

**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*



As of September, 2015

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**Ken Lawson**, Secretary

**Rick Scott**, Governor

### Rule Changes to Florida Administrative Code

Please be advised, the following rules are in the process of being amended or added to the Florida Administrative Code of the Cooperative Act.

61B-75.005, Coop Electronic Voting, effective 2/28/16 (amended)  
61B-75.0050, Coop Electronic Voting, effective 3/13/16 (new)

**CHAPTER 61B-75  
COOPERATIVES**

61B-75.002	Electronic Transmission of Notices
61B-75.004	Audio or Video Recording of Cooperative Meetings
61B-75.005	Regular Elections; Vacancies Caused by Expiration of Term, Resignations, Death
61B-75.0051	Provider Filing and Curriculum for Education and Training Programs
61B-75.006	Right to Recall and Replace a Board Member; Developers; Other Unit Owners; Class Voting
61B-75.007	Recall of One or More Members of a Board of Administration at a Unit Owner Meeting; Board Certification; Filling Vacancies
61B-75.008	Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies

**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., F.S., must contain a second notice of the election along with the ballot and any valid candidate information sheets that are timely received. As a further example, electronic transmission of the budget meeting shall only be effective if a copy of the proposed annual budget accompanies the notice of budget meeting.

(5) Effect of Sending Electronic Meeting Notice. Notice of a meeting 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., F.S. Electronic records may be maintained in electronic or paper format, but must be available for inspection and copying upon unit owner request.

*Rulemaking 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.

*Rulemaking 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, F.A.C., the provisions of this rule do not apply to vacancies created by the recall of a board member or members. The method of removing board members by recall and the procedures for filling such vacancies are set forth in Rules 61B-75.006 through 61B-75.008, F.A.C.

(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)(d)6., F.S., 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), F.S., 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., F.S., 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.

*Rulemaking 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-75.0051 Provider Filing and Curriculum for Educational and Training Programs.**

(1) Anyone seeking to be a division approved cooperative education provider shall file with the division the educational materials used in the cooperative education program. The following information shall be included regarding the education program:

(a) A price list for the program and a copy of all materials, including any information that will be provided to participants.

(b) The physical locations where programs will be available, if not web-based.

(c) Dates when programs will be offered.

(2) All materials must be submitted to the division via e-mail to CTMH.BdMbrCertProviders@myfloridalicense.com, by providing access to web-based training programs, or in either printed form or CD ROM format to the following address:

Division of Florida Condominiums, Timeshares, and Mobile Homes  
Bureau of Compliance  
1940 North Monroe Street  
Tallahassee, FL 32399-1030

(3) Programs shall cover at least four of the following topics in order to meet the requirements of an educational

curriculum for a cooperative education program as provided in Section 719.106(1)(d)1.b., F.S.:

(a) Budgets and reserves.

(b) Elections.

(c) Financial reporting.

(d) Condominium operations.

(e) Records maintenance, including unit owner access to records.

(f) Dispute resolution.

(g) Bids and contracts.

(4) Programs and materials shall not contain editorial comments.

(5) Within 45 days from receipt of the materials, the division shall notify the provider of any deficiencies or that the materials have been approved. If the notice is not given within 45 days from receipt of the materials, the materials are deemed approved.

(6) The provider shall have 45 days from the date of the division's notification of deficiencies to correct such deficiencies. If the deficiencies are not corrected within the 45-day period, the division shall reject the filing.

(7) Within 20 days from receipt of the corrections to noted deficiencies, the division shall notify the provider of any deficiencies or that the materials have been approved. If the notice is not given within 20 days from receipt of the corrections, the materials are deemed approved.

(8) Approved materials may be provided to participants via web-based training programs, seminars, or printed media.

(9) The division will maintain a list of approved programs and providers on the Department of Business and Professional Regulation's website at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/CondoEducation.html>.

(10) The division reserves the right to require changes to approved education and training programs.

(11) The provider will issue a certificate of completion to a board member who has successfully completed the approved educational curriculum.

*Rulemaking Authority 719.501(1)(f) FS. Law Implemented 719.106(1)(d)1.b., 719.501(1)(k) FS. History—New 2-18-15.*

#### **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, F.S., 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, F.S., 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), F.S., that may recall or remove such board member or members.

*Rulemaking 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, F.S. and Rule 61B-75.006, F.A.C., by the affirmative vote of the remaining board members. In the alternative, if less than a majority of the existing board is recalled at the unit owner meeting, the board may call and conduct an election which meets the requirements of Section 719.106(1)(d)1., F.S. and Rule 61B-75.005, F.A.C., to fill a vacancy or vacancies;

2. If a majority or more of the existing board is recalled at the meeting, an election, which is subject to the provisions of Section 719.301, F.S., and Rule 61B-75.005, F.A.C., shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote in person or by limited proxy, to elect replacement board members in an amount equal to the number of recalled board members.

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

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

2. Upon the expiration of five full business days after adjournment of the board meeting to determine whether to

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

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

4. Upon certification of the recall by the arbitrator in accordance with subparagraph (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, F.S., 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., F.S. and Rule 61B-75.005, F.A.C., in which case any person elected shall fill the entire remaining term.

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

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

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

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

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

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected at the recall meeting shall become effective upon mailing of the final order of arbitration. The term of office of 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), F.S., 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, F.S., 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, F.S., shall be included.

*Rulemaking 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, F.S., 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 subsection (1) of this rule shall be required for an effective recall of a board member or members.

(3) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more 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, F.S. and Rule 61B-75.006, F.A.C., 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, F.S., and Rule 61B-75.005, F.A.C., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

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

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

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

3. If the arbitrator certifies the recall of less than 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), F.S., 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, F.S., 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, F.S., shall be included.

*Rulemaking 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
61B-76.003	Budgets
61B-76.004	Guarantees of Common Expenses Under Section 719.108(8)(a)2., F.S.
61B-76.005	Reserves
61B-76.006	Financial Reporting Requirements
61B-76.0062	Transition Financial Statements; Turnover Audit

**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., F.S., 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., F.S., 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., F.S., 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, F.S.

*Rulemaking 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), F.S. 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.

*Rulemaking 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 paragraph (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.

*Rulemaking 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.

*Rulemaking 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 Sections 719.104(4)(b) and 719.301(4), F.S., as well as financial statements voluntarily prepared in lieu of a financial report as provided in Section 719.104(4), F.S., shall be prepared on the accrual basis using fund accounting in accordance with generally accepted accounting principles. Reviewed financial statements shall be reviewed in accordance with standards for accounting and review services and audited financial statements shall be audited in accordance with generally accepted auditing standards. Reviews and audits of an association's financial statements shall be performed by an independent certified public accountant licensed by the Florida Board of Accountancy. As used in this rule the terms "generally accepted accounting principles", "standards for accounting and review services", and "generally accepted auditing standards" shall have the same meaning as set forth in Chapter 61H1-20, F.A.C.

