit from the escrow agent, upon request.

8. If the contract is for the sale or transfer of a unit in a cooperative in which timeshare estates have been or may be created, the following text in conspicuous type: **UNITS IN THIS COOPERATIVE ARE SUBJECT TO TIMESHARE ESTATES.** The contract for the sale of a timeshare estate must also contain, in conspicuous type, the following: **FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING**

**AUTHORITY RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.**

(b) Copies of documents to be furnished to prospective buyer or lessee.—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 719.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer shall not close for 15 days following the execution of the agreement and delivery of the documents to the buyer as evidenced by a receipt for documents signed by the buyer unless the buyer is informed in the 15-day voidability period and agrees to close prior to the expiration of the 15 days. The developer shall retain in his or her records a separate signed agreement as proof of the buyer's agreement to close prior to the expiration of said voidability period. Said proof shall be retained for a period of 5 years after the date of the closing transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits,

if the development is subject to the provisions of s. 719.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 719.504, and cooperative documents, or the proposed cooperative documents if the documents have not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by <sup>1</sup>s. 719.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the cooperative.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the cooperative and a schedule of expenses for each type of unit, including fees assessed to a shareholder who has exclusive use of limited common areas, where such costs are shared only by those entitled to use such limited common areas.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.

8. The lease of recreational and other common areas that will be used by unit owners in common with unit owners of other cooperatives.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the association is to manage more than one cooperative, a description of the plan of phase development or the arrangements for the association to manage two or more cooperatives.

12. If the cooperative is a conversion of existing improvements, the statements and disclosure required by s. 719.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions which will affect the use of the property and which are not contained in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the cooperative, a copy of any such acceptance or approval acquired by the time of filing with the division pursuant to s. 719.502(1) or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed.

(c) Subsequent estimates; when provided.—If the closing on a contract occurs more than 12 months after the filing of the offering circular with the division, the developer shall provide a copy of the current estimated operating budget of the association to the buyer at closing, which shall not be considered an amendment that modifies the offering, provided any changes to the association's budget from the budget given to the buyer at the time of contract signing were the result of matters beyond the developer's control. Changes in budgets of any master association, recreation association, or club and similar budgets for entities other than the association shall likewise not be considered amendments that modify the offering. It is the intent of this paragraph to clarify existing law.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with the provisions of this subsection prior to the sale of his or her interest in the association. Each prospective purchaser who has entered into a contract for the purchase of an interest in a cooperative is entitled, at the seller's expense, to a current copy of the articles of incorporation of the association, the bylaws, and rules of the association, as well as a copy of the question and answer sheet as provided in s. 719.504.

(b) If a person licensed under part I of chapter 475 provides to or otherwise obtains for a prospective purchaser the documents described in this subsection, the person is not liable for any error or inaccuracy contained in the documents.

(c) Each contract entered into after July 1, 1992, for the resale of an interest in a cooperative shall contain in conspicuous type either:

1. A clause which states: **THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS, RULES OF THE ASSOCIATION, AND THE QUESTION AND ANSWER SHEET MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or**

2. A clause which states: **THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE ARTICLES OF INCORPORATION, BYLAWS, AND RULES OF THE ASSOCIATION, AND QUESTION AND ANSWER SHEET, IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE ARTICLES OF INCORPORATION, BYLAWS, RULES, AND QUESTION AND ANSWER SHEET, IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.**

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

(3) OTHER DISCLOSURE.—

(a) If cooperative parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common areas, or prior to completion of remodeling of previously occupied buildings, the developer shall make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common areas appurtenant to the unit.

(b) Sales brochures, if any, shall be provided to each purchaser, and the following caveat in conspicuous type shall be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: **ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER**

TO A BUYER OR LESSEE. If timeshare estates have been or may be created with respect to any unit in the cooperative, the sales brochure for sales of timeshare estates in such units must contain the following statement in conspicuous type: UNITS IN THIS COOPERATIVE ARE SUBJECT TO TIMESHARE ESTATES.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 12, ch. 79-284; s. 10, ch. 80-3; s. 34, ch. 86-175; s. 30, ch. 92-49; s. 886, ch. 97-102; s. 15, ch. 98-322; s. 6, ch. 2000-302; s. 14, ch. 2007-80.

<sup>1</sup>Note.—The reference is erroneous.

**719.504 Prospectus or offering circular.**—Every developer of a residential cooperative which contains more than 20 residential units, or which is part of a group of residential cooperatives which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled “Frequently Asked Questions and Answers,” which must be in accordance with a format approved by the division. This page must, in readable language: inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which identifies the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of \$100,000; and state whether membership in a recreational facilities association is mandatory and, if so, identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one cooperative, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(1) The front cover or the first page must contain only:

(a) The name of the cooperative.

(b) The following statements in conspicuous type:

1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A COOPERATIVE UNIT.

2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.

3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

(2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text (not including the summary and index), a description of the cooperative, including, but not limited to, the following information:

(a) Its name and location.

(b) A description of the cooperative property, including, without limitation:

1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units, if the cooperative is not a phase cooperative; or, if the cooperative is a phase cooperative, the maximum number of buildings that may be contained within the cooperative, the minimum and maximum number of units in each building, the minimum and maximum number of bathrooms and bedrooms that may be contained in each unit, and the maximum number of units that may be contained within the cooperative.

2. The page in the cooperative documents where a copy of the survey and plot plan of the cooperative is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, a statement that the estimated date of completion of the cooperative is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the cooperative. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner's maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5)(a) A statement in conspicuous type describing whether the cooperative is created and being sold as fee simple interests or as leasehold interests. If the cooperative is created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(b) If timeshare estates are or may be created with respect to any unit in the cooperative, a statement in conspicuous type stating that timeshare estates are created and being sold in such specified units in the cooperative.

(6) A description of the recreational and other common areas that will be used only by unit owners of the cooperative, including, but not limited to, the following:

(a) Each room and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit owners.

(f)1. An identification of each room or other facility to be used by unit owners that will not be owned by the unit owners or the association;

2. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to

the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above, their general locations and types, improvements or changes that may be made, the approximate dollar amount to be expended, and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other cooperatives, community associations, or planned developments which require the payment of the maintenance and expenses of such facilities, directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built.

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other common areas offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: **THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS COOPERATIVE; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS COOPERATIVE.** There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

**1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY**



FOR UNIT OWNERS; or

2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or

3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

4. A similar statement of the nature of the organization or manner in which the use rights are created, and that unit owners are required to pay. Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, reserves, or is entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: **THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMON AREAS.** Immediately following this statement, the location in the disclosure materials where the rent or land use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association has the right to a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. **THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN;** or

2. **THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED AREAS. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.**

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person has the right to increase or add to the recreational facilities at any time after the establishment of the cooperative whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: **RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S).** Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldfaced type that: **THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.**

(11) The arrangements for management of the association and maintenance and operation of

the cooperative property and of other property that will serve the unit owners of the cooperative property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

- (a) The names of contracting parties.
- (b) The term of the contract.
- (c) The nature of the services included.
- (d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.
- (e) A reference to the volumes and pages of the cooperative documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the cooperative property, then a statement in conspicuous type in substantially the following form shall appear, identifying the proposed or existing contract manager: **THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE COOPERATIVE PROPERTY WITH (NAME OF THE CONTRACT MANAGER).**

Immediately following this statement, the location in the disclosure materials of the contract for management of the cooperative property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that cooperative to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included: **THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.** Immediately following this statement, the location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in conspicuous type in substantially the following form shall be included: **THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.** Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the cooperative is part of a phase project, the following shall be stated:

(a) A statement in conspicuous type in substantially the following form shall be included: **THIS IS A PHASE COOPERATIVE. ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS COOPERATIVE.** Immediately following this statement, the location in the disclosure materials where the phasing is described shall be stated.

(b) A summary of the provisions of the declaration providing for the phasing.

(c) A statement as to whether or not residential buildings and units which are added to the cooperative may be substantially different from the residential buildings and units originally in the cooperative, and, if the added residential buildings and units may be substantially different, there shall be a general description of the extent to which such added residential buildings and units may differ, and a statement in conspicuous type in substantially the following form shall be included: **BUILDINGS AND UNITS WHICH ARE ADDED TO THE COOPERATIVE MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND UNITS IN THE COOPERATIVE.** Immediately following this statement, the location in the disclosure materials where the extent to which added residential buildings and units may substantially differ is described shall be stated.

(d) A statement of the maximum number of buildings containing units, the maximum and minimum number of units in each building, the maximum number of units, and the minimum and maximum square footage of the units that may be contained within each parcel of land which may be added to the cooperative.

(15) If the cooperative is created by conversion of existing improvements, the following information shall be stated:

(a) The information required by s. 719.616.

(b) A caveat that there are no express warranties unless they are stated in writing by the developer.

(16) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the cooperative property, including statements as to whether there are restrictions upon children and pets, and reference to the volumes and pages of the cooperative documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(17) If there is any land that is offered by the developer for use by the unit owners and that is neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the cooperative. If any part of such land will serve the cooperative, the statement shall describe the land and the nature and term of service, and the cooperative documents or other instrument creating such servitude shall be included as an exhibit.

(18) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage, will be provided and the person or entity furnishing them.

(19) An explanation of the manner in which the apportionment of common expenses and ownership of the common areas have been determined.

(20) An estimated operating budget for the cooperative and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(a) The estimated monthly and annual expenses of the cooperative and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than assessments payable to the association, payable by the unit owner to persons or entities other than the association, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses that are personal to unit owners, which are not uniformly incurred by all unit owners, or which are not provided for or contemplated by the cooperative documents, including, but not limited to, the costs of private telephone; maintenance of the interior of cooperative units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his or her unit; insurance premiums other than those incurred for policies obtained by the cooperative; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the cooperative and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and cooperative:

a. Administration of the association.

- b. Management fees.
- c. Maintenance.
- d. Rent for recreational and other commonly used areas.
- e. Taxes upon association property.
- f. Taxes upon leased areas.
- g. Insurance.
- h. Security provisions.
- i. Other expenses.
- j. Operating capital.
- k. Reserves.
- l. Fee payable to the division.
- 2. Expenses for a unit owner:
  - a. Rent for the unit, if subject to a lease.
  - b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used areas, which use and payment are a mandatory condition of ownership and are not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The following statement in conspicuous type: THE BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN ACCORDANCE WITH THE COOPERATIVE ACT AND IS A GOOD FAITH ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

(e) Each budget for an association prepared by a developer consistent with this subsection shall be prepared in good faith and shall reflect accurate estimated amounts for the required items in paragraph (c) at the time of the filing of the offering circular with the division, and subsequent increased amounts of any item included in the association's estimated budget that are beyond the control of the developer shall not be considered an amendment that would give rise to rescission rights set forth in s. 719.503(1)(a) or (b), nor shall such increases modify, void, or otherwise affect any guarantee of the developer contained in the offering circular or any purchase contract. It is the intent of this paragraph to clarify existing law.

