

Section: I. Law 1., a. The NOT-FOR-PROFIT ACT Chapter 617, F.S.

F.S., Chapter 617– Florida Not for Profit Corporation Act. Florida Statutes require that associations be a corporation for profit or not-for-profit. An association that is **not-for-profit** is organized under the provisions of **Chapter 617, F.S.** A corporation created under this **not-for-profit** chapter cannot distribute any part of its income to individual members, directors or officers of the association, although it is permitted to pay reasonable compensation to officers, directors, and agents if the articles of incorporation or the bylaws permit (**§617.01401 (5), F.S.**).

F.S., Chapter 617 outlines the provisions that must be included in the articles of a non-profit corporation. These requirements include the manner in which the articles can be amended, the purpose for which the corporation was organized and the limits on the corporation's authority (**§617.0202, F.S.**). **Chapter 617, F.S.**, also outlines the full range of the corporate powers that are granted to not-for-profit corporations in Florida. This authority ranges from the ability to operate and manage the condominium property, to the borrowing of funds and the mortgaging of association property.

The provisions of F.S., Chapter 617 require the corporation to maintain a registered agent and registered office, and specify that the board of administrations will carry out the powers and duties of the corporation. It allows for the indemnification of the officers and directors when they act in good faith and in normal course of their duties on the corporation's behalf. The chapter permits not-for-profit corporations to merge or consolidate their operations and it specifies the procedures which must be followed when such a merger or consolidation occurs. The Chapter basically confers upon the association the full authority necessary to carry out the duties of a non-for-profit corporation for the purpose that the corporation was organized (**§617. 0302, F.S.**).

The articles of incorporation, or corporate charter, is the document which establishes that part of the association responsible for the maintenance, management and operation of the common elements and the association property. The Declaration of Condominium or the Covenants must make provision for the articles of incorporation within their own text or as exhibit. The articles themselves must define the membership rights of each unit and the voting rights which each unit owner has in the association's operation.

The term "articles of incorporation" includes the original document creating the association and all amendments to it and any other documents which define the existing form, membership and responsibility of the association. For example, the definition also includes articles of consolidation or articles of merger if several condominiums associations have been combined into a single organization. (**§617.01401 (1), F.S.**).

The articles of incorporation may permit the association to operate more than one condominium, either in their original form, or by amendment, merger or consolidation (**§718.111 (l)(a), F.S.**).

The articles of incorporation may establish a corporation for profit or a corporation not-for-profit to operate the condominium. Under most circumstances, the articles of incorporation establish a "**corporation not-for-profit**" under Chapter 617 of the Florida Statutes to govern the condominium.

A **corporation not-for-profit** is not tax exempt but it is a corporation where no part of the income may be distributed to the members, directors or officers of the association (**§617.01401 (5), F.S.**).

The articles of incorporation for a **corporation not-for-profit** may contain all of the powers traditionally granted to profit-making corporations in Florida, except as restricted by the effective and the association may begin to operate when they are filed with the Division of Corporations of the Department of State.

The associations as not-for-profit corporations must fill certain forms each year with various State Divisions or Departments.

The filings are as follows:

1. The first filing is for **Condominiums only** and is with the Division of Land Sales, Condominiums and Mobile Homes for the purpose of remitting the **annual fee required by the Condominium Act**. The amount of the annual fee is based on the number of residential units that the association operates and is currently **\$4.00 per residential unit**. The fee must be paid on or before January 1st of each year. If the fee is not paid by June 1st of that year, the Division has the right to assess a 10% penalty against the association and the association is prohibited from maintaining or defending any action in the Florida courts (**§718.501 (2)(d)(6), F.S.**). **This fee is a common expense to the condominium and is the only budget line item mandated by the Statutes for every condominium.**
2. Each association must additionally file an **annual report titled the UNIFORM BUSINESS REPORT(UBR)**. Payments must be made to the **Department of State** between January 1st and May 1st of each year. The report is filed on Department forms and must be set forth the corporate name, the address of the principal office, the corporation's federal tax identification number, and the name and the mailing address for each officer, director and the **Registered Agent** effective for the current year of the report. **The Registered Agent is the person responsible for receiving legal correspondence on behalf of the corporation. The Registered Agent is thereby registered or listed with the State of Florida.** Failure of the board of administration to file this report with the Department of State results in the dissolution of the corporation (**§617.1622 (8), P.S.**). **The annual report must be accompanied by a filing fee (\$61.25), payable to the Department of State. There is a late filing fee \$550.00 after May 1, yearly. (§617.0122 (19), F.S.).**
3. Each condominium association, whether organized for **profit or not-for-profit**, is required to file an **annual income tax return** with the Internal Revenue Service. A corporation **not-for-profit** organized under **Chapter 617, F.S.**, is neither tax-exempt, nor exempt from filing the filing of an annual tax return. The Internal Revenue Service Code allows condominium associations' special treatment for some of their activities, including the retention of reserve accounts, but proper accounting for these funds and the filing of an income tax return are annual requirements for each condominium community.