(2) Components. The financial statements required by Sections 719.104(4)(b) and 719.301(4)(c), F.S., shall at a minimum include the following components:

- (a) Accountant's or Auditor's Report;
- (b) Balance Sheet;
- (c) Statement of Revenues and Expenses;
- (d) Statement of Changes in Fund Balances;
- (e) Statement of Cash Flows, 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), F.S., shall contain the following disclosures within the financial statements, notes, or supplementary information:

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

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

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

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

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

5. The 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), F.S., each converter reserve account shall be identified and include the disclosures required by this rule.

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

(c) The specific purpose or purposes of any special assessments to unit owners pursuant to Section 719.108(9), F.S., 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), F.S., existed at any time during the fiscal year, the financial statements shall disclose the following:

1. The period of time covered by the guarantee;

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

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

4. The amount of 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, F.S., 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), F.S. The financial report required by Section 719.104(4)(a), F.S., 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), F.S.; and

(c) The report shall contain the reserve disclosures required by Rule 61B-76.006(3)(a), F.A.C.

(d) The report shall include the special assessment disclosure required by paragraph 61B-76.006(3)(c), F.A.C.

(6) Minutes. 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.

*Rulemaking Authority 719.104(4)(a), 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, 3-19-15.*

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

(1) Period covered. The audit required by Section 719.301(4)(c), F.S., applies to all transfers of association control from developers to unit owners pursuant to Section 719.301(4), F.S. 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), F.S.;

(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), F.S., 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.

*Rulemaking 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

61B-77.002 Educational Resolution

61B-77.003 Enforcement Resolution and Penalty Guidelines

**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 from someone with standing to file a complaint containing sufficient documentation and addressing a subject within the jurisdiction of the division, pursuant to Section 719.501(1), F.S. A complaint that merely recites the statutes or is based on mere suspicion or speculation, without a plain statement of facts clearly describing what is alleged to have occurred, will not be accepted.

(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 the same or

substantially similar recurring conduct cited in an accepted complaint received by the division within two years from the resolution of a previous complaint, the issuance of a final arbitration order or court order, or the entering of a final order by the division regarding that conduct.

(d) “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. 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 resolution 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 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-77.001, 61B-77.002, and 61B-77.003, F.A.C., are necessary to explain the division’s education and enforcement policies. These rules are 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.

*Rulemaking Authority 719.501(1)(f) FS. Law Implemented 719.301(5), 719.501(1) FS. History–New 6-4-98, Amended 6-15-15.*

#### **61B-77.002 Educational Resolution.**

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

If 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 14 calendar 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 result in the division proceeding with an enforcement resolution. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the resolution of the complaint, or if applicable, alternative dispute resolution options.

*Rulemaking Authority 719.501(1)(f) FS. Law Implemented 719.301(5), 719.501(1) FS. History–New 6-4-98, Amended 6-15-15.*

**61B-77.003 Enforcement Resolution and Penalty Guidelines.**

(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. If the division issues a notice to show cause, it will notify the developer of its right to a hearing under Chapter 120, F.S. 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 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 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, which will reduce or increase the penalty amounts within the specified range, in determining penalties for both minor and major violations listed in this rule section. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of \$5,000. The factors shall be applied against each single count of the listed violation.

(a) Aggravating Factors:

No.	Description
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 responsible for the violation.
4.	The disciplinary history of the developer, including such action resulting in an enforcement resolution as detailed in Section 719.501, F.S. or Rule 61B-77.003, F.A.C.
5.	The violation caused substantial harm to unit owners, other persons, or entities.
6.	The violation occurred for a long period of time.
7.	The violation was repeated within 2 years.
8.	The developer impeded the division’s investigation or authority.

(b) Mitigating Factors:

No.	Description
1.	The violation or harm was related to a natural or manmade disaster(s).
2.	Financial hardship to respondent.

3.	The violation caused no harm to unit owners, other persons, or entities.
4.	The violation occurred despite reliance on written professional or expert counsel advice.
5.	The developer took affirmative or corrective action before it received the division's written notification of the violation.
6.	The developer expeditiously took affirmative or corrective action after it received the division's written notification of the violation.
7.	The developer cooperated with the division during the investigation.

(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 public

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 submitted with proper documentation. 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. In no event shall a penalty of more than \$5,000 be imposed for a single violation. The enumeration of violations is descriptive only; the full language of each statutory and rule provision cited must be consulted in order to determine the conduct included in the violation. The following are identified as minor violations:

No.	Category	Statute or Rule Cite	Description of Conduct/Violation
1.	Assessment	Section 719.108(6), F.S.	Failure to provide within 15 days a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel.
2.	Board	Section 719.1035(1), F.S.	Failure to maintain corporate status of the association.
3.	Board	Section 719.1055(4)(b), F.S.	Failure to include the full text showing underlined or strikethrough language in the proposed amendment to the cooperative documents.
4.	Board	Section 719.106(1)(a)3., F.S.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
5.	Board	Section 719.106(1)(b)1., F.S.	Action taken at unit owner meeting without quorum.
6.	Board	Section 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. Action on item not on agenda. Notice did not include agenda. Failure to allow unit owners to speak or unreasonably restricting the frequency, duration, or manner of unit owner statements at meeting. Failure to allow unit owners to attend meeting.
7.	Board	Section 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.
8.	Board	Section 719.106(1)(d)2., F.S.	Permitting unit owner action by written agreement without express