(f) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(21) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(22) The identity of the developer and the chief operating officer or principal directing the creation and sale of the cooperative and a statement of its and his or her experience in this field.

(23) Copies of the following, to the extent they are applicable, shall be included as exhibits:

- (a) The cooperative documents, or the proposed cooperative documents if the documents have not been recorded.
- (b) The articles of incorporation creating the association.
- (c) The bylaws of the association.

- (d) The ground lease or other underlying lease of the cooperative.
- (e) The management agreement and all maintenance and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year.
- (f) The estimated operating budget for the cooperative and the required schedule of unit owners' expenses.
- (g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.
- (h) The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.
- (i) The lease of facilities used by owners and others.
- (j) The form of unit lease, if the offer is of a leasehold.
- (k) A declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.
- (l) The statement of condition of the existing building or buildings, if the offering is of units in an operation being converted to cooperative ownership.
- (m) The statement of inspection for termite damage and treatment of the existing improvements, if the cooperative is a conversion.
- (n) The form of agreement for sale or lease of units.
- (o) A copy of the agreement for escrow of payments made to the developer prior to closing.
- (p) A copy of the documents containing any restrictions on use of the property required by subsection (16).

(24) Any prospectus or offering circular complying with the provisions of former ss. 711.69 and 711.802 may continue to be used without amendment, or may be amended to comply with this chapter.

(25) A brief narrative description of the location and effect of all existing and intended easements located or to be located on the cooperative property other than those in the declaration.

(26) If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facility intended to serve the cooperative, a copy of such acceptance or approval acquired by the time of filing with the division pursuant to s. 719.502 or a statement that such acceptance has not been acquired or received.

(27) Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 13, ch. 79-284; s. 11, ch. 80-3; s. 13, ch. 85-60; s. 35, ch. 86-175; s. 31, ch. 92-49; s. 60, ch. 95-211; s. 887, ch. 97-102; s. 7, ch. 2000-302; s. 15, ch. 2007-80; s. 59, ch. 2008-240.

**719.505 Good faith effort to comply.**—If a developer, in good faith, has attempted to comply with the requirements of this part, and if, in fact, he or she has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

History.—s. 1, ch. 76-222; s. 888, ch. 97-102.

**719.506 Publication of false and misleading information.**—

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising

and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, pays anything of value toward the lease of a cooperative parcel located in this state shall have a cause of action to rescind the contract or collect damages from the developer for his or her loss prior to the closing of the transaction. After the closing of the transaction, the lessee shall have a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a)-(d) shall occur:

(a) The closing of the transaction;

(b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section evidence of lawful occupancy shall be deemed to be given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common areas and such recreational facilities, whether or not the same are common areas, which the developer is obligated to complete or provide under the terms of the written contract or written agreement for purchase or lease of the unit; or

(d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common areas and such recreational facilities, whether or not the same are common areas, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

(2) In any action for relief under this section or under s. 719.503, the prevailing party shall be entitled to recover reasonable attorney's fees.

History.—s. 2, ch. 76-222; s. 36, ch. 86-175; s. 889, ch. 97-102.

**719.507 Zoning and building laws, ordinances, and regulations.**—All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the cooperative or equity facilities club form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the cooperative or equity facilities club form of ownership. This section does not apply if the owner in fee of any land enters into and records a covenant that existing improvements or improvements to be constructed shall not be converted to the cooperative form of residential ownership prior to 5 years after the later of the date of the covenant or completion date of the improvements. Such covenant shall be entered into with the governing body of the municipality in which the land is located or, if the land is not located in a municipality, with the governing body of the county in which the land is located.

History.—s. 2, ch. 76-222; s. 12, ch. 80-3; s. 7, ch. 2007-173.

**719.508 Regulation by Division of Hotels and Restaurants.**—In addition to the authority, regulation, or control exercised by the Division of Florida Condominiums, Timeshares, and Mobile Homes pursuant to this act with respect to cooperatives, buildings included in a cooperative property shall be subject to the authority, regulation, or control of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, to the extent provided in chapters 399 and 509.  
History.—s. 2, ch. 76-222; s. 14, ch. 85-60; s. 239, ch. 94-218; s. 60, ch. 2008-240.

## **PART VI CONVERSIONS TO COOPERATIVE**

**719.604 Short title.**—This part shall be known and may be cited as the “Roth Cooperative Conversion Act” in memory of Mr. James S. Roth, Director, Division of Florida Land Sales and Condominiums, 1979-1980.  
History.—s. 7, ch. 80-3.

**719.606 Conversion of existing improvements to cooperative; rental agreements.**—  
When existing improvements are converted to ownership as a residential cooperative:

(1)(a) Each residential tenant who has resided in the existing improvements for at least the 180 days preceding the date of the written notice of intended conversion shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 270 days after the date of the notice. If the rental agreement expires more than 270 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(b) Each other residential tenant shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 180 days after the date of the written notice of intended conversion. If the rental agreement expires more than 180 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(2)(a) In order to extend the rental agreement as provided in subsection (1), a tenant shall, within 45 days after the date of the written notice of intended conversion, give written notice to the developer of the intention to extend the rental agreement.

(b) If the rental agreement will expire within 45 days following the date of the notice, the tenant may remain in occupancy for the 45-day decision period upon the same terms by giving the developer written notice and paying rent on a pro rata basis from the expiration date of the rental agreement to the end of the 45-day period.

(c) The tenant may extend the rental agreement for the full extension period or a part of the period.

(3) After the date of a notice of intended conversion, a tenant may terminate any rental agreement, or any extension period having an unexpired term of 180 days or less, upon 30 days’ written notice to the developer. However, unless the rental agreement was entered into, extended, or renewed after the effective date of this part, the tenant may not unilaterally terminate the rental agreement but may unilaterally terminate any extension period having an unexpired term of 180 days or less upon 30 days’ written notice.

(4) A developer may elect to provide tenants who have been continuous residents of the existing improvements for at least 180 days preceding the date of the written notice of intended conversion and whose rental agreements expire within 180 days of the date of the written notice of intended conversion, the option of receiving in cash a tenant relocation payment at least equal to 1 month’s rent in consideration for extending the rental agreement for not more than 180 days, rather than extending the rental agreement for up to 270 days.

(5) A rental agreement may provide for termination by the developer upon 60 days' written notice if the rental agreement is entered into subsequent to the delivery of the written notice of intended conversion to all tenants and conspicuously states that the existing improvements are to be converted. No other provision in a rental agreement shall be enforceable to the extent that it purports to reduce the extension period provided by this section or otherwise would permit a developer to terminate a rental agreement in the event of a conversion. This subsection applies to rental agreements entered into, extended, or renewed after the effective date of this part; the termination provisions of all other rental agreements are governed by the provisions of s. 719.402(3), Florida Statutes 1979.

(6) Any provision of this section or of the rental agreement or other contract or agreement to the contrary notwithstanding, whenever a county, including a charter county, determines that there exists within the county a vacancy rate in rental housing of 3 percent or less, the county may adopt an ordinance or other measure extending the 270-day extension period described in paragraph (1)(a) and the 180-day extension described in paragraph (1)(b) for an additional 90 days, if:

(a) Such measure was duly adopted, after notice and public hearing, in accordance with all applicable provisions of the charter governing the county and any other applicable laws; and

(b) The governing body has made and recited in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency. A county ordinance or other measure adopting an additional 90-day extension under the provisions of this section is controlling throughout the entire county, including a charter county, where adopted, including all municipalities, unless a municipality votes not to have it apply within its boundaries.

History.—s. 7, ch. 80-3; s. 37, ch. 86-175.

**719.608 Notice of intended conversion; time of delivery; content.—**

(1) Prior to or simultaneous with the first offering of individual units to any person, each developer shall deliver a notice of intended conversion to all tenants of the existing improvements being converted to residential cooperative. All such notices shall be given within a 72-hour period.

(2)(a) Each notice of intended conversion shall be dated and in writing. The notice shall contain the following statement, with the phrases of the following statement which appear in upper case printed in conspicuous type:

These apartments are being converted to cooperative by (name of developer) , the developer.

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 180 days, you may extend your rental agreement for up to 180 days after the date of this notice.



c. IN ORDER FOR YOU TO EXTEND YOUR RENTAL AGREEMENT, YOU MUST GIVE THE DEVELOPER WRITTEN NOTICE WITHIN 45 DAYS AFTER THE DATE OF THIS NOTICE.

2. IF YOUR RENTAL AGREEMENT EXPIRES IN THE NEXT 45 DAYS, you may extend your rental agreement for up to 45 days after the date of this notice while you decide whether to extend your rental agreement as explained above. To do so, you must notify the developer in writing. You will then have the full 45 days to decide whether to extend your rental agreement as explained above.

3. During the extension of your rental agreement you will be charged the same rent that you are now paying.

4. YOU MAY CANCEL YOUR RENTAL AGREEMENT AND ANY EXTENSION OF THE RENTAL AGREEMENT AS FOLLOWS:

a. If your rental agreement began or was extended or renewed after May 1, 1980, and your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may cancel your rental agreement upon 30 days' written notice and move. Also, upon 30 days' written notice, you may cancel any extension of the rental agreement.

b. If your rental agreement was not begun or was not extended or renewed after May 1, 1980, you may not cancel the rental agreement without the consent of the developer. If your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may, however, upon 30 days' written notice cancel any extension of the rental agreement.

5. All notices must be given in writing and sent by mail, return receipt requested, or delivered in person to the developer at this address: (name and address of developer) .

6. If you have continuously been a resident of these apartments during the last 180 days:

a. You have the right to purchase your apartment and will have 45 days to decide whether to purchase. If you do not buy the unit at that price and the unit is later offered at a lower price, you will have the opportunity to buy the unit at the lower price. However, in all events your right to purchase the unit ends when the rental agreement or any extension of the rental agreement ends or when you waive this right in writing.

b. Within 90 days you will be provided purchase information relating to your apartment, including the price of your unit and the condition of the building. If you do not receive this information within 90 days, your rental agreement and any extension will be extended 1 day for each day over 90 days until you are given the purchase information. If you do not want this rental agreement extension, you must notify the developer in writing.