Once Again:

Current provisions of Florida's Statutes require that the association be either a corporation for profit or a corporation not-for-profit. As a general rule, most associations fall into not-for-profit category.

Association Corporate Filings

All:

1. Uniform Business Report (UBR) – **By 4/30**
2. Annual Income Tax Filing (usually for interest earned on Reserve Funds.)

Condo's Only:

1. Annual Report – including annual fee of \$4.00 per unit –**By 6/1**
* HOA's now also have to report to the State. See HOA section.

SECTION I: Law

Part 1: CONDOMINIUM ACT – CHAPTER 718, F.S and F.A.C.

Chapter 718 of the Florida Statutes, is also known as the Condominium Act, is a chapter of law that governs condominiums in the state of Florida.

The Condominium Act should be read in conjunction with chapter **61b of the Florida Administrative Code**. These administrative rules are promulgated by the Division of Florida Land Sales, Condominiums and Mobile Homes to interpret, enforce, and implement Chapter 718, Florida Statutes, and the Condominium Act. Due to the numerous changes to the statute, each association should inquire periodically to ensure that the version you are referring to is the most recently revised copy. Inquiries concerning this information may be addressed to the Bureau of Condominiums at any one of the Bureau's three offices. Please contact the office in your area about the Bureau of Condominiums, you may also access the Bureau's home page on the worldwide web at www.state.fl.us/dbpr

718.101 Short title.--This chapter shall be known and may be cited as the "Condominium Act."

718.102 Purposes.--The purpose of this chapter is:

- (1) To give statutory recognition to the condominium form of ownership of real property.
- (2) To establish procedures for the creation, sale, and operation of condominiums.

SECTION: I., 2., a. Knowledge of ownership and additional alterations to common elements

Every condominium created and existing in this state shall be subject to the provisions of this chapter.

718.103 Definitions.--As used in this chapter, the term:

(1) "Assessment" means a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.

(2) "Association" means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.

(3) "Association property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

(4) "Board of administration" or "board" means the board of directors or other representative body which is responsible for administration of the association.

Mission: To Protect, Preserve, Maintain and Enhance the Common Elements

(5) "Buyer" means a person who purchases a condominium unit. The term "purchaser" may be used interchangeably with the term "buyer."

(6) "Bylaws" means the bylaws of the association as they are amended from time to time.

(7) "Committee" means a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the proposed annual budget or to take action on behalf of the board.

(8) "Common elements" means the portions of the condominium property not included in the units.

(9) "Common expenses" means all expenses properly incurred by the association in the performance of its duties, including expenses specified in s. 718.115.

(10) "Common surplus" means the amount of all receipts or revenues, including assessments, rents, or profits, collected by a condominium association which exceeds common expenses.

(11) "Condominium" means that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

(12) "Condominium parcel" means a unit, together with the undivided share in the common elements appurtenant to the unit.

(13) "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

(14) "Conspicuous type" means BOLD TYPE IN CAPITAL LETTERS no smaller than the largest type, exclusive of headings, on the page on which it appears and, in all cases, at least 10-point type. Where conspicuous type is required, it must be separated on all sides from other type and print. Conspicuous type may be used in a contract for purchase and sale of a unit, a lease of a unit for more than 5 years, or a prospectus or offering circular only where required by law.

(15) "Declaration" or "declaration of condominium" means the instrument or instruments by which a condominium is created, as they are from time to time amended.

