

**Regulatory Council for
Community Association Managers**

Telephone Conference Meeting
Wednesday, December 6, 2007 @ 9:00 A.M. EST.

CALL TO ORDER

The meeting was called to order at 9:10 a.m. by Mr. Millard H. "Chris" Brown, Council Chair. The meeting was opened with the roll call and a quorum was established.

ROLL CALL (Council Members Present)

Chris Brown, Chair
Steven Czonstka
Debra Glass (absent)
Edith Yates (absent)
Mark Benson

Mr. Spivey informed the Council members that Ms. Yates resigned her position as a member of the council.

STAFF PRESENT

Anthony B. "Tony" Spivey, Executive Director
Renese Jones, Government Analyst
Barbara Edwards, Assistant Attorney General

MR. BENSON REPORT

Mr. Benson presented draft 12 the unabridged proposed amendments to Part VIII, Chapter 468.431-438 Florida Statute for council to review the changes and make the necessary comments. After a review of the amendments the Council called for a motion to approve the proposed amendments.

MOTION: Mr. Czonstka made a motion to submit the proposed amendments to Chapter 468.431-438, Part VIII Florida Statutes to their sponsor for the legislative session as printed below.

SECOND: Mr. Benson seconded the motion and it passed unanimously.

As Approved by the Regulatory Council of Community Association Managers 12/6/2007

Proposed Amendments, for the 2008 Legislative Session, to Florida Statute

Chapter 468 MISCELLANEOUS PROFESSIONS AND OCCUPATIONS

PART VIII

COMMUNITY ASSOCIATION MANAGEMENT

Deletions indicated by ~~strike through~~

Additions indicated by underline

468.431 Definitions.

468.4315 ~~Board Regulatory Council~~ of Community Association Managers.

468.432 Licensure of community association managers; exceptions.

468.433 Licensure by examination.

468.4336 Renewal of license.

468.4337 Continuing education.

468.4338 Reactivation; continuing education.

468.435 Fees; establishment; disposition.

468.436 Disciplinary proceedings.

468.4365 Availability of disciplinary records and proceedings.

468.437 Penalties.

468.438 Timeshare management firms.

468.431 Definitions.--

(1) "Community association" means a residential homeowners' association in which membership is a condition of ownership of a unit in a planned unit development, or of a lot for a home or a mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel.

2) "Community association management" means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration ~~and when the association or associations served contain more than 50 units or have an annual budget or budgets in excess of \$100,000~~: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association. A person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

(3) "Community association management firm" means a corporation, limited liability company, partnership, trust, association, sole proprietorship or other like organization engaging in the business of community association management to provide any of the services described in subsection (2).

(~~34~~) "Community association manager" means a natural person who is licensed pursuant to this part to perform community association management services.

(~~45~~) "Board Council" means the ~~Board Regulatory Council~~ of Community Association Managers.

(~~56~~) "Department" means the Department of Business and Professional Regulation.

468.4315 Board Regulatory Council of Community Association Managers.--

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(1) The ~~Board Regulatory Council~~ of Community Association Managers is created within the division and shall consist of seven members appointed by the Governor and confirmed by the Senate.

(a) Five members of the ~~board council~~ shall be licensed community association managers, one of whom ~~may shall~~ be a community association manager employed by a timeshare managing entity as described in s. 468.438 and 721.13, who have held an active license for at least 5 years. The remaining two ~~board council~~ members shall be residents of this state and must not be or ever have been connected with the business of community association management but shall not be precluded from serving by being or having been a resident or board member of a community association.

(b) The Governor shall appoint members for terms of 4 years. Such members shall serve until their successors are appointed. Members' service on the ~~board council~~ shall begin upon appointment and shall continue until their successors are appointed.

(2) The ~~board council may shall~~ adopt rules relating to the licensure examination, continuing education requirements, continuing education providers, fees, and professional practice standards to assist the department in carrying out the duties and authorities conferred upon the department by this part.