7. If you have any questions regarding this conversion or the Cooperative Act, you may contact the developer or the state agency which regulates cooperatives: The Division of Florida Condominiums, Timeshares, and Mobile Homes, (Tallahassee address and telephone number of division) .

(b) When a developer offers tenants an optional tenant relocation payment pursuant to s. 719.606(4), the notice of intended conversion shall contain a statement substantially as follows:

If you have been a continuous resident of these apartments for the last 180 days and your lease expires during the next 180 days, you may extend your rental agreement for up to 270 days, or you may extend your rental agreement for up to 180 days and receive a cash payment at least equal to 1 month's rent. You must make your decision and inform the developer in writing within 45 days after the date of this notice.

(c) When the rental agreement extension provisions of s. 719.606(6) are applicable to a conversion, subparagraphs 1.a. and b. of the notice of intended conversion shall read as follows:

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 360 days, you may extend your rental agreement for up to 360 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

(3) Notice of intended conversion may not be waived by a tenant unless the tenant's lease conspicuously states that the building is to be converted and the other tenants residing in the building have previously received a notice of intended conversion.

(4) Upon the request of a developer and payment of a fee prescribed by the rules of the division not to exceed \$50, the division may verify to a developer that a notice complies with this section.

(5) Prior to delivering a notice of intended conversion to tenants of existing improvements being converted to a residential cooperative, each developer shall file with the division a copy of the notice of intended conversion. Upon filing, each developer shall pay to the division a filing fee of \$100.

History.—s. 7, ch. 80-3; s. 15, ch. 85-60; s. 38, ch. 86-175; s. 32, ch. 92-49; s. 61, ch. 2008-240.

**719.61 Notices.—**

(1) All notices from tenants to a developer shall be deemed given when deposited in the United States mail, addressed to the developer's address as stated in the notice of conversion, and sent postage prepaid, return receipt requested, or when personally delivered in writing by the tenant to the developer at such address. The date of a notice is the date when it is mailed or personally delivered by the tenant.

(2) All notices from developers to tenants shall be deemed given when deposited in the United States mail, addressed to the tenant's last known residence, which may be the address of the property subject to the rental agreement, and sent by certified or registered mail, postage prepaid. The date of a notice is the date when it is mailed to the tenant.

History.—s. 7, ch. 80-3; s. 39, ch. 86-175.

**719.612 Right of first refusal.—**

(1) Each tenant, who for the 180 days preceding a notice of intended conversion has been a residential tenant of the existing improvements, shall have the right of first refusal to purchase the unit in which he or she resides on the date of the notice, under the following terms and conditions:

(a) Within 90 days following the written notice of the intended conversion, the developer shall deliver to the tenant the following purchase materials: an offer to sell stating the price and terms of purchase, the economic information required by s. 719.614, and the disclosure documents required by ss. 719.503 and 719.504. Failure by the developer to deliver such purchase materials within 90 days following the written notice of the intended conversion shall automatically extend the rental agreement, any extension of the rental agreement

provided for in s. 719.606, or any other extension of the rental agreement. The extension shall be for that number of days in excess of 90 days that has elapsed from the date of the written notice of the intended conversion to the date when the purchase materials are delivered.

(b) The tenant shall have the right of first refusal to purchase the unit for a period of not less than 45 days after mailing or personal delivery of the purchase materials.

(c) If, after any right of first refusal has expired, the developer offers the unit at a price lower than that offered to the tenant, the developer shall in writing notify the tenant prior to the publication of the offer. The tenant shall have the right of first refusal at the lower price for a period of not less than an additional 10 days after the date of the notice. Thereafter, the tenant shall have no additional right of first refusal. As used in this paragraph, "offer" includes any solicitation to the general public by means of newspaper advertisement, radio, television, or written or printed sales literature or price list but shall not include a transaction involving the sale of more than one unit to one purchaser.

(2) Prior to closing on the sale of the unit, a tenant alleging a developer's violation of paragraph (1)(c) may bring an action for equitable or other relief, including specific performance. Subsequent to closing, the tenant's sole remedy for such a violation shall be damages. In addition to any damages otherwise recoverable by law, the tenant shall be entitled to an amount equal to the difference between the price last offered in writing to the tenant pursuant to this section and the price at which the unit was sold to a third party, plus court costs and attorney's fees.

(3) It is against the public policy of this state for any developer to seek to enforce any provision of any contract which purports to waive the right of a purchasing tenant to bring an action for specific performance.

(4) A tenant's right of first refusal terminates upon:

(a) The termination of the rental agreement and all extensions thereof; or

(b) Waiver of the right in writing by the tenant, if the waiver is executed subsequent to the date of the notice of intended conversion. A tenant who waives the right of first refusal waives the right to receive the purchase materials; or

(c) The running of the tenant's 45-day right of first refusal and the additional 10-day period provided for by paragraph (1)(c), if applicable.

History.—s. 7, ch. 80-3; s. 480, ch. 81-259; s. 40, ch. 86-175; s. 890, ch. 97-102.

**719.614 Economic information to be provided.**—The developer shall distribute to tenants having a right of first refusal, if any:

(1) Information in summary form regarding mortgage financing; estimated down payment; alternative financing and down payments; monthly payments of principal, interest, and real estate taxes; and federal income tax benefits.

(2) Any other information which the division publishes and by rule determines will assist tenants in making a decision and which the division makes available to the developer.

History.—s. 7, ch. 80-3; s. 16, ch. 85-60; s. 19, ch. 94-350.

**719.616 Disclosure of condition of building and estimated replacement costs.**—

(1) Each developer of a residential cooperative created by converting existing, previously occupied improvements to such form of ownership shall disclose the condition of the improvements and the condition of certain components and their current estimated replacement costs.

(2) The following information shall be stated concerning the improvements:

(a) The date and type of construction.

(b) The prior use.

(c) Whether there is termite damage or infestation and whether the termite damage or infestation, if any, has been properly treated. The statement shall be substantiated by including, as an exhibit, an inspection report by a certified pest control operator.

(3)(a) Disclosure of condition shall be made for each of the following components that the existing improvements may include:

1. Roof.
2. Structure.
3. Fireproofing and fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.

(b) For each component, the following information shall be disclosed and substantiated by attaching a copy of a certificate under seal of an architect or engineer authorized to practice in this state:

1. The age of the component.
2. The estimated remaining useful life of the component.
3. The estimated current replacement cost of the component, expressed:
  - a. As a total amount, and
  - b. As a per unit amount, based upon each unit's proportional share of the common expenses.
4. The structural and functional soundness of the component.

History.—s. 7, ch. 80-3; s. 41, ch. 86-175; s. 20, ch. 94-350.

**719.618 Converter reserve accounts; warranties.—**

(1) When existing improvements are converted to ownership as a residential cooperative, the developer shall establish reserve accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the reserve accounts in amounts calculated as follows:

(a)1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the

numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

Roof Type	Numerator	Denominator
a. Built-up roof without insulation	4	5
b. Built-up roof with insulation	4	5
c. Cement tile roof	45	50
d. Asphalt shingle roof	14	15
e. Copper roof		
f. Wood shingle roof	9	10
g. All other types	18	20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years from the later of:

1. 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
2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be measured from the date of replacement or renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

1. The date of the replacement or renewal; and
2. That the replacement or renewal at least met the requirements of the then-applicable building code.

(2)(a) The developer shall fund the reserve account required by subsection (1) on a pro rata basis upon the sale of each unit. The developer shall deposit in the reserve account not less than a percentage of the total amount to be deposited in the reserve account equal to the percentage of ownership of the common elements allocable to the unit sold. When a developer deposits amounts in excess of the minimum reserve account funding, later deposits may be reduced to the extent of the excess funding. For the purposes of this subsection, a unit is considered sold when a fee interest in the unit is transferred to a third party or the unit is leased for a period in excess of 5 years.

(b) When an association makes an expenditure of reserve account funds before the developer has sold all units, the developer shall make a deposit in the reserve account. Such deposit shall be at least equal to that portion of the expenditure which would be charged against the reserve account deposit that would have been made for any such unit had the unit been sold. Such deposit may be reduced to the extent the developer has funded the reserve account in excess of the minimum reserve account funding required by this subsection. This paragraph applies only when the developer has funded reserve accounts as provided by paragraph (a).

(3) The use of reserve account funds is limited as follows:

(a) Reserve account funds may be spent prior to the assumption of control of the association by unit owners other than the developer; and

(b) Reserve account funds may be expended only for repair or replacement of the specific components for which the funds were deposited, unless, after assumption of control of the association by unit owners other than the developer, a determination is made by a three-fourths vote of all unit owners to expend the funds for other purposes.

(4) The developer shall establish the reserve account in the name of the association at a bank, savings and loan association, or trust company located in this state.

(5) A developer may establish and fund additional reserve accounts.

(6) A developer makes no implied warranties when existing improvements are converted to ownership as a residential cooperative and reserve accounts are funded in accordance with this section. As an alternative to establishing such reserve accounts, or when a developer fails to establish the reserve accounts in accordance with this section, the developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended as to the roof and structural components of the improvements; as to fireproofing and fire protection systems; and as to mechanical, electrical, and plumbing elements serving the improvements, except mechanical elements serving only one unit. The warranty shall be for a period beginning with the notice of intended conversion and continuing for 3 years thereafter, or the recording of the declaration to cooperative and continuing for 3 years thereafter, or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(a) The warranty provided for in this section is conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(b) The warranty shall inure to the benefit of each owner and successor owner.

(c) Existing improvements converted to residential cooperative may be covered by an insured warranty program underwritten by an insurance company authorized to do business in this state, if such warranty program meets the minimum requirements of this chapter. To the degree that the warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

(7) When a developer desires to post a surety bond, the developer shall, after notification to the buyer, acquire a surety bond issued by a company licensed to do business in this state, if such a bond is readily available in the open market, in an amount which would be equal to the total amount of all reserve accounts required under subsection (1), payable to the association.

(8) The amended provisions of this section do not affect a conversion of existing improvements when a developer has filed a notice of intended conversion and the documents required by s. 719.503 or s. 719.504, as applicable, with the division prior to October 1, 1994, provided:

(a) The documents are proper for filing purposes.

(b) The developer, not later than 6 months after such filing:

1. Creates a cooperative for such filing in accordance with part I.

2. Gives a notice of intended conversion.

History.—s. 7, ch. 80-3; s. 24, ch. 84-368; s. 42, ch. 86-175; s. 21, ch. 94-350; s. 76, ch. 99-3.