			authority from Chapter 719, F.S., or the cooperative governing documents.
9.	Board	Section 719.106(1)(h), F.S.	Failure to include the full text showing underlined or strikethrough language in the proposed amendment to the bylaws.
10.	Board	Section 719.3026(1), F.S.	Failure to obtain competitive bids on contracts that exceed five percent of the association's budget.
11.	Board	Section 719.106(1)(b)5., F.S.	Failure to provide a speaker phone for board or committee meetings held by teleconference.
12.	Board	Section 719.106(1)(c), F.S. Rule 61B-75.004, F.A.C.	Failure to allow a unit owner to tape record or video tape meetings.
13.	Budgets	Section 719.106(1)(e), F.S.	Failure to timely notice budget meeting. Failure to timely deliver proposed budget.
14.	Budgets	Section 719.106(1)(j)1., F.S. Section 719.504(20)(c), F.S.	Failure to include applicable line items in proposed budget.
15.	Budgets	Paragraph 61B-76.003(1)(b), FAC.	Failure to disclose the beginning and ending dates of the period covered by the budget.
16.	Budgets	Paragraph 61B-76.003(1)(c), F.A.C.	Failure to disclose periodic assessments for each unit type in proposed budget.
17.	Development	Section 719.301(2), F.S.	Failure to file name and address of first non-developer board member.
18.	Development	Section 719.301(4)(a)1., F.S.	Failure to deliver cooperative documents and all amendments thereto upon transfer of association control.
19.	Development	Section 719.301(4)(a)2., F.S.	Failure to deliver articles of incorporation upon transfer of association control.
20.	Development	Section 719.301(4)(a)3., F.S.	Failure to deliver the bylaws upon transfer of association control.
21.	Development	Section 719.301(4)(a)5., F.S.	Failure to deliver house rules upon transfer of association control.
22.	Development	Section 719.301(4)(b), F.S.	Failure to deliver resignations of officers and board members upon transfer of association control.
23.	Development	Section 719.301(4)(i), F.S.	Failure to deliver copies of certificates of occupancy upon transfer of association control.
24.	Development	Section 719.301(4)(j), F.S.	Failure to deliver permits upon transfer of association control.
25.	Development	Section 719.301(4)(l), F.S.	Failure to deliver unit owner roster upon transfer of association control.
26.	Elections	Subsection 61B-75.005(8), F.A.C.	Failure to provide space for name, unit number, and signature on outer envelope.
27.	Elections	Subsection 61B-75.005(9), F.A.C.	Failure to list candidates alphabetically by surname on the ballot.
28.	Elections	Paragraph 61B-75.005(10)(b), F.A.C.	Improper verification of outer envelopes.
29.	Records	Section 719.104(2)(a)2., F.S.	Failure to maintain a copy of the cooperative documents.
30.	Records	Section 719.104(2)(a)5., F.S.	Failure to maintain a current and complete unit owner roster.
31.	Records	Section 719.104(2)(a)12., F.S.	Failure to maintain or annually update the question and answer sheet.
32.	Records	Section 719.104(2)(a)13., F.S.	Failure to maintain other association records related to the operation of the association.
33.	Records	Section 719.104(8)(b), F.S.	Failure to record a vote or an abstention in the minutes for each board member present at the board meeting.
34.	Records	Subsection 61B-76.003(3), F.A.C.	Failure to reflect the adoption of the budget in meeting minutes.
35.	Reporting	Subparagraph 61B-76.006(3)(a)5., F.A.C.	Failure to disclose in the annual financial statements or turnover audit the manner by which reserve items were estimated and/or the date the estimates were last made.
36.	Reporting	Paragraph 61B-76.006(3)(b), F.A.C.	Failure to disclose the method of allocating income and expenses in the annual financial statements or turnover audit.

37.	Reporting	Subsection 61B-76.006(4), F.A.C.	Failure to show developer assessments separately from other assessment revenues in the annual financial report (statements) or turnover audit.
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(b) Major Violations. The following violations shall be considered major due to their increased potential for public 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 submitted with proper documentation. 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. In no event shall a penalty of more than \$5,000 be imposed for a single violation. The enumeration of violations is descriptive only; the full language of each statutory and rule provision cited must be consulted in order to determine the conduct included in the violation. The penalties for each violation are as follows:

Level 1: \$10 – \$18 per unit.

Level 2: \$20 – \$50 per unit.

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

No.	Category	Statute or Rule Cite	Description of Conduct/Violation	Penalty Level
1.	Accounting Records	Section 719.104(2)(a)9., F.S.	Insufficient or incomplete accounting records.	2
2.	Assessing	Section 719.106(1)(g), F.S.	Failure to assess at sufficient accounts to meet expenses.	1
3.	Assessing	Section 719.106(1)(g), F.S.	Collecting assessments less frequently than quarterly.	1
4.	Assessing	Section 719.107(2), F.S.	Failure to assess based upon the shares stated in the cooperative documents.	2
5.	Assessing	Section 719.108(3), F.S.	Failure to charge interest on past due assessments.	2
6.	Assessing	Sections 719.108(1), (8), F.S.	Developer or other owner improperly excused from paying assessments.	2
7.	Board	Section 719.104(3), F.S.	Failure to insure the association property.	2
8.	Board	Section 719.104(5), F.S.	Improper use fee.	1
9.	Board	Section 719.104(8)(b), F.S.	Use of proxies or improper use of secret ballots by board members at a board meeting.	1
10.	Board	Section 719.105, F.S. Section 719.109(1), F.S.	Unit owner denied access to unit or to common areas.	1
11.	Board	Section 719.1055, F.S.	Improperly amending the cooperative documents.	2
12.	Board	Section 719.106(1)(a)1., F.S.	Compensating officers or members of the board without express authority from the cooperative governing documents.	2
13.	Board	Section 719.106(1), F.S.	Allowing ineligible person to serve on board of administration.	2
14.	Board	Section 719.106(1)(b)2., F.S.	Improper use of general proxies. Use of non-conforming limited proxies.	1
15.	Board	Section 719.106(1)(c), F.S.	Excluding unit owners from board or committee meetings.	1
16.	Board	Section 719.106(1)(d), F.S.	Failure to hold annual meeting.	2
17.	Board	Section 719.106(1)(f), F.S.	Improper removal of board member.	1
18.	Board	Section 719.106(1)(h), F.S.	Improperly amending the association bylaws.	2
19.	Board	Section 719.106(1)(i), F.S.	Requiring transfer fees or security deposits without express authority from the cooperative governing documents. Requiring excessive transfer fees.	1
20.	Board	Section 719.106(1)(k), F.S.	Failure to maintain adequate fidelity bonding for all persons who control or disburse association funds.	2
21.	Board	Subsection 61B-75.005(13),	Improperly filling a vacancy of an unexpired term on the board.	1

		F.A.C.		
22.	Board	Section 719.108(3), F.S.	Levying late fees without express authority from the cooperative governing documents.	1
23.	Board	Section 719.115(3), F.S.	Failure to timely notify unit owners of legal action.	1
24.	Board	Sections 719.303(3), (4), (5), (6), F.S.	Imposing fines without proper notice. Imposing excessive fines. Improper suspension of use rights and voting rights; failure to provide proper notice.	1
25.	Budgets	Section 719.106(1)(e), F.S.	Failure to propose/adopt budget for a given year.	2
26.	Budgets	Section 719.106(1)(e)4., F.S.	Developer increased assessments more than 115% without approval.	1
27.	Budgets	Subparagraph 61B-76.003(1)(e)5., F.A.C.	Failure to disclose converter reserve funding.	1
28.	Budgets	Paragraphs 61B-76.003(1)(e), (f), (g), F.A.C.	Failure to include reserve schedule in the proposed budget.	1
29.	Budgets	Paragraphs 61B-76.003(1)(e), (f), F.A.C. Subsections 61B-76.005(1), (5), F.A.C.	Failure to include a required reserve item in proposed budget.	1
30.	Budgets	Section 719.106(1)(j)2., F.S. Subsections 61B-76.005(3), (5), F.A.C.	Improper calculation of reserve requirements.	1
31.	Commingle	Section 719.104(7), F.S.	Commingling association funds with non-association funds.	2
32.	Commingle	Section 719.104(7), F.S.	Association funds deposited in account not in association's name.	1
33.	Commingle	Section 719.104(7), F.S. Subsection 61B-76.005(2), F.A.C.	Commingling reserve funds with operating funds.	1
34.	Common Expenses	Section 719.107(1), F.S.	Using association funds for other than common expenses.	2
35.	Converter Reserves	Section 719.618(1), F.S.	Failure to calculate converter reserves properly.	2
36.	Converter Reserves	Section 719.618(2), F.S.	Failure to fund converter reserves in a timely manner.	2
37.	Converter Reserves	Section 719.618(3)(b), F.S.	Improper use of converter reserves.	1
38.	Converter Reserves	Subparagraph 61B-76.003(1)(e)5., F.A.C.	Failure to include converter reserve disclosures in the proposed budget.	1
39.	Development	Section 719.202(1), F.S.	Developer using an alternative assurance, in lieu of an escrow account, without the prior approval of the Director.	3
40.	Development	Section 719.202(1), F.S.	Failure to place purchase deposits in escrow.	3
41.	Development	Section 719.202(6), F.S.	Failure to place reservation deposits in escrow.	3
42.	Development	Sections 719.301(1), (2), (4), F.S.	Failure to transfer association control.	2
43.	Development	Section 719.301(1)(a)4., F.S.	Failure to deliver the minute books upon transfer of association control.	2
44.	Development	Section 719.301(4)(c), F.S.	Failure to deliver the financial records (other than the audit) within 90 days of transfer of association control.	2