(16) "Developer" means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include an owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy, nor does it include a cooperative association which creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion. A state, county, or municipal entity is not a developer for any purposes under this act when it is acting as a lessor and not otherwise named as a developer in the association.

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

(18) "Land" means the surface of a legally described parcel of real property and includes, unless otherwise specified in the declaration and whether separate from or including such surface, airspace lying above and subterranean space lying below such surface. However, if so defined in the declaration, the term "land" may mean all or any portion of the airspace or subterranean space between two legally identifiable elevations and may exclude the surface of a parcel of

real property and may mean any combination of the foregoing, whether or not contiguous, or may mean a condominium unit.

(19) **"Limited common elements" means those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.**

(20) "Multicondominium" means a real estate development containing two or more condominiums, all of which are operated by the same association.

(21) "Operation" or "operation of the condominium" includes the administration and management of the condominium property.

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

(23) "Residential condominium" means a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in § 721.05(35) shall govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of § 718.404.

(24) **"Special assessment" means any assessment levied against a unit owner other than the assessment required by a budget adopted annually.**

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

(26) "Timeshare unit" means a unit in which timeshare estates have been created.

(27) **"Unit" means a part of the condominium property which is subject to exclusive ownership as specified in the declaration.**

(28) "Unit owner" or "owner of a unit" means a record owner of legal title to a condominium parcel.

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

(30) "Voting interests" means the voting rights distributed to the association members pursuant to § 718.104(4)(j). In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a

multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

SECTION: I., 2. b. Knowledge of Governing Document Existence

718.104 Creation of condominiums; contents of declaration.--Every condominium created in this state shall be created pursuant to this chapter.

- (1) A condominium may be created on land owned in fee simple or held under a lease complying with the provisions of § 718.401.
- (2) A condominium is created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed. All persons who have record title to the interest in the land being submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the declaration. Upon the recording of the declaration, or an amendment adding a phase to the condominium under § 718.403(6), all units described in the declaration or phase amendment as being located in or on the land then being submitted to condominium ownership shall come into existence, regardless of the state of completion of planned improvements in which the units may be located. Upon recording the declaration of condominium pursuant to this section, the developer shall file the recording information with the division within 120 calendar days on a form prescribed by the division.
- (3) All persons who have any record interest in any mortgage encumbering the interest in the land being submitted to condominium ownership must either join in the execution of the declaration or execute, with the requirements for deed, and record, a consent to the declaration or an agreement subordinating their mortgage interest to the declaration.
- (4) The declaration must contain or provide for the following matters:
 - (a) A statement submitting the property to condominium ownership.
 - (b) The name by which the condominium property is to be identified, which shall include the word "condominium" or be followed by the words "a condominium."
 - (c) The legal description of the land and, if a leasehold estate is submitted to condominium, an identification of the lease.
 - (d) An identification of each unit by letter, name, or number, or combination thereof, so that no unit bears the same designation as any other unit.
 - (e) A survey of the land which meets the minimum technical standards set forth by the Board of Professional Surveyors and Mappers, pursuant to § 472.027, and a graphic description of the improvements in which units are located and a plot plan thereof that, together with the declaration, are in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions. Failure of the survey to meet minimum technical standards shall not invalidate an otherwise validly created condominium. The survey, graphic description, and plot plan may be in the form of exhibits consisting of building plans, floor plans, maps, surveys, or sketches. If the construction of the condominium is not substantially completed, there shall be a statement to that effect, and, upon substantial completion of construction, the developer or the association shall amend the declaration to include the certificate described below. The amendment may be accomplished by referring to the recording data of a survey of the condominium that complies with the certificate. A certificate of a surveyor and mapper authorized to practice in this state shall be included in or attached to the declaration or the survey or graphic description as recorded under § 718.105