**719.62 Prohibition of discrimination against nonpurchasing tenants.**—When existing improvements are converted to cooperative, tenants who have not purchased a unit in the cooperative being created shall, during the remaining term of the rental agreement and any

extension thereof, be entitled to the same rights, privileges, and services that were enjoyed by all tenants prior to the date of the written notice of conversion and that are granted, offered, or provided to purchasers.

History.—s. 7, ch. 80-3.

**719.621 Rulemaking authority.**—The division may adopt rules to administer and ensure compliance with a developer’s obligations with respect to cooperative conversions concerning the filing and noticing of intended conversions, rental agreement extensions, rights of first refusal, and disclosures and postpurchase protections.

History.—s. 16, ch. 98-322.

**719.622 Saving clause.**—

(1) All notices of intended conversion given subsequent to the effective date of this part shall be subject to the requirements of ss. 719.606, 719.608, and 719.61. Tenants given such notices shall have a right of first refusal as provided by s. 719.612.

(2) The disclosure provided by s. 719.616 and required by ss. 719.503 and 719.504 to be furnished to each prospective buyer or lessee for a period of more than 5 years shall be provided to any such person who has not, prior to May 1, 1980, been furnished the documents, prospectus, or offering circular required by ss. 719.503 and 719.504.

(3) The provisions of s. 719.618 do not affect a conversion of existing improvements when a developer has filed with the division prior to May 1, 1980, provided:

(a) The documents are proper for filing purposes; and

(b) The developer, not later than 6 months after such filing, gives a notice of intended conversion.

History.—s. 14, ch. 80-3.

**Department  
of  
Business  
and  
Professional  
Regulation**

**CHAPTERS 61B-75 Through 79,  
FLORIDA ADMINISTRATIVE CODE**

*Division of Florida  
Condominiums,  
Timeshares, and  
Mobile Homes*

*Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida  
32399-1030*



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## **CHAPTER 61B-75 COOPERATIVES**

### **61B-75.002 Electronic Transmission of Notices.**

(1) Definition. "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 a 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 unit owner of record or by a person holding a power of attorney executed by the shareholder of record. Consent or revocation of consent may be delivered to the association by 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 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 719.106(1)(d)1., Florida Statutes, 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 shall be deemed 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 (3)(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, unless removed in accordance with Section 719.104(2)(a)5., Florida Statutes. Electronic records may be maintained in electronic or paper format, but must be available for inspection and copying upon unit owner request.

*Specific Authority 719.106(1)(d)1., 719.501(1)(f) FS. Law Implemented 719.104(2)(a)5., 719.106(1)(c), (d), (d)1., 3., (e)1., 719.106(2)(c) FS. History-New 10-12-06.*

#### **61B-75.004 Audio or Video Recording of Meetings.**

Any unit owner is entitled to tape record or videotape meetings of the board of administration, committee meetings, or unit owner meetings, subject to the following restrictions:

(1) Rules: Associations may adopt rules, which are consistent with this rule, regarding the placement and use of audio and video equipment by unit owners who exercise their rights to tape association meetings. Association rules for this purpose must be adopted in accordance with the procedures for adopting association rules established by the cooperative documents.

(2) Placement: Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting.

(3) Use: Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording.

*Specific Authority 719.106(1)(c), (d)5. FS. Law Implemented 719.106(1)(c), (d)5. FS. History-New 8-3-06.*

#### **61B-75.005 Regular Elections; Vacancies Caused by Expiration of Term, Resignations, Death.**

(1)(a) Unless otherwise provided herein, the provisions of this rule apply to all regular and runoff elections conducted by a cooperative association, regardless of any provision to the contrary contained in the cooperative documents.

(b) Except as otherwise provided by Rules 61B-75.007 and 61B-75.008, Florida Administrative Code, 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-75.006 through 61B-75.008, Florida Administrative Code.

(c) In order to adopt different voting and election procedures in its bylaws pursuant to Section 719.106(1)(f)5., F.S., 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 719.106(1)(f)5., 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 subsection (13) of this rule 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 or delivered not less than 60 days before a scheduled election, must contain the name and correct mailing address of the association.

(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. 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 719.106(1)(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 second notice and accompanying documents shall not contain any communication by the board which 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. No ballot shall indicate which candidate or 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 cooperative 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 cooperative 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 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) Unless otherwise provided in the cooperative documents, any vacancy occurring on the board prior to the expiration of a term, except in the case of a vacancy caused by recall, may be

filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may in its discretion hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of Section 719.106(1)(d)1., Florida Statutes, and this rule. A board member appointed or elected pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled.

*Specific Authority 719.106(1)(d)1. FS. Law Implemented 719.106(1)(d)1. FS. History—New 12-29-92, Formerly 7D-75.005, Amended 8-24-94, 11-15-95, 2-19-01.*

**61B-75.006 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 719.301, Florida Statutes, 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 units owners are entitled to representation on a board of administration pursuant to Section 719.301, Florida Statutes, 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 rather 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 cooperative documents provide 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 719.106(1)(f), Florida Statutes, that may recall or remove such board member or members.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.106(1)(f) FS. History—New 12-29-92, Formerly 7D-75.006, Amended 11-15-95.*

**61B-75.007 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 cooperative 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 “cooperative documents” means the recorded articles of incorporation and bylaws of the association, and any amendments to each which are in effect, and any other documents establishing the cooperative.

(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 ten percent of the voting interests. The signature list shall:

1. State that the purpose for obtaining signatures is to call a special 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 special 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 recall 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 recall meeting, if the association is incorporated, unless a different time for notice of the meeting is provided in the cooperative documents. If the association is unincorporated, notice shall be mailed or delivered according to the time requirements stated in the cooperative 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 cooperative 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 the notice of the recall meeting is mailed or delivered, unless otherwise provided in the cooperative 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, record the specific seat the person 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 719.301, Florida Statutes and Rule 61B-75.006, Florida Administrative Code, 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 719.106(1)(d)1., Florida Statutes and Rule 61B-75.005, Florida Administrative Code, 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 719.301, Florida Statutes, and Rule 61B-75.005, Florida Administrative Code, 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 (3)(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 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 719.301, Florida Statutes, and Rule 61B-75.006, Florida Administrative Code, regardless of whether the authority to fill vacancies in this manner is provided in the cooperative 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 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 719.106(1)(d)1., Florida Statutes and Rule 61B-75.005, Florida Administrative Code, 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, Florida Administrative Code, 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 any replacement board member 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)(k), 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 719.501(1)(f) FS. Law Implemented 719.106(1)(f) FS. History—New 12-29-92, Formerly 7D-75.007, Amended 8-24-94, 11-15-95, 2-19-01.*

### **61B-75.008 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

board 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;

(d) Provide a space for the person executing 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 cooperative 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 voting interests executing the written agreement;

(g) The written agreement or a copy shall be served on the board by certified mail or by personal service. 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(c), Florida Rules of Civil Procedure; and,

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

(2) Substantial compliance with the provisions of section (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 member or members of the board 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 719.301, Florida Statutes and Rule 61B-75.006, Florida Administrative Code, regardless of whether the authority to fill the vacancies in this manner is provided in the cooperative 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 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 719.301, Florida Statutes, and Rule 61B-75.005, Florida Administrative Code, 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, Florida Administrative Code, 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 the 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 any replacement board member shall expire in accordance with the provisions of subparagraph (3)(a)3. of this rule.

(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:

(a) The 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 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 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. 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 719.501(1)(f) FS. Law Implemented 719.106(1)(f) FS. History—New 12-29-92, Formerly 7D-75.008, Amended 11-15-95, 2-19-01.*

## **CHAPTER 61B-76**

### **ACCOUNTING AND FINANCIAL REPORTING REQUIREMENTS; BUDGETS, GUARANTEES, AND RESERVES; FINANCIAL STATEMENTS AND REPORTS**

#### **61B-76.001 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 719.104(2)(a)9., Florida Statutes, and any other records that identify, measure, record, and/or communicate financial information whether the records are maintained electronically or otherwise.

(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 719.106(1)(j)2., Florida Statutes, and any other funds restricted as to use by the cooperative documents or the cooperative association. Funds that are not restricted as to use by Section 719.106(1)(j)2., Florida Statutes, the cooperative 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 719.301, Florida Statutes.

*Specific Authority 719.501(1)(f), (j) FS. Law Implemented 719.104(2)(a)9., 719.106(1)(j)2., 719.501(1)(j) FS. History—New 12-20-95.*

### **61B-76.003 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 in the proportions or percentages of sharing common expenses provided in the cooperative documents 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 719.504(20)(c), Florida Statutes. 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 719.106(1)(j), F.S., 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 719.618, F.S., if applicable.

(f) If the association maintains a pooled account for reserves required by Section 719.106(1)(j), F.S., 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.

*Specific Authority 719.501(1)(f), (j) FS. Law Implemented 719.106(1)(e), (j), 719.107(2), 719.501(1)(j) FS. History—New 12-20-95, Amended 7-29-08.*

### **61B-76.004 Guarantees of Common Expenses Under Section 719.108(8)(a)2., F.S.**

(1) Establishment of the guarantee. If a guarantee is not included in the purchase contracts,

cooperative documents, 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 cooperative including the unit owners in different phases of phase cooperatives;

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

(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 cooperative documents. 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 proportion or percentage of sharing common expenses.

(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 are not sufficient to provide payment, on a timely basis, of all common expenses, including the full funding of reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due; and

(b) No revenues or capital contributions other than regular periodic assessments, and cash payments by the guarantor as provided in subsection (4)(a) of this rule, shall be utilized for the payment of common expenses during the guarantee period. This restriction includes items such as interest revenue, vending revenue, laundry revenue, other non-assessment revenue and capital contributions.

(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; less

(b) The total regular periodic assessments charged to 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.

*Specific Authority 719.501(1)(f), (j) FS. Law Implemented 719.108(8), 719.501(1)(j) FS. History–New 12-20-95.*

#### **61B-76.005 Reserves.**

(1) Reserves required by statute. Reserves, required by Section 719.106(1)(j), F.S., 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 719.106(1)(j), F.S., 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 719.106(1)(j), F.S., 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 component shall be the sum of the following calculation:

1. The total amount necessary, if any, to bring a negative account balance to zero; and

2. The total estimated deferred maintenance expense or total 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 719.106(1)(j), F.S., 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 719.618, F.S., 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 719.618, F.S.; 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. 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 719.106(1)(j)2., F.S., shall be effective for only one annual budget.

(9) Developer Voting Restrictions. Prior to turnover the developer may cast votes to waive or reduce reserves during the association's first two fiscal years only, beginning with the date of the incorporation of the cooperative association. During any period that the developer is precluded from casting its votes to waive or reduce the funding of reserves, the approval of a majority of the non-developer voting interest at a duly called meeting of the association shall be required in order to waive or reduce the funding of reserves.