45.	Development	Section 719.301(4)(d), F.S.	Failure to deliver the association funds upon transfer of association control.	2
46.	Development	Section 719.301(4)(e), F.S.	Failure to deliver all tangible personal property of the association upon transfer of association control.	2
47.	Development	Section 719.301(4)(f), F.S.	Failure to deliver a copy of the plans, specifications and affidavit upon transfer of association control.	1
48.	Development	Section 719.301(4)(g), F.S.	Failure to deliver the list of contractors upon transfer of association control.	1
49.	Development	Section 719.301(4)(h), F.S.	Failure to deliver copies of insurance policies upon transfer of association control.	1
50.	Development	Section 719.301(4)(k), F.S.	Failure to deliver copies of all warranties upon transfer of association control.	1
51.	Development	Section 719.301(4)(m), F.S.	Failure to deliver copies of all leases to which the association is a party upon transfer of association control.	1
52.	Development	Sections 719.301(4)(n), (o), F.S.	Failure to deliver copies of all contracts involving the association upon transfer of association control.	1
53.	Development	Section 719.403(1), F.S.	Continuing to develop phases after expiration of phase deadline.	3
54.	Development	Sections 719.403(1), (2), F.S.	Improperly amending cooperative documents to provide for phased development.	2
55.	Development	Section 719.502(2)(a), F.S. Paragraph 61B-79.001(2)(b), F.A.C.	Accepting reservation deposits prior to filing reservation program with the division.	3
56.	Development	Section 719.502(2)(a), F.S. Paragraph 61B-79.001(2)(a), (3), F.A.C.	Offering sales contracts prior to filing with division.	3
57.	Development	Section 719.502(3), F.S. Subsection 61B-79.003(2), F.A.C.	Offering sales contracts on units within a phase prior to filing phase documents with the division.	3
58.	Development	Section 719.502(3), F.S. Subsection 61B-79.003(2), F.A.C.	Failure to file amendments to documents previously filed with the division.	1
59.	Development	Section 719.503(1)(a), F.S. Subsection 61B-79.004(9), F.A.C.	Using sales contracts without required disclosures.	3
60.	Development	Section 719.503(1)(b), F.S.	Failure to provide disclosure documents to purchasers.	3
61.	Development	Section 719.503(1)(b), F.S.	Failure to allow purchaser to rescind contract upon receipt of timely notice from purchaser.	3
62.	Development	Subsection 61B-79.001(3), F.A.C.	Closing on sales of units prior to the division's approval of the filing.	3
63.	Development	Section 719.504(10), F.S.	Failure to disclose rental program in prospectus.	1
64.	Elections	Section 719.106(1)(d), F.S. Sections 719.301(1), (2), F.S. Subsection 61B-75.005(2), F.A.C.	Failure to hold election to permit participation on board by non-developer owners. Failure to permit participation on board by non-developer owners after 15 percent of units have been sold.	2
65.	Elections	Section 719.106(1)(d)1., F.S. Subsection 61B-75.005(3), F.A.C.	Use of nomination procedures in an election.	2
66.	Elections	Subsection 61B-75.005(2),	Election not held at time and place of annual meeting.	1



		F.A.C.		
67.	Elections	Section 719.106(1)(d)1.a., F.S. Subsection 61B-75.005(4), F.A.C.	Failure to provide, or timely provide, first notice of election.	2
68.	Elections	Section 719.301(2), F.S.	Failure to provide, or timely provide, first notice of turnover election.	2
69.	Elections	Section 719.106(1)(d)1.a., F.S. Subsections 61B-75.005(7), (8), F.A.C.	Failure to provide, or timely provide, second notice of election or omitting ballots, envelopes, and candidate information sheets.	2
70.	Elections	Subsection 61B-75.005(8), F.A.C.	Voters allowed to rescind or change their previously cast ballots.	1
71.	Elections	Section 719.106(1)(d)1.a., F.S. Subsection 61B-75.005(7), F.A.C.	Association altered or edited candidate-information sheets.	2
72.	Elections	Section 719.106(1)(d)1., F.S.	Failure to use ballots or voting machines.	2
73.	Elections	Section 719.106(1)(d)1.a., F.S. Subsection 61B-75.005(5), F.A.C.	Ballot included candidate who did not timely submit notice of candidacy.	2
74.	Elections	Subsection 61B-75.005(6), F.A.C.	Failure to provide candidate a receipt for personally delivered written notice of candidacy.	1
75.	Elections	Subsection 61B-75.005(7), F.A.C.	Distributing candidate information sheets consisting of more than one side of a page.	1
76.	Elections	Subsection 61B-75.005(8), F.A.C.	Second notice of election included comments by board about candidates.	2
77.	Elections	Paragraph 61B-75.005(10)(a), F.A.C.	Ballots not counted by impartial committee.	1
78.	Elections	Paragraph 61B-75.005(10)(a), F.A.C.	Inner envelopes not placed in separate receptacle before being opened.	2
79.	Elections	Section 719.106(1)(d)1.a., F.S. Subsection 61B-75.005(9), F.A.C.	Failure to include all timely submitted names of eligible candidates on the ballot.	2
80.	Elections	Subsection 61B-75.005(9), F.A.C.	Ballots not uniform. Ballots identify voter. Ballots included space for write-in candidate.	2
81.	Elections	Subsection 61B-75.005(10), F.A.C.	Outer envelopes not checked against list of eligible voters.	1
82.	Elections	Paragraphs 61B-75.005(10)(a), (b), F.A.C.	Counting ineligible ballots.	1
83.	Elections	Paragraph 61B-75.005(10)(a), F.A.C.	Failure to count properly cast ballots.	1
84.	Elections	Subsection 61B-75.005(10), F.A.C.	Outer envelopes opened prior to election meeting. Outer envelopes not opened in presence of unit owners.	2
85.	Elections	Paragraph 61B-75.005(10)(a), F.A.C.	Not counting ballots in the presence of unit owners.	2