that the construction of the improvements is substantially complete so that the material, together with the provisions of the declaration describing the condominium property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials. Completed units within each substantially completed building in a condominium development may be conveyed to purchasers, notwithstanding that other buildings in the condominium are not substantially completed, provided that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving such building, as set forth in the declaration, are first completed and the declaration of condominium is first recorded and provided that as to the units being conveyed there is a certificate of a surveyor and mapper as required above, including certification that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving the building in which the units to be conveyed are located have been substantially completed, and such certificate is recorded with the original declaration or as an amendment to such declaration. This section shall not, however, operate to require development of improvements and amenities declared to be included in future phases pursuant to § 718.403 prior to conveying a unit as provided herein. For the purposes of this section, a "certificate of a surveyor and mapper" means certification by a surveyor and mapper in the form provided herein and may include, along with certification by a surveyor and mapper, when appropriate, certification by an architect or engineer authorized to practice in this state. Notwithstanding the requirements of substantial completion provided in this section, nothing contained herein shall prohibit or impair the validity of a mortgage encumbering units together with an undivided interest in the common elements as described in a declaration of condominium recorded prior to the recording of a certificate of a surveyor and mapper as provided herein.

(f) The undivided share of ownership of the common elements and common surplus of the condominium that is appurtenant to each unit stated as a percentage or a fraction of the whole. In the declaration of condominium for residential condominiums created after April 1, 1992, the ownership share of the common elements assigned to each residential unit shall be based either upon the total square footage of each residential unit in uniform relationship to the total square footage of each other residential unit in the condominium or on an equal fractional basis.

(g) The percentage or fractional shares of liability for common expenses of the condominium, which, for all residential units, must be the same as the undivided shares of ownership of the common elements and common surplus appurtenant to each unit as provided for in paragraph (f).

(h) If a developer reserves the right, in a declaration recorded on or after July 1, 2000, to create a multicondominium, the declaration must state, or provide a specific formula for determining, the fractional or percentage shares of liability for the common expenses of the association and of ownership of the common surplus of the association to be allocated to the units in each condominium to be operated by the association. If a declaration recorded on or after July 1, 2000, for a condominium operated by a multicondominium association as originally recorded fails to so provide, the share of liability for the common expenses of the association and of ownership of the common surplus of the association allocated to each unit in each condominium operated by the association shall be a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of units in all condominiums operated by the association.

(i) The name of the association, which must be a corporation for profit or a corporation not for profit.

(j) Unit owners' membership and voting rights in the association.

(k) The document or documents creating the association, which may be attached as an exhibit.

(l) A copy of the bylaws, which shall be attached as an exhibit. Defects or omissions in the bylaws shall not affect the validity of the condominium or title to the condominium parcels.

(m) Other desired provisions not inconsistent with this chapter.

(n) The creation of a nonexclusive easement for ingress and egress over streets, walks, and other rights-of-way serving the units of a condominium, as part of the common elements necessary to provide reasonable access to the public ways, or a dedication of the streets, walks, and other rights-of-way to the public. All easements for ingress and egress shall not be encumbered by any leasehold or lien other than those on the condominium parcels, unless:

1. Any such lien is subordinate to the rights of unit owners, or
2. The holder of any encumbrance or leasehold of any easement has executed and recorded an agreement that the use-rights of each unit owner will not be terminated as long as the unit owner has not been evicted because of a default under the encumbrance or lease, and the use-rights of any mortgagee of a unit who has acquired title to a unit may not be terminated.

(o) If timeshare estates will or may be created with respect to any unit in the condominium, a statement in conspicuous type declaring that timeshare estates will or may be created with respect to units in the condominium. In addition, the degree, quantity, nature, and extent of the timeshare estates that will or may be created shall be defined and described in detail in the declaration, with a specific statement as to the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be created with respect to any unit.

(5) The declaration as originally recorded or as amended under the procedures provided therein may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. However, the rule against perpetuities shall not defeat a right given any person or entity by the declaration for the purpose of allowing unit owners to retain reasonable control over the use, occupancy, and transfer of units.

(6) A person who joins in, or consents to the execution of, a declaration subjects his or her interest in the condominium property to the provisions of the declaration.

(7) All provisions of the declaration are enforceable equitable servitudes, run with the land, and are effective until the condominium is terminated.

718.1045 Timeshare estates; limitation on creation. ----No timeshare estates shall be created with respect to any condominium unit except pursuant to provisions in the declaration expressly permitting the creation of such estates.

SECTION: I., 2. c. Knowledge of Disclosure Requirements

718.105 Recording of declaration.--

(1) When executed as required by §718.104, a declaration together with all exhibits and all amendments is entitled to recordation as an agreement relating to the conveyance of land.