*Specific Authority 719.501(1)(f), (j) FS. Law Implemented 719.106(1)(j), 719.501(1)(j), 719.618(1) FS. History—New 12-20-95, Amended 1-19-97, 7-29-08.*

#### **61B-76.006 Financial Reporting Requirements.**

(1) Basis of accounting. The financial statements required by this rule, and Section 719.301(4), Florida Statutes, as well as financial statements voluntarily prepared in lieu of a financial report as provided in Section 719.104(4), Florida Statutes, 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, Florida Administrative Code.

(2) Components. The financial statements required by Sections 719.104(4)(b) and 719.301(4)(c), Florida Statutes, 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, direct method; and
- (f) Notes to Financial Statements.

(3) Disclosure requirements. The financial statements required by Sections 719.104(4)(b) and 719.301(4)(c), Florida Statutes, 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 manner by which reserve items were estimated, the date the estimates were last made, the cooperative association's policies for allocating reserve fund interest, and whether reserves have been waived during the period covered by the financial statements; and,

6. If the developer has established converter reserves pursuant to Section 719.618(1), Florida Statutes, 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 719.108(9), Florida Statutes, and the amount of each special assessment and the disposition of the funds collected; and

(d) If a guarantee pursuant to Section 719.108(8), Florida Statutes, 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 the developer's payments pursuant to the guarantee; and

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

(4) Developer assessments. All financial reports and financial statements required by Chapter 719, Florida Statutes, shall disclose the assessment revenues from the developer separately from that of the non-developer unit owners.

(5) Financial reports required by Section 719.104(4)(a), Florida Statutes. The financial report required by Section 719.104(4)(a), Florida Statutes, shall meet the following requirements:

(a) The report shall be prepared on a cash basis;

(b) The report shall include the receipts and expenditures listed in Section 719.104(4)(a), Florida Statutes; and

(c) The report shall contain the reserve disclosures required by Rule 61B-76.006(3)(a), Florida Administrative Code.

(6) Timing.

(a) Financial reports prepared pursuant to Section 719.104(4), Florida Statutes, as well as financial statements voluntarily prepared in lieu of a financial report as provided in Section 719.104(4), Florida Statutes, shall be mailed or delivered by the association to the unit owners within 60 days following the end of the fiscal or calendar year to which the statements relate or annually on such date as is otherwise provided in the association bylaws.

(b) Financial statements required by Rule 61B-76.006(8), Florida Administrative Code, shall be mailed or delivered by the association to the unit owners within 90 days following the end of the fiscal or calendar year to which the statements relate or annually on such date as is otherwise provided in the association bylaws.

(c) Financial statements required by Section 719.301(4)(c), Florida Statutes, shall be delivered by the developer to the association not more than 90 days after the date of the meeting at which the non-developer unit owners first elected a majority of the board of administration.

(7) Financial statements voluntarily prepared by the association in lieu of a financial report as provided in Section 719.104(4), Florida Statutes, may either be compiled, reviewed or audited. Financial statements required by Rule 61B-76.006(8), Florida Administrative Code, shall be compiled, reviewed or audited as provided by that rule.

(8) Financial statements prepared in lieu of financial reports. Rather than providing the financial report specified in Section 719.104(4)(a), Florida Statutes, associations operating more than 50 cooperative units and having annual revenues of more than \$100,000.00 shall prepare and distribute to the unit owners a complete set of association financial statements meeting the requirements of this rule, unless this requirement is waived according to Section 719.104(4)(b), Florida Statutes. The financial statements shall be compiled, reviewed, or audited depending on the total amount of annual revenues earned by the association as follows:

(a) Associations having annual revenues in excess of \$100,000.00 but less than \$200,000.00 shall, at a minimum, prepare compiled financial statements;

(b) Associations having annual revenues of at least \$200,000.00 but less than \$400,000.00 shall, at a minimum prepare reviewed financial statements; and

(c) Associations having annual revenues of \$400,000.00 or more shall prepare audited financial statements.

(9) Waiver of reporting requirements. The waiver of the requirement to provide compiled, reviewed, or audited financial statements is valid for one year only, and includes any vote to modify the association's obligations under this rule by allowing it to provide reviewed or compiled financial statements rather than audited financial statements or to provide compiled financial statements rather than reviewed financial statements.

(a) If the requirement for audited, reviewed, or compiled financial statements is waived the minimum report required shall be a financial report complying with Section 719.104(4)(a), Florida Statutes, and Rule 61B-76.006(5), Florida Administrative Code;

(b) Prior to turnover the developer may cast votes to waive the audit requirement of subsection (8)(c) of this rule during the association's first two fiscal years only, beginning with the date of the incorporation of the association; and

(c) 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.

(10) Association not precluded from exceeding standards. Nothing herein precludes an association from exceeding the requirements of this rule by requiring that compiled, reviewed, or audited financial statements be prepared rather than a financial report of actual receipts and expenditures, or that financial statements be reviewed or audited rather than compiled, or be audited rather than reviewed.

*Specific Authority 719.501(1)(f), (j) FS. Law Implemented 719.104(4), 719.501(1)(j) FS. History—New 12-20-95, Amended 1-19-97.*

#### **61B-76.0062 Transition Financial Statements; Turnover Audit.**

(1) Period covered. The audit required by Section 719.301(4)(c), Florida Statutes, applies to all transfers of association control from developers to unit owners pursuant to Section 719.301(4), Florida Statutes. 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 719.301(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 that 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 719.108(8), 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 the developer's payments pursuant to the guarantee; and

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

*Specific Authority 719.501(1)(f), (j) FS. Law Implemented 719.301(4)(c), 719.501(1)(j) FS. History—New 12-20-95.*

## **CHAPTER 61B-77**

### **RESOLUTION GUIDELINES FOR COOPERATIVE DEVELOPERS**

#### **61B-77.001 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 719.501(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 719.103(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 719, 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 719, 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 719.301(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 719.501(1)(d), (f), and (k), F.S. This rule chapter does not preclude the division from imposing affirmative or corrective action pursuant to Section 719.501(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-77.001, 61B-77.002, and 61B-77.003, 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 719, F.S., or the administrative rules by an officer or association board member, pursuant to Section 719.501(1)(d)4., F.S. Such violations shall be strictly governed by the provisions of Section 719.501(1)(d)4., Florida Statutes. This rule chapter is not intended to cover, or be applied to violations of Chapter 719, F.S. or the administrative rules by a unit owner controlled association. Such violations shall be strictly governed by the provisions of Chapter 61B-78, F.A.C.

*Specific Authority 719.501(1)(d)4., (f) FS. Law Implemented 719.501(1)(d)4., (k) FS. History—New 6-4-98.*

#### **61B-77.002 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 719.501(1)(d)4., (f) FS. Law Implemented 719.501(1)(d)4., (k) FS. History—New 6-4-98.*

#### **61B-77.003 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 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 a developer. 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 719, 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-77.003, 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-77.003, 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 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 cooperative 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 notification 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 cooperative 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 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 719, 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 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 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 following are identified as minor violations:

Category	Statute or Rule Cite	Description of Conduct/Violation
Board	719.104(8)(b), FS.	Improper use of secret ballot, or use of proxy, by board members at a board meeting.
Board	719.106(1)(a)2., FS.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
Board	719.106(1)(b)1., FS.	Improper quorum at unit owner meeting.
Board	719.106(1)(b)2., FS.	Failure of proxy to contain required elements.
Board	719.106(1)(c), FS.	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; failure to permit a unit owner to tape record or video tape meeting; failure to allow unit owners to attend meeting.
Board	719.106(1)(d), FS.	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	719.106(1)(d)2., FS.	Failure to hold a unit owner meeting to obtain unit owners' approval when written agreements are not authorized.
Board	719.106(1)(h), FS.	Failure of amendment to bylaws to contain full text showing underlined or language; etc.
Board	719.106(1)(i), FS.	Failure to have the authority in the cooperative documents when levying transfer fees or security deposits.
Board	719.108(3), FS.	Failure to have the authority in the cooperative documents when levying late fees.
Board	719.3026(1), FS.	Failure to obtain competitive bids on contracts that exceed five percent of the association's budget.
Board	719.303(3), FS.	Failure to have the authority in the cooperative documents when levying fines. Failure to provide proper notice of fines.
Board	61B-75.005(13), FAC.	Failure to fill vacancy properly.
Budgets	719.106(1)(e)1., FS.	Failure to timely notice budget meeting. Failure to timely deliver proposed budget.
Budgets	719.106(1)(e)2., FS.	Failure of board to call a unit owners' meeting to consider alternate budget.
Budgets	719.106(1)(j)1., FS.	Failure to include applicable line items in proposed budget.
Budgets	719.504(20), FS.	
Budgets	61B-76.003(1)(b), FAC.	Failure to disclose the beginning and ending dates of the period covered by the proposed budget.
Budgets	61B-76.003(1)(c), FAC.	Failure to disclose periodic assessments for each unit in proposed budget.
Budgets	61B-76.003(1)(e), (f), FAC.	Failure to provide for funding of one or more