86.	Elections	Paragraph 61B-75.005(10)(b), F.A.C.	Failure to notice meeting to verify outer-envelope information.	1
87.	Elections	Paragraph 61B-75.005(10)(c), F.A.C.	Failure to hold, or timely hold, runoff election.	2
88.	Elections	Paragraph 61B-75.005(10)(a), F.A.C.	No blank ballots available at election meeting.	2
89.	Final Order	Section 719.501(1)(d)4., F.S.	Failure to comply with final order of the division.	2
90.	Guarantee	Section 719.108(8), F.S. Subsection 61B-76.004(1), F.A.C.	Guarantee not properly established.	2
91.	Guarantee	Section 719.108(8)(a), F.S. Subsection 61B-76.004(3), F.A.C.	Improperly assessing unit owners.	2
92.	Guarantee	Section 719.108(8)(a), F.S. Subsections 61B-76.004(4), (5), F.A.C.	Failure to advance sufficient cash.	2
93.	Guarantee	Section 719.108(8)(b), F.S. Subsection 61B-76.004(4), F.A.C.	Expending capital contributions or special assessment funds during guarantee period.	2
94.	Guarantee	Subsection 61B-76.004(2), F.A.C.	Guarantee period unclear/not specified, not properly extended.	2
95.	Records	Section 719.104(2)(a)4., F.S.	Failure to maintain minutes of meetings.	1
96.	Records	Section 719.104(2)(a)6., F.S.	Failure to maintain a copy of a current insurance policy.	1
97.	Records	Section 719.104(2)(a)7., F.S.	Failure to maintain copy of management agreement or other contract under which the association has obligations.	1
98.	Records	Section 719.104(2)(a)8., F.S.	Failure to maintain bills of sale or transfer.	1
99.	Records	Section 719.104(2)(a)10., F.S.	Failure to maintain election or voting materials for one year.	1
100.	Records	Section 719.104(2)(a)11., F.S.	Failure to maintain rental records.	1
101.	Records	Section 719.104(2)(c), F.S. Section 719.107(1)(a), F.S.	Requiring a unit owner to pay a fee for access to association records.	1
102.	Records	Section 719.104(2)(b), F.S.	Failure to maintain records within Florida.	2
103.	Records	Sections 719.104(2)(b), (c), F.S.	Failure to provide access to records. Failure to allow scanning or copying of records.	1
104.	Records	Section 719.104(2)(e), F.S.	Failure of outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election.	2
105.	Reporting	Section 719.104(4), F.S. Subsections 61B-76.006(6), (8), F.A.C.	Failure to provide, or timely provide, the annual financial report or statements.	2
106.	Reporting	Section 719.104(4)(b), F.S. Paragraph 61B-76.006(9)(b), F.A.C.	Prior to turnover of control of the association, developer was included in vote to waive audit requirement after the first two years of operation.	2
107.	Reporting	Section 719.104(4)(c), F.S. Subsection 61B-76.0062(1), F.A.C.	Failure to provide, or timely provide, turnover financial statements. Turnover financial statements not audited. Failure of turnover financial statements to cover entire period of	2

			control.	
108.	Reporting	Subsection 61B-76.006(1), F.A.C.	Failure to prepare annual/turnover financial statements using fund accounting. Failure to prepare annual/turnover financial statements on accrual basis.	1
109.	Reporting	Section 719.104(4)(a), F.S. Subsection 61B-76.006(1), F.A.C.	Failure to prepare annual/turnover financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Failure to have reviewed or audited annual/turnover financial statements prepared by a Florida licensed CPA.	2
110.	Reporting	Subsection 61B-76.006(2), F.A.C.	Failure to include one or more components of the annual/turnover financial statements (incomplete).	1
111.	Reporting	Subparagraphs 61B-76.006(3)(a)1.-5., F.A.C.	Failure to make significant reserve fund disclosures in the annual/turnover financial statements.	1
112.	Reporting	Subparagraph 61B-76.006(3)(a)6., F.A.C.	Failure to include converter reserve disclosures in the annual financial statements.	1
113.	Reporting	Paragraph 61B-76.006(5)(c), F.A.C.	Failure to include converter reserve disclosures in the annual financial report.	1
114.	Reporting	Paragraph 61B-76.006(5)(c), F.A.C.	Failure to include the required reserve fund disclosures in the annual financial report.	1
115.	Reporting	Paragraph 61B-76.006(3)(c), F.A.C.	Failure to include the special assessment disclosures in the annual financial statements.	1
116.	Reporting	Paragraph 61B-76.006(3)(d), F.A.C.	Incomplete or missing guarantee disclosures in the annual financial statements.	1
117.	Reporting	Paragraph 61B-76.006(2)(d), F.A.C.	Incomplete or missing guarantee disclosures in the turnover financial statements.	1
118.	Reporting	Subparagraph 61B-76.006(3)(d)5., F.A.C.	Failure to properly calculate guarantor's final obligation.	2
119.	Reporting	Paragraph 61B-76.006(5)(a), F.A.C.	Failure to prepare the annual financial report on a cash basis.	1
120.	Reporting	Section 719.104(4)(c), F.S. Paragraph 61B-76.006(5)(b), F.A.C.	Failure to include in the annual financial report specified receipt or expenditure items.	1
121.	Reporting	Subsection 61B-76.006(8), F.A.C.	Providing lower level of annual financial reporting than required.	2
122.	Reporting	Subsection 61B-76.0062(2), F.A.C.	Failure to present revenues and expenses for each fiscal year and interim period in the turnover financial statements.	2
123.	Reporting	Subsection 61B-76.0062(2), F.A.C.	Failure to include in the turnover audit a statement of total cash payments made by the developer to the association.	2
124.	Reserves	Section 719.106(1)(j)2., F.S. Subsection 61B-76.005(6), F.A.C.	Failure to fund reserves in a timely manner. Failure to fully fund reserves.	1
125.	Reserves	Section 719.106(1)(j)2., F.S. Subsections 61B-76.005(6), (8), F.A.C.	Failure to follow proper method to waive or reduce reserve funding.	1
126.	Reserves	Section 719.106(1)(j)2., F.S. Subsection 61B-76.005(9), F.A.C.	Prior to turnover of control of the association, developer included in vote to waive/reduce reserve funding after first two years of operation.	1
127.	Reserves	Section 719.106(1)(j)3., F.S. Subsection	Using reserve funds for other purposes without proper unit owner approval.	2

		61B-76.005(7), F.A.C.		
128.	Special Assessment	Section 719.108(9), F.S.	Using special assessment funds for other than intended purposes.	1
129.	Special Assessment	Section 719.108(9), F.S.	Failure to state purpose of special assessment in the special assessment notice.	1

Rulemaking Authority 719.501(1)(f) FS. Law Implemented 719.301(5), 719.501(1) FS. History—New 6-4-98, Amended 6-15-15.