(2) Graphic descriptions of improvements constituting exhibits to a declaration, when accompanied by the certificate of a surveyor required by §718.104, may be recorded as a part of a declaration without approval of any public body or officer.

(3) The clerk of the circuit court recording the declaration may, for his or her convenience, file the exhibits of a declaration which contains graphic descriptions of improvements in a separate book, and shall indicate the place of filing upon the margin of the record of the declaration.

Note: the affixed label on each page of the recorded document will give the date, time, book # and page #.

(4)(a) If the declaration does not have the certificate or the survey or graphic description of the improvements required under §718.104(4)(e), the developer shall deliver therewith to the clerk an estimate, signed by a surveyor authorized to practice in this state, of the cost of a final survey or graphic description providing the certificate prescribed by § 718.104(4)(e), and shall deposit with the clerk the sum of money specified in the estimate.

(b) The clerk shall hold the money until an amendment to the declaration is recorded that complies with the certificate requirements of § 718.104(4)(e). At that time, the clerk shall pay to the person presenting the amendment to the declaration the sum of money deposited, without making any charge for holding the sum, receiving it, or paying out, other than the fees required for recording the condominium documents.

(c) If the sum of money held by the clerk has not been paid to the developer or association as provided in paragraph (b) within 3 years after the date the declaration was originally recorded, the clerk may notify, in writing, the registered agent of the association that the sum is still available and the purpose for which it was deposited. If the association does not record the certificate within 90 days after the clerk has given the notice, the clerk may disburse the money to the developer. If the developer cannot be located, the clerk shall disburse the money to the Division of Florida Condominiums, Timeshares, and Mobile Homes for deposit in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

(5) When a declaration of condominium is recorded pursuant to this section, a certificate or receipted bill shall be filed with the clerk of the circuit court in the county where the property is located showing that all taxes due and owing on the property have been paid in full as of the date of recordation.

SECTION: I., 2., d. Knowledge of Rights, Privileges and Obligations of the Unit Owner
718.106 Condominium parcels; appurtenances; possession and enjoyment.--

(1) A condominium parcel created by the declaration is a separate parcel of real property.

(2) There shall pass with a unit, as appurtenances (attachments) thereto:

(a) An undivided share in the common elements and common surplus.

(b) The exclusive right to use such portion of the common elements as may be provided by the declaration, including the right to transfer such right to other units or unit owners to the extent authorized by the declaration as originally recorded, or amendments to the declaration adopted pursuant to the provisions contained therein. Amendments to declarations of condominium providing for the transfer of use rights with respect to limited common elements are not amendments that materially modify unit appurtenances as described in s. 718.110(4). However, in order to be effective, the transfer of use rights with respect to limited common elements must be effectuated in conformity with the procedures set forth in the declaration as originally recorded or as amended under the procedures provided therein. This section is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.

(d) Membership in the association designated in the declaration, with the full voting rights appertaining thereto.

(e) Other appurtenances (attachments) as may be provided in the declaration.

(3) A unit owner is entitled to the exclusive possession of his or her unit, subject to the provisions of § 718.111(5). He or she is entitled to use the common elements in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the lawful rights of other unit owners

(4) When a unit is leased, a tenant shall have all use rights in the association property and those common elements otherwise readily available for use generally by unit owners and the unit owner shall not have such rights except as a guest, unless such rights are waived in writing by the tenant. Nothing in this subsection shall interfere with the access rights of the unit owner as a landlord pursuant to chapter 83. The association shall have the right to adopt rules to prohibit dual usage by a unit owner and a tenant of association property and common elements otherwise readily available for use generally by unit owners.

718.107 Restraint upon separation and partition of common elements.--

(1) The undivided share in the common elements which is appurtenant to a unit shall not be separated from it and shall pass with the title to the unit, whether or not separately described.

(2) The share in the common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common elements appurtenant to units are undivided, and no action for partition of the common elements shall lie.

718.108 Common elements.--

(1) "Common elements" includes within its meaning the following:

(a) The condominium property which is not included within the units.

(b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.

(c) An easement of support in every portion of a unit which contributes to the support of a building.

(d) The property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements.

(2) The declaration may designate other parts of the condominium property as common elements.