Elections	61B-76.005(1), FAC. 719.106(1)(d)1., FS.	reserve fund categories in the proposed budget. Improper nomination procedures in election.
Elections	61B-75.005(3), FAC 719.106(1)(d)1., FS.	Including a candidate who did not provide timely notice of candidacy.
Elections	61B-75.005(5), FAC. 61B-75.005(6), FAC.	Failure to provide candidate a receipt for written notice of intent to be a candidate.
Elections	61B-75.005(8), (10), FAC.	Counting ballots not cast in inner and outer envelopes. Failure to provide space for name and signature on outer envelope.
Elections	61B-75.005(10)(c), FAC.	Failure to timely hold runoff election.
Records	719.104(2)(a)2., FS.	Failure to maintain the cooperative documents.
Records	719.104(2)(a)5., FS.	Failure to maintain a current unit owner roster. Failure of roster to include all elements.
Records	719.104(2)(a)12., FS. 719.104(2)(c), FS.	Failure to maintain a copy of the question and answer sheet.
Records	719.104(2)(a)13., FS.	Failure to maintain other association records related to the operation of the association.
Records	719.104(2)(b), (c), FS.	Failure to provide access to records.
Records	719.104(8)(b), FS.	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	61B-76.003(3), FAC.	Failure of budget meeting minutes to reflect adoption of the proposed budget.
Reporting	719.104(4)(a), FS.	Failure to timely provide the annual financial report.
Reporting	61B-76.006(6)(a), FAC. 61B-76.006(3)(a)5., FAC.	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-76.006(3)(b), (c), FAC.	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-76.006(4), FAC.	Failure to show developer assessments separately from non-developer owners in the year-end financial statements or annual financial report.
Reporting	61B-76.006(5)(c), FAC.	Failure to include the required reserve fund disclosures in the annual financial report.
Reporting	61B-76.0062(2)(b), FAC.	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	719.104(2)(a)9., FS.	Insufficient detail in the accounting records.	2
Records		Failure to maintain sufficient accounting records.	
Assessing	719.106(1)(g), FS.	Failure to assess at sufficient amounts.	1
Assessing	719.107(2), FS.	Failure to assess based upon proportionate share or as stated in the cooperative documents.	2
Assessing	719.108(1), (8), FS.	Failure by developer to pay assessments or to pay in timely manner.	2
Board	719.106, FS.	Failure to follow method of amendment.	2
Board	719.106(1)(a)1., FS.	Improper compensation of officers or directors.	1
Board	719.106(1)(d), FS.	Failure to hold annual meeting.	2
Board	719.106(1)(k), FS.	Failure to maintain adequate fidelity bonding for all persons who control or distribute association funds.	2
Board	719.501(2)(a), FS.	Failure to pay annual fees to the division.	2
Budgets	719.106(1)(e), FS.	Failure to propose/adopt budget for a given year.	2
Budgets	61B-76.003(1)(e), (f), FAC.	Failure to include reserve schedule in the proposed budget.	1
Commingle	719.104(7), FS.	Commingling association funds with non-association funds.	2
Commingle	719.104(7), FS. 61B-76.005(2), FAC.	Commingling reserve funds with operating funds.	1
Common Expenses	719.107(1), FS.	Using association funds for other than common expenses.	2
Converter Reserves	719.618(1), FS.	Failure to calculate converter reserves properly.	2
Converter Reserves	719.618(2)(a), FS.	Failure to fund converter reserves in a timely manner.	2

Converter Reserves	719.618(3), FS.	Improper use of converter reserves.	1
Converter Reserves	61B-76.003(1)(e)5., FAC. 61B-76.006(3)(a)6., FAC. 61B-76.006(5)(c), FAC.	Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report.	1
Development	719.202(1), FS.	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	719.202(1) or (6), FS.	Failure to establish an escrow account or place funds therein.	3
Development	719.301(1), (2), (4), FS.	Failure to transfer association control.	2
Development	719.403(1), (2), FS.	Failure to follow proper method to amend cooperative documents to alter phase development plan.	3
Development	719.403(1), FS.	Continuing to develop phases after expiration of phase deadline.	3
Development	719.502(2)(a), FS.	Accepting deposits prior to filing reservation and escrow agreements with the division.	3
Development	719.502(2)(a), FS.	Offering sales contracts prior to initial filing with division and acceptance for form.	3
Development	61B-79.001(2)(a), (3), FAC. 719.502(3), FS.	Offering sales contracts on units within a phase prior to filing phase documents with the division.	3
Development	719.502(3), FS.	Failure to file amendments to documents previously filed with the division.	1
Development	61B-79.003(2), FAC. 719.503(1)(a), FS. 61B-79.004(9), FAC.	Using sales contracts without required disclosures.	3
Development	719.503(1)(b), FS.	Failure to provide documents to purchasers.	3
Development	61B-79.001(3), FAC.	Closing on sales of units prior to filing with division and acceptance for content.	3
Elections	719.106(1)(d), FS. 719.301(1), (2), FS. 61B-75.005(2), FAC.	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	719.106(1)(d)1., FS. 61B-75.005(4), FAC.	Failure to provide, or timely provide, first notice of election.	1

Elections	719.106(1)(d)1., FS. 61B-75.005(7), (8), FAC.	Failure to provide, or timely provide, second notice of election or omitting materials such as ballots, envelopes, and candidate information sheets.	1
Elections	719.106(1)(d)1., FS.	Failure to use ballots or voting machines.	2
Elections	719.106(1)(d)1., FS. 61B-75.005(9), FAC.	Failure to include all timely submitted names of eligible candidates on the ballot.	1
Elections	61B-75.005(10)(a), (b), FAC.	Counting ineligible ballots. Not counting ballots in the presence of unit owners.	1
Elections	61B-75.005(10)(c), FAC.	Failure to hold runoff election.	2
Final Order	719.501(1)(d)4., FS.	Failure to comply with final order of the division.	2
Guarantee	719.108(8), FS. 61B-76.004(1), FAC	Guarantee not properly established.	2
Guarantee	719.108(8)(a), FS. 61B-76.004(3), FAC	Improperly assessing unit owners.	2
Guarantee	719.108(8)(a), FS. 61B-76.004(5), FAC	Guarantee deficit not funded	2
Guarantee	61B-76.004(2), FAC.	Guarantee period unclear/not specified, not properly extended.	2
Guarantee	61B-76.004(4)(a), FAC.	Not providing sufficient cash/resources to provide payment on a timely basis of all common expenses including full funding of reserves.	2
Guarantee	61B-76.004(4)(b), FAC. 61B-76.004(5), FAC.	Amount owed by the guarantor for the guarantee period not properly calculated.	2
Records	719.104(2)(a)10., FS.	Failure to maintain election materials for one year.	1
Records	719.104(2)(a)4., FS.	Failure to maintain minutes of meetings.	1
Records	719.104(2)(b), FS.	Failure to maintain records within Florida.	2
Records	719.301(4), FS.	Failure to deliver one or more association records upon transfer of association control.	2
Reporting	719.104(4)(a), FS.	Failure to provide the annual financial report.	2
Reporting	719.104(4)(b), FS. 61B-76.006(6)(b), FAC.	Failure to provide year-end financial statements in a timely manner.	1
Reporting	719.104(4)(b), FS. 61B-76.006(8), FAC.	Failure to provide year-end financial statements.	2
Reporting	719.104(4)(b), FS. 61B-76.006(9)(b), FAC.	Prior to turnover of control of the association, developer was included in vote to waive audit requirement after the first	2

		two years of operation.	
Reporting	719.301(4)(c), FS. 61B-76.006(6)(c), FAC.	Failure to provide turnover financial statements in a timely manner.	1
Reporting	719.301(4)(c), FS. 61B-76.0062(1), FAC.	Failure to provide turnover financial statements. Turnover financial statements not audited. Failure of turnover financial statements to cover entire period.	2
Reporting	61B-76.006(1), FAC.	Failure to prepare year-end financial statements using fund accounting. Failure to prepare year-end financial statements on accrual basis.	1
Reporting	61B-76.006(1), FAC.	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-76.006(2), FAC.	Failure to include one or more components of the year-end financial statements (incomplete).	1
Reporting	61B-76.006(3)(a)1.-4., FAC. 61B-76.006(5)(c), FAC.	Failure to make significant reserve fund disclosures in the year-end financial statements or annual financial report.	1
Reporting	61B-76.006(3)(d), FAC. 61B-76.0062(2)(d), FAC.	Guarantee disclosures incomplete in, or missing from, turnover financial statements	1
Reporting	61B-76.006(5)(a), (b), FAC.	or year-end financial statements. 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.	1
Reporting	61B-76.006(8), FAC.	Providing lower level of reporting for year-end financial statements than required.	2
Reporting	61B-76.0062(2), FAC.	Failure of turnover financial statements to present revenues and expenses for each fiscal year and interim period.	2
Reporting	61B-76.0062(2)(a)-(c), FAC.	Turnover financial statements omit disclosure of common expenses paid by the developer.	2
Reserves	719.106(1)(j)2., FS. 61B-76.005(3), FAC	Failure to calculate reserve funds properly.	1
Reserves	719.106(1)(j)2., FS.	Failure to fund reserves in a timely	1

		manner.	
Reserves	61B-76.005(6), FAC. 719.106(1)(j)2., FS.	Failure to fully fund reserves. Failure to follow proper method to waive or reduce reserve funding.	1
Reserves	61B-76.005(6), (8), FAC. 719.106(1)(j)2., FS. 61B-76.005(9), FAC.	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	719.106(1)(j)3., FS. 61B-76.005(7), FAC.	Failure to obtain unit owner approval prior to using reserve funds for other purposes.	2
Special Assessment	719.108(9), FS.	Failure to use special assessment funds for intended purposes.	1

*Specific Authority 719.501(1)(f), 719.501(1)(d)4. FS. Law Implemented 719.501(1)(d)4., 719.501(1)(k) FS. History—New 6-4-98.*

**CHAPTER 61B-78  
ASSOCIATION FEE AND MAILING ADDRESS; COOPERATIVE RESOLUTION  
GUIDELINES FOR UNIT OWNER CONTROLLED ASSOCIATIONS**

**61B-78.001 Association Fee; Mailing Address; Retrofitting.**

- (1) The annual fee shall be paid as follows:
  - (a) The division shall mail to the association an annual fee statement. However, the failure to receive the annual fee statement shall not relieve the association of the obligation to pay the fee.
  - (b) The check or money order in payment of the annual fees shall be accompanied by the annual fee statement.
  - (c) The postmark date shall constitute the date of payment.
  - (d) If the documents are amended during the year to alter the number of units, the association shall pay the annual fee on the highest number of units during the year.
- (2) The association shall, within 30 days of a change of address, notify the division in writing of its new mailing address.
- (3) Each association that votes to forego retrofitting of the common areas or units of a residential cooperative with a fire sprinkler system or other engineered life safety system or handrails and guardrails by the affirmative vote of two-thirds of all voting interests in the affected cooperative, shall report the voting results and certification information for each affected cooperative to the division on DBPR Form CP 6000-1, RETROFITTING REPORT FOR COOPERATIVES, 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 cooperative, the association shall report the per-unit cost of such work to the division using DBPR Form CP 6000-1, RETROFITTING REPORT FOR COOPERATIVES. The division shall prepare separate reports of information obtained from associations relating to the waiver of a fire sprinkler system or 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 CP 6000-1, RETROFITTING

REPORT FOR COOPERATIVES must be filed with the division within 60 days of recordation of the retrofitting waiver certificate in the public records where the cooperative is located or upon commencement of the retrofitting project.

(4)(a) As provided for by Section 719.1055, F.S., 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 consent may be utilized by an association regardless of whether the cooperative documents specifically permit voting by written consent.