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

- 61B-78.001 Association Fee; Mailing Address; Retrofitting
- 61B-78.002 Definitions and Purpose
- 61B-78.003 Educational Resolution
- 61B-78.004 Enforcement Resolution and Penalty Guidelines

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

(1) The annual fee shall be paid as follows:

(a) The division shall provide to the association an annual fee statement. The failure to receive the annual fee statement shall not relieve the association of the obligation to pay the fee. Annual fees shall be paid online at [www.MyFloridaLicense.com](http://www.MyFloridaLicense.com) or by check or money order made payable to Division of Florida Condominiums, Timeshares, and Mobile Homes.

(b) 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, handrails, or guardrails, 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. If retrofitting has been undertaken by a residential cooperative, the association shall report the per-unit cost of such work to the division on DBPR Form CP 6000-1. DBPR Form CP 6000-1 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.

DBPR Form CP 6000-1 may be obtained by writing the division at 1940 North Monroe Street, Tallahassee, Florida 32399-1030. The division shall prepare separate reports of information obtained from associations relating to the waiver of a fire sprinkler system and the waiver of handrails and guardrails and deliver the reports to the Division of State Fire Marshal of the Department of Financial Services no later than August 1 of each year.

(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.

Rulemaking 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, 2-22-15, 9-1-15.

**61B-78.002 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 from someone with standing to file a complaint containing sufficient documentation and addressing a subject within the jurisdiction of the division, pursuant to Section 719.501(1), F.S. A complaint that merely recites the statutes or is based on mere suspicion or speculation, without a plain statement of facts clearly describing what is alleged to have occurred, will not be accepted.

(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 the same or substantially similar recurring conduct cited in an accepted complaint received by the division within two years from the resolution of a previous complaint, the issuance of a final arbitration order or court order, or the entering of a final order by the division 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 resolution guidelines are promulgated pursuant to the division’s authority in Section 719.501(1)(d), (f), and (m), 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 explain the division’s education and enforcement policies. 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(16), 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.

*Rulemaking Authority 719.501(1)(f) FS. Law Implemented 719.501(1)(d)4., (m) FS. History—New 6-4-98, Amended 2-19-15.*

### **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 Minor Violations. A subsequent accepted complaint that is directed at the same association involving a possible violation identified as minor in these guidelines will be resolved as follows:

If 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 14 calendar 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 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 result in the division proceeding with an enforcement resolution. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the resolution of the complaint, or if applicable, alternative dispute resolution options.

(4) Alleged Major Violations. An initial accepted complaint that is directed at an association and involving a possible violation identified as major in these guidelines will

be resolved as follows:

If 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 14 calendar 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 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 result in the division proceeding with an enforcement resolution. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the resolution of the complaint, or if applicable, alternative dispute resolution options.

*Rulemaking Authority 719.501(1)(f) FS. Law Implemented 719.501(1)(d)4., (m) FS. History—New 6-4-98, Amended 2-19-15.*

**61B-78.004 Enforcement Resolution and Penalty Guidelines.**

(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. If the division issues a notice to show cause, it will notify the association of its right to a hearing under Chapter 120, F.S. 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, which will reduce or increase the penalty amounts within the specified range, in determining penalties for both minor and major violations listed in this rule section. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of \$5,000. The factors shall be applied against each single count of the listed violation.

(a) Aggravating Factors:

No.	Description
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 responsible for 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 to unit owners, other persons, or entities.
6.	The violation occurred for a long period of time.
7.	The violation was repeated within 2 years.
8.	The association impeded the division's investigation or authority.

(b) Mitigating Factors:

No.	Description
1.	The violation or harm was related to a natural or manmade disaster(s).
2.	Financial hardship to respondent.
3.	The violation caused no harm to unit owners, other persons, or entities.
4.	The violation occurred despite reliance on written professional or expert counsel advice.
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.

(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 public harm. If an enforcement resolution is utilized, the division violations:

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 submitted with proper documentation. 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. In no event shall a penalty of more than \$2,500 be imposed for a single violation. The enumeration of violations is descriptive only; the full language of each statutory and rule provision cited must be consulted in order to determine the conduct included in the violation. The following are identified as minor

No.	Category	Statute or Rule Cite	Description of Conduct/Violation
1.	Assessments	Section 719.108(6), F.S.	Failure to provide within 15 days a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel.
2.	Board	Section 719.1055(4)(b), F.S.	Failure to include the full text showing underlined or strikethrough language in the proposed amendment to the cooperative documents.
3.	Board	Section 719.1035(1), F.S.	Failure to maintain corporate status of the association.
4.	Board	Section 719.106(1)(a)3., F.S.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
5.	Board	Section 719.106(1)(b)1., F.S.	Action taken at unit owner meeting without quorum.
6.	Board	Section 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. Action on item not on agenda. Notice did not include agenda. Failure to allow unit owners to speak or unreasonably restricting the frequency, duration, or manner of unit owner statements at meeting. Failure to allow unit owner to attend meeting.
7.	Board	Section 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.
8.	Board	Section 719.106(1)(d)2., F.S.	Permitting unit owner action by written agreement without express authority from Chapter 719, F.S., or the cooperative governing documents.
9.	Board	Section 719.106(1)(h), F.S.	Failure to include the full text showing underlined or strikethrough language in the proposed amendment to the bylaws.
10.	Board	Section 719.3026(1), F.S.	Failure to obtain competitive bids on contracts that exceed five percent of the association's budget.
11.	Board	Section 719.106(1)(b)5., F.S.	Failure to provide a speaker phone for board or committee meetings held by teleconference.
12.	Board	Section 719.106(1)(c), F.S. Rule 61B-75.004, F.A.C.	Failure to allow a unit owner to tape record or video tape meetings.
13.	Budgets	Section 719.106(1)(e), F.S.	Failure to timely notice budget meeting. Failure to timely deliver proposed budget.
14.	Budgets	Section 719.106(1)(e)2., F.S.	Failure of board to call a unit owners' meeting to consider alternate budget.
15.	Budgets	Section 719.106(1)(j)1., F.S. Section 719.504(20)(c), F.S.	Failure to include applicable line items in proposed budget.
16.	Budgets	Paragraph 61B-76.003(1)(b), F.A.C.	Failure to disclose the beginning and ending dates of the period covered by the budget.
17.	Budgets	Paragraph 61B-76.003(1)(c), F.A.C.	Failure to disclose periodic assessments for each unit type in proposed budget.
18.	Elections	Subsection 61B-75.005(8), F.A.C.	Failure to provide space for name, unit number, and signature on outer envelope.
19.	Elections	Subsection 61B-75.005(9), F.A.C.	Failure to list candidates alphabetically by surname on the ballot.
20.	Elections	Paragraph 61B-75.005(10)(b), F.A.C.	Improper verification of outer envelopes.
21.	Records	Section 719.104(2)(a)2., F.S.	Failure to maintain a copy of the cooperative documents.
22.	Records	Section 719.104(2)(a)5., F.S.	Failure to maintain a current and complete unit owner roster.
23.	Records	Section 719.104(2)(a)12., F.S.	Failure to maintain or annually update the question and answer sheet.
24.	Records	Section 719.104(2)(a)13., F.S.	Failure to maintain other association records related to the operation of the association.
25.	Records	Section 719.104(8)(b), F.S.	Failure to record a vote or an abstention in the minutes for each board member present at the board meeting.
26.	Records	Subsection 61B-76.003(3), F.A.C.	Failure to reflect the adoption of the budget in meeting minutes.
27.	Reporting	Subparagraph 61B-76.006(3)(a)5., F.A.C.	Failure to disclose in the annual financial statements the manner by which reserve items were estimated and/or the date the estimates were last made.