718.109 Legal description of condominium parcels.--Following the recording of the declaration, a description of a condominium parcel by the number or other designation by which the unit is identified in the declaration, together with the recording data identifying the declaration, shall be a sufficient legal description for all purposes. The description includes all appurtenances to the unit concerned, whether or not separately described, including, but not limited to, the undivided share in the common elements appurtenant thereto.

718.112 The Bylaws

(1) GENERALLY.--

(a) The operation of the association shall be governed by the articles of incorporation if the association is incorporated, and the bylaws of the association, which shall be included as exhibits to the recorded declaration. If one association operates more than one condominium, it shall not be necessary to rerecord the same articles of incorporation and bylaws as exhibits to each declaration after the first, provided that in each case where the articles and bylaws are not so recorded, the declaration expressly incorporates them by reference as exhibits and identifies the book and page of the public records where the first declaration to which they were attached is recorded.

(b) No amendment to the articles of incorporation or bylaws is valid unless recorded with identification on the first page thereof of the book and page of the public records where the declaration of each condominium operated by the association is recorded.

(2) REQUIRED PROVISIONS.--The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(a) Administration.--

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

Unless otherwise provided in the bylaws, the members of the board shall serve without compensation and for a period of one (1) year.

61B – Florida Administrative Code

CONDOMINIUM ADMINISTRATIVE RULES - Chapters 61B-15 through 61B-24 Florida Administrative Code

CHAPTER 61B.15

FORMS AND DEFINITIONS

61 B-15.0011 – Definitions. As used in chapters 61B-15 through 61B-25 the term:

(1) “Multi-condominium” means a condominium which is a part of or included within a development which contains more than one condominium operated by a single association.

(2) “Multi-condominium association” means a single association which operates more than one condominium.

- (a) A creating developer, which means any *person* who creates a condominium or offers condominium parcels for sale or lease in the ordinary course business;
- (b) A successor or subsequent developer, which means any person who succeeds to the interests of a developer by sale, lease assignment, foreclosure of a mortgage or other transfer and who offers condominium parcels for sale or lease in the ordinary course of business; or,
- (c) A concurrent developer, which means any person who acts concurrently with a developer in selling or leasing condominium parcels in the ordinary course of business. As used in this rule, person includes natural persons, corporations, partnerships, and any other legal entities.

For purpose of the above definitions, one is presumed to offer condominium parcels for sale or lease in the ordinary course of business where that person:

- (a) Offers more than 7 parcels, or for condominiums comprised of less than 70 parcels, where that person offers more than 5 parcels in the condominium within a period of 1 year; or,
 - (b) Participates in a common promotional plan which offers more than 7 parcels within a period of 1 year. A person is not, however, deemed to have participated in a plan merely by virtue of providing financial contributions or professional or brokerage services.
- (3) Notwithstanding the above, the presumption that one is offering condominiums units in the ordinary course of business will not apply for filing purposes where all of the units are offered and conveyed to a single purchaser in a single transaction. An example of such a transaction would be a financial lending institution receiving title to a number of condominium units through foreclosure or deed in lieu of foreclosure and then conveying all of such units to another person. In such circumstances, the lending institution would not be deemed to be a developer for the filing purposes. However, such entity shall, upon the conveyance to a single purchaser, notify the bureau in writing of the identity and business address of the purchaser, the name of the condominium involved, the date of the conveyance and the number of units conveyed.

61B-17.001- Development, Filing.

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

(2)(a) Except in a case of a reservation program, a developer of a residential condominium shall file with the Division one copy of each document required by sections 718.503 and 718.504, Florida Statutes. The filing shall occur at the time the condominium is created pursuant to section 718.104, Florida Statutes or prior to any offering of a condominium unit to the public, whichever occurs first. The developer shall submit with the filing a Developer/Condominium Filing Statement, BPR form 33-016, incorporated herein by reference and effective 2-20-97. When each subsequent phase is filed, the developer shall submit BPR form 33-017, Filing Statement for Subsequent Phases, incorporated herein by reference and effective 2-20-97.