(3) ~~To the extent the council shall apply~~ The board is authorized to exercise functions ~~otherwise~~ exercised by a board pursuant to chapter 455, the provisions of chapter 455 and s. 20.165 relating to regulatory boards ~~shall apply~~, including, but not limited to, provisions relating to board rules and the accountability and liability of board members. All proceedings and actions of the ~~board council~~ are subject to the provisions of chapter 120. In addition, the provisions of chapter 455 and s. 20.165 shall apply to the department in carrying out the duties and authorities conferred upon the department by this part.

(4) The board shall establish a program of public education concerning professional community association management.

(5) Members of the board shall serve without compensation but are entitled to receive per diem and travel expenses pursuant to s. 112.061 while on board approved official business.

(6) Among the functions of the board shall be to:

(a) Receive input regarding issues of concern with respect to community association management and recommendations for changes in applicable laws.

(b) Review, evaluate, and advise the division concerning revisions and adoption of rules affecting community association management.

(c) Recommend improvements, if needed, in the education programs offered by the division.

468.432 Licensure of community association managers; community association management firms; exceptions.

(1) A person shall not manage or hold himself out to the public as being able to manage a community association in this state unless he is licensed by the department in accordance with the provisions of this part. However, nothing in this part prohibits any person licensed in this state under any other law or court rule from engaging in the profession for which he is licensed.

~~(2) Nothing in this part prohibits a corporation, partnership, trust, association, or other like organization from engaging in the business of community association management in this state unless it is without being licensed if it employs licensed natural persons in the direct provision of community association management services. Such corporation, partnership,~~

~~trust, association, or other organization shall also file with the department a statement on a form approved by the department that it submits itself to the rules of the council and the department and the provisions of this part which the department deems applicable.~~

(2) As of January 1, 2009 a community association management firm or other like organization shall not engage nor hold itself out to the public as being able to engage in the business of community association management in this state unless it is licensed by the department as a community association management firm in accordance with the provisions of this part

(a) A community association management firm or other like organization desiring to be licensed as a community association management firm shall apply to the department on a form approved by the department together with the application and licensure fees required by s. 468.435(1)(a) and (g). Each community association management firm applying for licensure under this subsection must be actively registered and authorized to do business in this state.

(b) On its application each applicant shall designate a licensed community association manager who shall be required to respond to all inquires from and investigations by the department or division.

(c) Each licensed community association management firm shall notify the department within thirty days of the change of information contained in the application upon which licensure is based.

(d) A community association management firm license shall expire September 30 of odd numbered years and shall be renewed every two years. An application for renewal shall be accompanied by the renewal fee as required by s. 468.435(1) (d).

(e) The department shall license each applicant who the department certifies as meeting the requirements of this subsection.

(f) If the license of at least one individual active community association manager member is not in force, the license of the community association management firm or other like organization is cancelled automatically during that time.

(g) Any community association management firm or other like organization agrees by being licensed that it will employ only licensed persons in the direct provision of community association management services as defined in s. 468.431(2).

468.433 Licensure by examination.--

(1) A person desiring to be licensed as a community association manager shall apply to the department to take the licensure examination. Each applicant must file a complete set of fingerprints that have been taken by an authorized law enforcement officer, which set of fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. The cost of processing shall be borne by the applicant.

(2) The department shall examine each applicant who is at least 18 years of age, who has successfully completed all precensure education requirements, and who the department certifies is of good moral character.

(a) Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

(b) The department may refuse to certify an applicant ~~only~~ if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a community association manager; and
2. The finding by the department of lack of good moral character is supported by clear and convincing evidence.

(3) The applicant is found to have been providing management services requiring licensure without the requisite license.