(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 cooperative, in order for a waiver to be effective as to a particular cooperative and the buildings located within that cooperative, two-thirds of the total voting interests of that cooperative must affirmatively vote in favor of waiving the retrofitting requirements.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.1055(5), (6), 719.501(1), (2) FS. History—New 2-17-98, Amended 1-28-04, 11-30-04.*

#### **61B-78.002 Definitions and Purpose.**

(1) Definitions. For the purposes of Rules 61B-78.002, 61B-78.003, and 61B-78.004, 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 719.501(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 719.103(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 719, 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 719, 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 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 719, 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 719.501(1)(d), (f), and (k), F.S. These rules do not preclude the division from imposing affirmative or corrective action pursuant to Section 719.501(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-78.002, 61B-78.003, and 61B-78.004, 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 719, F.S., or the administrative rules by an officer or association board member, pursuant to Section 719.501(1)(d)4., F.S. Such violations shall be strictly governed by the provisions of Section 719.501(1)(d)4., F.S. These rules are not intended to cover, or be applied to, violations of Chapter 719, F.S., or the administrative rules by a cooperative developer as defined by Section 719.103(13), F.S. Such violations shall be strictly governed by the provisions of Chapter 61B-77, F.A.C., and Section 719.301(5), F.S.

*Specific Authority 719.501(1)(d)4., (f) FS. Law Implemented 719.501(1)(d)4., (k) FS. History—New 6-4-98.*

### **61B-78.003 Educational Resolution.**

(1) The educational resolution process, as detailed in these rules, 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 719.501(1)(d)4., (f) FS. Law Implemented 719.501(1)(d)4., (k) FS. History—New 6-4-98.*

#### **61B-78.004 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 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 an association. 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 719, 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-78.004, 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-78.004, 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 disciplinary history of the association, including such action resulting in an enforcement resolution as detailed in Rule 61B-78.004, F.A.C., or Section 719.501, F.S.

5. The violation caused substantial harm, or has the potential to cause substantial harm, to cooperative 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-78.003, F.A.C., on the requirements of Chapter 719, 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 cooperative 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 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 719, 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 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 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	719.104(8)(b), F.S.	Improper use of secret ballot, or use of proxy, by board members at a board meeting.
Board	719.106(1)(a)2., F.S.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
Board	719.106(1)(b)1., F.S.	Improper quorum at unit owner meeting.
Board	719.106(1)(b)2., F.S.	Failure of proxy to contain required elements.
Board	719.106(1)(c), F.S.	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; failure to permit a unit owner to tape record or video tape meeting; failure to allow unit owners to attend meeting.
Board	719.106(1)(d), 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	719.106(1)(d)2., F.S.	Failure to hold a unit owner meeting to obtain unit owners’ approval when written agreements are

		not authorized.
Board	719.106(1)(h), F.S.	Failure of amendment to bylaws to contain full text showing underlined or language; etc.
Board	719.106(1)(i), F.S.	Failure to have the authority in the cooperative documents when levying transfer fees or security deposits.
Board	719.108(3), F.S.	Failure to have the authority in the cooperative documents when levying late fees.
Board	719.3026(1), F.S.	Failure to obtain competitive bids on contracts that exceed five percent of the association's budget.
Board	719.303(3), F.S.	Failure to have the authority in the cooperative documents when levying fines. Failure to provide proper notice of fines.
Board	61B-75.005(13), F.A.C.	Failure to fill vacancy properly.
Budgets	719.106(1)(e)1., F.S.	Failure to timely notice budget meeting. Failure to timely deliver proposed budget.
Budgets	719.106(1)(e)2., F.S.	Failure of board to call a unit owners' meeting to consider alternate budget.
Budgets	719.106(1)(j)1., F.S.	Failure to include applicable line items in proposed budget.
Budgets	61B-76.003(1)(b), F.A.C.	Failure to disclose the beginning and ending dates of the period covered by the proposed budget.
Budgets	61B-76.003(1)(c), F.A.C.	Failure to disclose periodic assessments for each unit type in proposed budget.
Budgets	61B-76.003(1)(e), (f), F.A.C.	Failure to provide for funding of one or more reserve fund categories in the proposed budget.
Elections	61B-76.005(1), F.A.C.	Improper nomination procedures in election.
Elections	719.106(1)(d)1., F.S.	
Elections	61B-75.005(3), FAC	
Elections	719.106(1)(d)1., F.S.	Including a candidate who did not provide timely notice of candidacy.
Elections	61B-75.005(5), F.A.C.	Failure to provide candidate a receipt for written notice of intent to be a candidate.
Elections	61B-75.005(6), F.A.C.	
Elections	61B-75.005(8), (10), 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-75.005(10)(c), F.A.C.	Failure to timely hold runoff election.
Records	719.104(2)(a)2., F.S.	Failure to maintain the cooperative documents.
Records	719.104(2)(a)5., F.S.	Failure to maintain a current unit owner roster. Failure of roster to include all elements.
Records	719.104(2)(a)12., F.S.	Failure to maintain a copy of the question and answer sheet.
Records	719.104(2)(c), F.S.	
Records	719.104(2)(a)13., F.S.	Failure to maintain other association records related to the operation of the association.
Records	719.104(2)(b), (c), F.S.	Failure to provide access to records.

Records	719.104(8)(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	61B-76.003(3), F.A.C.	Failure of budget meeting minutes to reflect adoption of the proposed budget.
Reporting	719.104(4)(a), F.S.	Failure to timely provide the annual financial report.
Reporting	61B-76.006(6)(a), F.A.C.	
Reporting	61B-76.006(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-76.006(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-76.006(5)(c), F.A.C.	Failure to include the required reserve fund disclosures in the annual financial report.

(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	719.104(2)(a)9., F.S.	Insufficient detail in the accounting records	2
Records		Failure to maintain sufficient accounting records.	
Assessing	719.106(1)(g), F.S.	Failure to assess at sufficient amounts.	1
Assessing	719.107(2), F.S.	Failure to assess based upon proportionate share or as stated in the cooperative documents.	2
Board	719.106, F.S.	Failure to follow method of amendment.	2
Board	719.106(1)(a)1., F.S.	Improper compensation of officers or directors.	1
Board	719.106(1)(d), F.S.	Failure to hold annual meeting.	2
Board	719.106(1)(k), F.S.	Failure to maintain adequate fidelity	2

		bonding for all persons who control or distribute association funds.	
Board	719.501(2)(a), F.S.	Failure to pay annual fees to the division.	2
Budgets	719.106(1)(e), F.S.	Failure to propose/adopt budget for a given year.	2
Budgets	61B-76.003(1)(e), (f), F.A.C.	Failure to include reserve schedule in the proposed budget.	1
Commingle	719.104(7), F.S.	Commingling association funds with non-association funds.	2
Commingle	719.104(7), F.S.	Commingling reserve funds with operating funds.	1
Common Expenses	61B-76.005(2), F.A.C.	Using association funds for other than common expenses.	2
Converter Reserves	719.107(1), F.S.		
Converter Reserves	719.618(3)(b), F.S.	Improper use of converter reserves.	1
Converter Reserves	61B-76.003(1)(e)5., F.A.C.	Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report.	1
	61B-76.006(3)(a)6., F.A.C.		
	61B-76.006(5)(c), F.A.C.		
Elections	719.106(1)(d), F.S.	Failure to hold election	2
	61B-75.005(2), FAC		
Elections	719.106(1)(d)1., F.S.	Failure to provide, or timely provide, first notice of election.	1
	61B-75.005(4), F.A.C.		
Elections	719.106(1)(d)1., F.S.	Failure to provide, or timely provide, second notice of election or omitting materials such as ballots, envelopes, and candidate information sheets.	1
	61B-75.005(7), (8), F.A.C.		
Elections	719.106(1)(d)1., F.S.	Failure to use ballots or voting machines.	2
Elections	719.106(1)(d)1., F.S.	Failure to include all timely submitted names of eligible candidates on the ballot.	1
	61B-75.005(9), F.A.C.		
Elections	61B-75.005(10)(a), (b), F.A.C.	Counting ineligible ballots. Not counting ballots in the presence of unit owners.	1
Elections	61B-75.005(10)(c), F.A.C.	Failure to hold runoff election.	2
Final Order	719.501(1)(d)4., F.S.	Failure to comply with final order of the division.	2
Records	719.104(2)(a)10., F.S.	Failure to maintain election materials for one year.	1
Records	719.104(2)(a)4., F.S.	Failure to maintain minutes of meetings.	1
Records	719.104(2)(b), F.S.	Failure to maintain records within Florida.	2

Reporting	719.104(4)(a), F.S.	Failure to provide the annual financial report.	2
Reporting	719.104(4)(b), F.S. 61B-76.006(6)(b), F.A.C.	Failure to provide year-end financial statements in a timely manner.	1
Reporting	719.104(4)(b), F.S. 61B-76.006(8), F.A.C.	Failure to provide year-end financial statements.	2
Reporting	61B-76.006(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-76.006(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-76.006(2), F.A.C.	Failure to include one or more components of the year-end financial statements (incomplete).	1
Reporting	61B-76.006(3)(a)1.-4., F.A.C. 61B-76.006(5)(c), F.A.C.	Failure to make significant reserve fund disclosures in the year-end financial statements or annual financial report.	1
Reporting	61B-76.006(5)(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.	1
Reporting	61B-76.006(8), F.A.C.	Providing lower level of reporting for year-end financial statements than required.	2
Reserves	719.106(1)(j)2., F.S.	Failure to calculate reserve funds properly.	1
Reserves	61B-76.005(3), FAC 719.106(1)(j)2., F.S.	Failure to fund reserves in a timely manner.	1
Reserves	61B-76.005(6), F.A.C. 719.106(1)(j)2., F.S.	Failure to fully fund reserves. Failure to follow proper method to waive or reduce reserve funding.	1
Reserves	61B-76.005(6), (8), F.A.C. 719.106(1)(j)3., F.S.	Failure to obtain unit owner approval	2

Special Assessment	61B-76.005(7), F.A.C. 719.108(9), F.S.	prior to using reserve funds for other purposes. Failure to use special assessment funds 1 for intended purposes.
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*Specific Authority 719.501(1)(f), 719.501(1)(d)4. FS. Law Implemented 719.501(1)(d)4., 719.501(1)(k) FS. History—New 6-4-98.*

**CHAPTER 61B-79  
FILINGS**

**61B-79.001 Developer, Filing.**

(1) In determining whether a developer has offered a contract for sale or lease pursuant to Section 719.502(2), F.S., it shall be relevant although not dispositive, whether and the extent to which the developer advertised, induced, solicited, or attempted to encourage any person to acquire an interest in a cooperative unit, either proposed or existing, if undertaken for gain or profit.