28.	Reporting	Paragraph 61B-76.006(3)(b), F.A.C.	Failure to disclose the method of allocating income and expenses in the annual financial statements.
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(b) Major Violations. The following violations shall be considered major due to their increased potential for public 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 submitted with proper documentation. 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. In no event shall a penalty of more than \$5,000 be imposed for a single violation. The enumeration of violations is descriptive only; the full language of each statutory and rule provision cited must be consulted in order to determine the conduct included in the violation. The penalties for each violation are as follows:  
Level 1: \$6 – \$10 per unit.  
Level 2: \$12 – \$20 per unit.

No.	Category	Statute or Rule Cite	Description of Conduct/Violation	Penalty Level
1.	Accounting Records	Section 719.104(2)(a)9., F.S.	Insufficient or incomplete accounting records.	2
2.	Assessing	Section 719.106(1)(g), F.S.	Failure to assess at sufficient amounts to meet expenses.	1
3.	Assessing	Section 719.106(1)(g), F.S.	Collecting assessments less frequently than quarterly.	1
4.	Assessing	Section 719.107(2), F.S.	Failure to assess based upon the shares stated in the cooperative documents.	2
5.	Assessing	Section 719.108(3), F.S.	Failure to charge interest on past due assessments.	2
6.	Assessing	Sections 719.108(1), (8), F.S.	Developer or other owner improperly excused from paying assessments.	2
7.	Board	Section 719.104(3), F.S.	Failure to insure the association property.	2
8.	Board	Section 719.104(5), F.S.	Improper use fee.	1
9.	Board	Section 719.104(8)(b), F.S.	Use of proxies or improper use of secret ballots by board members at a board meeting.	1
10.	Board	Section 719.105, F.S. Section 719.109(1), F.S.	Unit owner denied access to unit or to common areas.	1
11.	Board	Section 719.1055, F.S.	Improperly amending the cooperative documents.	2
12.	Board	Subsection 61B-75.005(13), F.A.C.	Improperly filling a vacancy of an unexpired term on the board.	1
13.	Board	Section 719.106(1)(a)1., F.S.	Compensating officers or members of the board without express authority from the cooperative governing documents.	2
14.	Board	Section 719.106(1), F.S.	Allowing ineligible person to serve on board of administration.	2
15.	Board	Section 719.106(1)(b)2., F.S.	Improper use of general proxies. Use of non-conforming limited proxies.	1
16.	Board	Section 719.106(1)(c), F.S.	Excluding unit owners from board or committee meetings.	1
17.	Board	Section 719.106(1)(d), F.S.	Failure to hold annual meeting.	2
18.	Board	Section 719.106(1)(f), F.S.	Improper removal of board member.	1
19.	Board	Section 719.106(1)(h), F.S.	Improperly amending the association bylaws.	2
20.	Board	Section 719.106(1)(i), F.S.	Requiring transfer fees or security deposits without express authority from the cooperative governing documents. Requiring excessive transfer fees.	1
21.	Board	Section 719.106(1)(k), F.S.	Failure to maintain adequate fidelity bonding for all	2

			persons who control or disburse association funds.	
22.	Board	Section 719.108(3), F.S.	Levying late fees without express authority from the cooperative governing documents.	1
23.	Board	Section 719.115(3), F.S.	Failure to notify, or timely notify, unit owners of legal action.	1
24.	Board	Sections 719.303(3), (4), (5), (6), F.S.	Imposing fines without proper notice. Imposing excessive fines. Improper suspension of use rights and voting rights; failure to provide proper notice.	1
25.	Budgets	Section 719.106(1)(e), F.S.	Failure to propose/adopt budget for a given year.	2
26.	Budgets	Subparagraph 61B-76.003(1)(e)5., F.A.C.	Failure to disclose converter reserve funding.	1
27.	Budgets	Paragraphs 61B-76.003(1)(e), (f), (g), F.A.C.	Failure to include reserve schedule in the proposed budget.	1
28.	Budgets	Paragraphs 61B-76.003(1)(e), (f), F.A.C. Subsection 61B-76.005(1), F.A.C.	Failure to include a required reserve item in proposed budget.	1
29.	Budgets	Section 719.106(1)(j)2., F.S. Subsection 61B-76.005(3), F.A.C.	Improper calculation of reserve requirements.	1
30.	Commingle	Section 719.104(7), F.S.	Commingling association funds with non-association funds.	2
31.	Commingle	Section 719.104(7), F.S.	Association funds deposited in account not in association's name.	1
32.	Commingle	Section 719.104(7), F.S. Subsection 61B-76.005(2), F.A.C.	Commingling reserve funds with operating funds.	1
33.	Common Expenses	Section 719.107(1), F.S.	Using association funds for other than common expenses.	2
34.	Converter Reserves	Section 719.618(3)(b), F.S.	Improper use of converter reserves.	1
35.	Converter Reserves	Subparagraph 61B-76.003(1)(e)5., F.A.C.	Failure to include converter reserve disclosures in the proposed budget.	1
36.	Elections	Section 719.106(1)(d), F.S. Subsection 61B-75.005(2), F.A.C.	Failure to hold election.	2
37.	Elections	Subsection 61B-75.005(2), F.A.C.	Election not held at time and place of annual meeting.	1
38.	Elections	Section 719.106(1)(d)1., F.S. Subsection 61B-75.005(3), F.A.C.	Use of nomination procedures in an election.	2
39.	Elections	Section 719.106(1)(d)1.a., F.S. Subsection 61B-75.005(4), F.A.C.	Failure to provide, or timely provide, first notice of election.	2
40.	Elections	Section 719.106(1)(d)1.a., F.S. Subsection 61B-75.005(5), F.A.C.	Ballot included candidate who did not timely submit notice of candidacy.	2
41.	Elections	Subsection 61B-75.005(6), F.A.C.	Failure to provide candidate a receipt for personally delivered written notice of candidacy.	1