(b) In the case of a reservation program, a developer of a condominium shall file with the Division one copy of each document required by section 718.502(2), Florida Statutes, and shall obtain approval of the Division prior to any offering

of a condominium unit to the public. In addition, a developer shall file, prior to offering, proof of the developer's ownership, contractual, or leasehold interest in the land upon which the condominium is to be developed. For purposes of this rule the Division shall accept a signed written statement from the developer or the developer's attorney describing the developer's interest in the land upon which the condominium is to be developed. The signature of the developer or the developer's attorney constitutes a certificate that they have read the statement and, to the best of their knowledge information, and belief formed after reasonable inquiry, the statement accurately describes the developer's interest in the land.

(3) Upon receipt of a developer's filing, the Division will take action pursuant to these rules. When filing is determined to be in correct form pursuant to rule 61 B-i 7.005, Florida Administrative Code, offerings to the public may be made pursuant to the statute and these rules.

(4) Upon recording the declaration or amendments adding phases pursuant to section 718.403, Florida Statutes, the developer shall file the recording information with the division within 30 working days on DBPR form CO 6000-01, NOTICE OF RECORDING INFORMATION. This form may be obtained by writing the Bureau of Condominiums

61-B 17.003 – Phase Condominium Filing.

(1) Every developer of a phase residential condominium shall file the initial phase with the Division. Said initial filing shall be submitted as required by Rule 61 B-I 7.002.

(2) Subsequent phase(s) shall be filed prior to offering any unit therein for sale or lease when the lease period is more than five years.

(3) In addition, upon substantial completion of the construction of each subsequent phase, the developer shall file with the Division a survey prepared by a surveyor authorized to practice in the State of Florida with the appropriate certificate of the surveyor. Said certificate shall state that the construction of the improvements is substantially complete.

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

(5) Each filing of a subsequent phase shall be submitted with the Filing Statement for Subsequent Phase(s), and the appropriate fees as described in Chapter 718.

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

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

- (a) The estimated operating budget filed with the Division in a phase condominium shall include a budget for the condominium completed through the phase being filed and a budget for the condominium as it would be upon completion of all phases, using estimated expenses as of the of filing.
- (b) The description of the general size of units pursuant to Section 718.403(2)(b), Florida Statutes, shall be stated in terms of approximate square footage per unit type.
- (c) The declaration shall contain a formula by which a unit owner can compute that unit's change in percentage or proportion of ownership in the common elements as each phase is added.
- (8) "**Commencement**" of a phase pursuant to Section 718.403(3), Florida Statutes, means the issuance of a building permit or the equivalent authorization issued by the governmental body having jurisdiction, or the recording of the amendment to the declaration adding phase, whichever occurs first. The required notice shall be mailed within five business days of commencement.

Frequently Asked Questions and Answers Sheet.

This is a statute requirement for developers and associations and the FAQ must be submitted with the developer filings substantially conforming to DBPR form CO 6000-4.

FREQUENTLY ASKED QUESTIONS AND ANSWERS SHEET, see form on page 147 in the forms section.

The association must maintain the Frequently Asked Question and Answer sheet as part of the official records of the association and must be updated annually by the association.

The FAQ form is DBPR Form CO 6000-4

The procedure is a simple one.

We recommend that this item be placed on the association boards meeting agenda at the last meeting of your association's fiscal year. The motion could be: *I move that the Frequently Asked Question and Answer Sheet be updated with changes (or without changes) for the next fiscal year. Seconded – discussion – call the vote!* The action must be recorded in the minutes and therefore becomes part of the official records of the association.

As of October 1, 2004 the developer and association must maintain this requirement and be available to anyone requesting a copy.

Associations may obtain this form by writing:

The Bureau of Condominiums
2601 BLAIR STONE ROAD
TALLAHASSEE, FLORIDA 32309

Initial Estimated Operating Budget

Each condominium filing by a developer shall include an estimated operating budget conforming to the requirements of **Rule 61-B-22.003**, Florida Administrative Code, in a single exhibit labeled **“Estimated Operating Budget.”**

The following statement in conspicuous type is to appear on developer budgets:

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

Each budget for an association prepared by a developer consistent with this subsection shall be prepared in good faith and shall reflect accurate estimated amounts for the required items in paragraph (c) at the time of the filing of the offering circular with the division, and subsequent increased amounts of any item included in the association's estimated budget that are beyond the control of the developer shall not be considered an amendment that would give rise to rescission rights set forth in s. 718.503(1)(a) or (b), nor shall such increases modify, void, or otherwise affect any guarantee of the developer contained in the offering circular or any purchase contract. It is the intent of this paragraph to clarify existing law.