(2)(a) Except in the case of a reservation program, a developer of a residential cooperative shall file with the division one copy of each document required by Sections 719.503 and 719.504, F.S. The filing shall occur at the time the cooperative is created, or prior to any offering of a cooperative unit to the public, whichever occurs first. As to conversions from mobile home parks to cooperatives, the association must file with the division as provided in Section 723.079(10), F.S.

(b) A developer shall file, prior to offering, either pursuant to a reservation agreement or contract for purchase, proof of the developer’s ownership, contractual, or leasehold interest in the land upon which the cooperative is to be developed. 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 cooperative 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 receipt of a developer’s filing, the division will review the filing pursuant to these Rules. When a filing is determined to be in correct form pursuant to Rule 61B-79.002, F.A.C., offerings to the public may be made pursuant to the statute and these Rules. Until the developer prepares and delivers to a purchaser and to the division documents that comply with the Cooperative Act and these Rules and the division notifies the developer that the filing is proper or is presumed proper pursuant to Rule 61B-79.002, F.A.C., the developer shall not close on any contract for sale or contract for a lease period of more than five years.

(4) Each developer shall submit with its filing a completed Frequently Asked Questions and Answers Sheet substantially conforming to DBPR Form CO 6000-33-037, FREQUENTLY ASKED QUESTIONS AND ANSWERS SHEET FOR COOPERATIVE ASSOCIATIONS, incorporated herein by reference and effective 1/98. (This form, as well as all forms referenced in these Rules, may be obtained by writing the Division of Florida Condominiums, Timeshares, and Mobile Homes at the Department of Business and Professional Regulation, 1940 North Monroe Street, Northwood Centre, Tallahassee, Florida 32399-1033.) The answers to the questions may be summary in nature, in which case the answers shall refer to identified portions of the cooperative documents.

(5) Any document required to be delivered to a prospective buyer or lessee pursuant to Section



719.503 or 719.504, F.S., which describes the developer's (or other person's) right to retain control of the association shall recite the provisions of Sections 719.301(1)(a)-(e), F.S., regarding turnover of control of the association. This disclosure requirement shall not prohibit a developer from providing in the document for turnover to the unit owners other than the developer at an earlier point than the maximum time period set forth in Section 719.301, F.S.

(6)(a) Upon recording the cooperative documents as defined in Section 719.1035(1), F.S., or recording amendments adding phases as defined in Section 719.403(7), F.S., the developer or the association shall file the incorporation and recording information with the division within 30 working days on DBPR Form CP 6000-2, NOTICE OF COOPERATIVE INCORPORATION/RECORDING INFORMATION, incorporated in this rule and effective 6-10-07. Any person may request a copy of the form, as well as all forms referenced in these rules, by sending a written request to the Division of Florida Condominiums, Timeshares, and Mobile Homes at the Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1033.

(b)1. If the developer or the association has not already filed and the division has not reviewed and approved the recorded documents under subsections (2) and (3) of this rule and Sections 719.502, 719.503, and 719.504, F.S., prior to recording, then the developer or association shall submit a complete copy of the recorded documents with DBPR Form CP 6000-2, NOTICE OF COOPERATIVE INCORPORATION/RECORDING INFORMATION; or

2. If the division has already reviewed and approved the recorded documents, then the developer or the association shall only file the form.

*Specific Authority 719.1035(1), 719.501(1)(f) FS. Law Implemented 719.1035(1), 719.403(7), 719.502, 719.503, 719.504 FS. History—New 1-8-98, Amended 6-10-07.*

### **61B-79.002 Procedure for Filing and Examination of Documents.**

#### (1) Filing.

(a) Documents submitted to the division for filing shall be securely bound and fastened between firm covers. Documents which are too bulky for binding may be submitted with the filing unbound.

(b) 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.

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

(d) 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 referenced in this Rule shall be submitted with the documents and need not be submitted to purchasers.

(e) There shall be submitted with each filing a Filing Checklist which substantially conforms to DBPR Form CO 6000-33-029, FILING CHECKLIST, incorporated herein by reference and effective 1/98.

(f) A developer who contracts to sell a cooperative parcel when the construction, furnishing and landscaping of the cooperative property submitted to cooperative ownership have not been substantially completed or renovation of property converted to cooperative 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 719.202, 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.

(2) Examination.

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

1. All forms and documents, properly completed, tabbed, labeled and assembled in accordance with these Rules, are included;

2. The DEVELOPER/COOPERATIVE FILING STATEMENT, DBPR Form CO 6000-33-024, incorporated herein by reference and effective 1/98, has been completed properly; and

3. The correct filing fee has been received by the division, pursuant to Section 719.502(3), F.S.

(b) When the filing is found to be in correct form, the division will examine the content of the filing to determine its sufficiency under the Cooperative Act and these Rules. After receipt of the documents in correct form, the division shall notify the developer or its agent by mail of any deficiencies in the content or that the filing is proper for filing purposes. 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.

(c) The developer shall correct any form or content deficiencies noted by the division. The developer shall identify all new language and all deleted language, by providing a coded copy of the new documents identifying new language with underlining and striking through deleted material.

(d) The division shall notify the developer or its agent after the receipt of documents correcting noted deficiencies of the acceptability of the corrections.

(e) In no event shall proper filing with the division be construed as approval of the offering by the division and no document or offering shall indicate that the division has in any manner approved the offering.

(3) Time periods for review and correction of filings.

(a) Reservation program filing. Within 20 days from receipt of the developer's filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. The developer shall have 20 days from the date of the division's notification of deficiencies in the filing to correct any deficiencies noted by the division. The division shall have 20 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(b) Cooperative filing. Within 45 days from receipt of the developer's filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. 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 division shall have 30 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(c) Amendment filing. Within 35 days from receipt of the developer's filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. The developer shall have 20 days from the date of the division's notification of deficiencies in the filing to correct any deficiencies noted by the division. The division shall have 20 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(d) Notice of intended conversion filing. Within 20 days from receipt of the developer's filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. The developer shall have 20 days from the date of the division's notification of deficiencies in the filing to correct any deficiencies noted by the division. The division shall have

20 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(e) If the division fails to notify the developer within the time periods specified in this rule, the filing shall be considered proper for purposes of Section 719.502(1)(a), F.S., but shall not exempt the developer from compliance with all other provisions of the Cooperative Act or preclude any purchaser remedies afforded by the Act.

(f) If the developer does not correct deficiencies within the specified time period and does not timely request an extension of time, the division shall reject the filing and no further offers may be made. The developer will not be granted more than four (4) extensions in a particular filing. If a filing is rejected, the developer, when subject to the requirements of Section 719.202, F.S., 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 719, F.S., and these rules, including the payment of filing fees, will be required prior to any additional offerings.

*Specific Authority 719.501(1)(f), 719.502(1)(b), 719.621 FS. Law Implemented 719.202, 719.502, 719.503, 719.504, 719.505, 719.506, 719.608 FS. History—New 1-8-98, Amended 2-7-06.*

### **61B-79.003 Filing and Examination of Amendments to Documents.**

(1) “Amendment” means any change to documents, whether technical or substantive, regardless of the procedure by which the change is made.

(2)(a) Every developer of a cooperative who holds a unit for sale in a cooperative shall submit to the division any amendments to documents or items on file with the division and deliver to the purchaser pursuant to Rule 61B-79.004, Florida Administrative Code, all amendments prior to closing, but in no event, later than 10 days after the amendment.

(b) Upon filing an amendment to documents or items which 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 cooperative in which case a filing fee of only \$100 shall be charged. However, there shall be no charge for filing a Certificate of Incorporation.

(c) Payment of fees shall be by check or money order made payable to Division of Florida Condominiums, Timeshares, and Mobile Homes.

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

- (a) Name and physical location of the cooperative 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) All new and deleted language shall be shown 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 Cooperative Act and these Rules. After 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. 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 correct the deficiencies noted by the division.

(7) The division shall notify the developer or its agent after the receipt of documents correcting noted deficiencies of the acceptability of the corrections.

(8) In no event shall proper filing with the division be construed as approval of the amendment by the division. No documents or offering materials shall indicate the division has in any manner approved the materials.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.502, 719.503 FS. History—New 1-8-98.*

#### **61B-79.004 Contracts.**

(1) In determining whether a developer has closed on a contract for sale or lease for purposes of this Rule, it shall be relevant although not dispositive, whether and the extent to which the developer delivered to the purchaser evidence of ownership in the association and a lease or other muniment of title or possession; or whether a lease has been executed by all parties.

(2) The developer shall not close for 15 days following the execution of the agreement and delivery of the documents to the buyer as evidenced by the signed Receipt for Documents unless the buyer is informed of the 15-day voidability period and agrees to close prior to the expiration of the 15 days. The developer shall retain in his records proof of purchaser's agreement to close prior to the expiration of said voidability period. Said proof shall be retained for a period of 5 years after the date of the closing of the transaction.

(3) At the time amendments are delivered to purchasers or lessees, pursuant to Rule 61B-79.003, 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 719, 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 719, Florida Statutes, and these Rules of the division as evidenced by the signed Receipt for Cooperative 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) 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 719.202, Florida Statutes.

(7) 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.

(8) 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.

(9) Only contracts conforming to the requirements of this Rule and the provisions of Section 719.503, 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 719.502, 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.

(10) Every developer who enters into a contract for the sale of a residential cooperative unit or for the lease of a residential cooperative 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. 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, pursuant to Sections 719.503 and 719.504, Florida Statutes. 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. The developer shall retain a copy of the signed receipt for a period of five years after the date of closing of the transaction, maintained in the official business records of the developer. Said receipt shall include but does not have to be limited to the items listed below in paragraphs (a)-(c):

(a) The name and address of the cooperative.

(b) An acknowledgment signed by the purchaser or lessee which lists the documents which have been received by the purchaser or lessee, or as to plan and specifications, made available for inspection.

(c) The following statement:

THE PURCHASE AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THE PURCHASE AGREEMENT BY THE BUYER AND RECEIPT BY THE BUYER OF ALL OF THE DOCUMENTS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER. THE AGREEMENT IS ALSO VOIDABLE BY THE BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE DOCUMENTS REQUIRED. BUYER'S RIGHT TO VOID THE PURCHASE AGREEMENT SHALL TERMINATE AT CLOSING.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.202, 719.502, 719.503, 719.504 FS. History—New 1-8-98.*

#### **61B-79.005 Plot and Floor Plans.**

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

(a) Name of the cooperative;

(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;

(f) Limited common areas;

(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 719.502, 719.503 and 719.504, 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 719.501(1)(f) FS. Law Implemented 719.504 FS. History—New 1-8-98.*