42.	Elections	Section 719.106(1)(d)1.a., F.S. Subsections 61B-75.005(7), (8), F.A.C.	Failure to provide, or timely provide, second notice of election or omitting ballots, envelopes, and candidate information sheets.	2
43.	Elections	Subsection 61B-75.005(7), F.A.C.	Distributing candidate information sheets consisting of more than one page.	1
44.	Elections	Subsection 61B-75.005(8), F.A.C.	Voters allowed to rescind or change their previously cast ballots.	1
45.	Elections	Subsection 61B-75.005(8), F.A.C.	Second notice of election included comments by board about candidates.	2
46.	Elections	Section 719.106(1)(d)1.a., F.S. Subsection 61B-75.005(7), F.A.C.	Association altered or edited candidate information sheets.	2
47.	Elections	Section 719.106(1)(d)1., F.S.	Failure to use ballots or voting machines.	2
48.	Elections	Paragraph 61B-75.005(10)(a), F.A.C.	Inner envelopes not placed in separate receptacle before being opened.	2
49.	Elections	Section 719.106(1)(d)1.a., F.S. Subsection 61B-75.005(9), F.A.C.	Failure to include all timely submitted names of eligible candidates on the ballot.	2
50.	Elections	Subsection 61B75.005(9), F.A.C.	Ballots not uniform. Ballots identify voter. Ballots included space for write-in candidate.	2
51.	Elections	Subsection 61B-75.005(10), F.A.C.	Outer envelopes not checked against list of eligible voters.	1
52.	Elections	Paragraphs 61B-75.005(10)(a), (b), F.A.C.	Counting ineligible ballots.	1
53.	Elections	Paragraph 61B-75.005(10)(a), F.A.C.	Failure to count properly cast ballots.	1
54.	Elections	Subsection 61B-75.005(10), F.A.C.	Outer envelopes opened prior to election meeting. Outer envelopes not opened in presence of unit owners.	2
55.	Elections	Paragraph 61B-75.005(10)(a), F.A.C.	Not counting ballots in the presence of unit owners.	2
56.	Elections	Paragraph 61B-75.005(10)(a), F.A.C.	Ballots not counted by impartial committee.	1
57.	Elections	Paragraph 61B-75.005(10)(b), F.A.C.	Failure to notice meeting to verify outer envelope information.	1
58.	Elections	Paragraph 61B-75.005(10)(c), F.A.C.	Failure to hold, or timely hold, runoff election.	2
59.	Elections	Paragraph 61B-75.005(10)(a), F.A.C.	No blank ballots available at election meeting.	2
60.	Final Order	Section 719.501(1)(d)4., F.S.	Failure to comply with final order of the division.	2
61.	Records	Section 719.104(2)(a)4., F.S.	Failure to maintain minutes of meetings.	1
62.	Records	Section 719.104(2)(a)6., F.S.	Failure to maintain a copy of a current insurance policy.	1
63.	Records	Section 719.104(2)(a)7., F.S.	Failure to maintain copy of management agreement or other contract under which the association has obligations.	1
64.	Records	Section 719.104(2)(a)8., F.S.	Failure to maintain bills of sale or transfer.	1
65.	Records	Section 719.104(2)(a)10., F.S.	Failure to maintain election or voting materials for one year.	1
66.	Records	Section 719.104(2)(a)11., F.S.	Failure to maintain rental records.	1

67.	Records	Section 719.104(2)(c), F.S. Section 719.107(1)(a), F.S.	Requiring a unit owner to pay a fee for access to association records.	1
68.	Records	Section 719.104(2)(b), F.S.	Failure to maintain records within Florida.	2
69.	Records	Sections 719.104(2)(b), (c), F.S.	Failure to provide access to records. Failure to allow scanning or copying of records.	1
70.	Records	Section 719.104(2)(e), F.S.	Failure of outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election.	2
71.	Reporting	Section 719.104(4), F.S. Subsections 61B-76.006(6), (8), F.A.C.	Failure to provide, or timely provide, the annual financial report or statements.	2
72.	Reporting	Subsection 61B-76.006(1), F.A.C.	Failure to prepare annual financial statements using fund accounting. Failure to prepare annual financial statements on accrual basis.	1
73.	Reporting	Section 719.104(4)(a), F.S. Subsection 61B-76.006(1), F.A.C.	Failure to prepare annual financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Failure to have reviewed or audited annual financial statements prepared by a Florida licensed CPA.	2
74.	Reporting	Subsection 61B-76.006(2), F.A.C.	Failure to include one or more components of the annual financial statements (incomplete).	1
75.	Reporting	Subparagraphs 61B-76.006(3)(a)1.-5., F.A.C.	Failure to make significant reserve fund disclosures in the annual financial statement.	1
76.	Reporting	Subparagraph 61B-76.006(3)(a)6., F.A.C.	Failure to include converter reserve disclosures in the annual financial statements.	1
77.	Reporting	Paragraph 61B-76.006(5)(c), F.A.C.	Failure to include converter reserve disclosures in the annual financial report.	1
78.	Reporting	Paragraph 61B-76.006(5)(c), F.A.C.	Failure to include the required reserve fund disclosures in the annual financial report.	1
79.	Reporting	Paragraph 61B-76.006(3)(c), F.A.C.	Failure to include the special assessment disclosures in the annual financial statements.	1
80.	Reporting	Paragraph 61B-76.006(3)(d), F.A.C.	Incomplete or missing guarantee disclosures in the annual financial statements.	1
81.	Reporting	Paragraph 61B-76.006(5)(a), F.A.C.	Failure to prepare the annual financial report on a cash basis.	1
82.	Reporting	Section 719.104(4)(c), F.S. Paragraph 61B-76.006(5)(b), F.A.C.	Failure to include in the annual financial report specified receipt or expenditure items.	1
83.	Reporting	Subsection 61B-76.006(8), F.A.C.	Providing lower level of annual financial reporting than required.	2
84.	Reserves	Section 719.106(1)(j)2., F.S. Subsection 61B-76.005(6), F.A.C.	Failure to fund reserves in a timely manner. Failure to fully fund reserves.	1
85.	Reserves	Section 719.106(1)(j)2., F.S. Subsections 61B-76.005(6), (8), F.A.C.	Failure to follow proper method to waive or reduce reserve funding.	1
86.	Reserves	Section 719.106(1)(j)3., F.S.	Using reserve funds for other purposes without proper	2

		Subsection 61B-76.005(7), F.A.C.	unit owner approval.	
87.	Special Assessment	Section 719.108(9), F.S.	Using special assessment funds for other than intended purposes.	1
88.	Special Assessment	Section 719.108(9), F.S.	Failure to state purpose of special assessment in the special assessment notice.	1

*Rulemaking Authority 719.501(1)(f) FS. Law Implemented 719.501(1)(d)4., (m) FS. History--New 6-4-98, Amended 2-19-15.*

**CHAPTER 61B-79  
FILINGS**

- 61B-79.001 Developer, Filing
- 61B-79.002 Procedure for Filing and Examination of Documents
- 61B-79.003 Filing and Examination of Amendments to Documents
- 61B-79.004 Contracts
- 61B-79.005 Plot and Floor Plans

**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.*