(c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the department shall furnish the applicant a statement containing its findings, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

(d) The ~~board council~~ shall establish by rule the required amount of prelicensure education, which shall consist of not more than 24 hours of in-person instruction by a department-approved provider and which shall cover all areas of the examination specified in subsection (3). Such instruction shall be completed within 12 months prior to the date of the examination. Prelicensure education providers shall be considered continuing education providers for purposes of establishing provider approval fees. A licensee shall not be required to comply with the continuing education requirements of s. 468.4337 prior to the first license renewal. The department shall, by rule, set standards for exceptions to the requirement of in-person instruction in cases of hardship or disability.

~~(3)~~ (4) The ~~board council~~ shall approve an examination for licensure. The examination must demonstrate that the applicant has a fundamental knowledge of state and federal laws relating to the operation of all types of community associations and state laws relating to corporations and nonprofit corporations, proper preparation of community association budgets, proper procedures for noticing and conducting community association meetings, insurance matters relating to community associations, and management skills.

~~(4)~~ (5) The department shall issue a license to practice in this state as a community association manager to any applicant not otherwise unqualified who successfully completes the examination in accordance with this section and pays the appropriate fee.

468.4337 Continuing education.--The department may not renew a license until the licensee submits proof that the licensee has completed the requisite hours of continuing education. No more than 10 hours of continuing education annually shall be required for renewal of a license. The number of hours, criteria, and course content shall be approved by the ~~board council~~ by rule.

468.4338 Reactivation; continuing education.—The ~~board council~~ shall prescribe by rule continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license may not exceed 10 classroom hours for each year the license was inactive.

468.435 Fees; establishment; disposition.—

(1) The ~~board council~~ shall, by rule, establish fees for the described purposes ~~and within the ranges specified in this section:~~

- ~~(a) Application fee: not less than \$25, or more than \$50.~~
- ~~(b) Examination fee: not less than \$25, or more than \$100.~~
- ~~(c) Initial license fee: not less than \$25, or more than \$100.~~
- ~~(d) Renewal of license fee: not less than \$25, or more than \$100.~~
- ~~(e) Delinquent license fee: not less than \$25, or more than \$50.~~
- ~~(f) Inactive license fee: not less than \$10, or more than \$25.~~

(2) ~~Until the~~ The board council shall adopts rules establishing fees under subsection (1), ~~the lower amount in each range shall apply.~~

(3) Fees collected under this section shall be deposited to the credit of the Professional Regulation Trust Fund.

(4) The ~~board council~~ shall establish fees that are adequate to fund the cost to implement the provisions of this part. Fees shall be based on the department estimates of the revenue required to implement this part and the provisions of law with respect to the regulation of community association managers.

468.436 Disciplinary proceedings.—

(1) The Department shall investigate complaints filed against community association managers or firms and allegations of violations by a community association manager or firm of Chapter 455, 468 or rules promulgated thereunder forwarded from other DBPR Divisions.

~~(2)~~ (2) The following acts constitute grounds for which the disciplinary actions in subsection ~~(3)~~ (4) may be taken:

(a) Violation of any provision of s. 455.227(1).

(b)1. Violation of any provision of this part.

2 Violation of any lawful order or rule rendered or adopted by the department or the ~~board council~~.

3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.

4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

5. Committing acts of gross misconduct or gross negligence in connection with the profession.

6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

~~(2)~~ (3) The ~~board council~~ shall specify by rule the acts or omissions that constitute a violation of subsection (1).

~~(3)~~ (4) When the department finds any community association manager or firm guilty of any of the grounds set forth in subsection (1), it shall refer the matter to the department, which may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the community association manager on probation for a period of time and subject to such conditions as the department specifies.

(f) Restriction of the authorized scope of practice by the community association manager.

(4) (5) The department shall reissue the license of a disciplined community association manager or firm upon certification by the department that the disciplined person or firm has complied with all of the terms and conditions set forth in the final order.

ADJORNMENT

MOTION: Mr. Czonstka moved to adjourn the meeting

SECOND: Mr. Benson seconded the motion and it passed unanimously.

The meeting was adjourned at 10:05 am.