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

COOPERATIVE CHAPTER 719, F.S. - THE COOPERATIVE ACT and F.A.C.

Section I., 5., Utilize the Cooperative Act and F.A.C.

Chapter 719 of the Florida Statutes, also known as the Cooperative Act, is a chapter of law that governs cooperatives in the State of Florida. The Cooperative Act should be read in conjunction with chapters 61 B-75 through 61 B-79, Florida Administrative Code. These administrative rules are promulgated by the Division of Florida Land Sales, Condominiums and Mobile Homes to interpret, enforce, and implement Chapter 719, Florida Statutes, the Cooperative Act. Due to the numerous changes to the statute, each association should inquire periodically to ensure that the version you are referring to is the most recently revised copy. Inquiries concerning this information may be addressed to the Bureau of Condominiums at any one of the Bureau's three offices. Please contact the office in your area.

DEFINITIONS

719.101 Short title.--This chapter shall be known and may be cited as the "Cooperative Act."

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

719.103 Definitions.--As used in this chapter:

"Association" means the corporation for profit or not for profit that owns the recorded interest in the cooperative property or a leasehold of the property of a cooperative and that is responsible for the operation of the cooperative.

"Common areas" means the portions of the cooperative property not included in the units.

"Common areas" includes within its meaning the following:

- (a) The cooperative property which is not included within the units.
- (b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common areas.
- (c) An easement of support in every portion of a unit which contributes to the support of a building.
- (d) The property and installations required for the furnishing of utilities and other services to more than one unit or to the common areas.
- (e) Any other part of the cooperative property designated in the cooperative documents as common areas.

Note: The first eleven definitions are similar to those explained in other chapters (SEE OTHER CHAPTERS)

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

(13) **"Cooperative documents"** means:

- (a) The documents that create a cooperative, including, but not limited to, articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any.
- (b) The document evidencing a unit owner's membership or share in the association.
- (c) The document recognizing a unit owner's title or right of possession to his or her unit.

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

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

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

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

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

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

(20) **"Operation"** or **"operation of the cooperative"** includes the administration and management of the cooperative property.

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

(22) **"Residential cooperative"** means a cooperative consisting of cooperative units, any of which are intended for use as a private residence. A cooperative is not a residential cooperative if the use of the units is intended as primarily commercial or industrial and not more than three units are intended to be used for private residence, domicile, or homestead, or if the units are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the cooperative. If a cooperative is a residential cooperative under this definition, but has units intended to be commercial or industrial, then the cooperative is a residential cooperative with respect to those units intended for use as a private residence, domicile, or homestead, but not a residential cooperative with respect to those units intended for use commercially or industrially. With respect to a timeshare cooperative, the timeshare instrument as defined in s. 721.05 shall govern the intended use of each unit in the cooperative.

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

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

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

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

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

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

SPECIAL TYPES of COOPERATIVES

719.401 – Leasehold.

719.4015 – Cooperative leases; escalation clauses.

719.102 – Conversion of existing improvement to cooperative.

719.103 – Phase cooperative.

719.401 Leaseholds.--

(1) A cooperative may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold, if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years.

719.4015 Cooperative leases; escalation clauses.--

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

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

719.403 Phase cooperatives.--

(1) A developer may develop a cooperative in phases, if the original cooperative documents or an amendment to the cooperative documents approved by the unit owners and unit mortgagees provides for and describes in detail all

anticipated phases, the impact, if any, which the completion of subsequent phases would have upon the initial phase, and the time period within which all phases must be added to the cooperative and must comply with the requirements of this section or the right to add additional phases shall expire.

SECTION: I., 5., a. Knowledge of the governing document existence

719.1035 Creation of cooperatives.--

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

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

SECTION: I., 5., b.

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.--

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

(2) **OFFICIAL RECORDS.—Almost EVERY written document is an Official Record in any Association!**

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

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).
2. A photocopy of the cooperative documents.
3. A copy of the current rules of the association.
4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners, which minutes shall be retained for a period of not less than 7 years.
5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers.
6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.
8. Bills of sale or transfer for all property owned by the association.
9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but not be limited to:
 - a. Accurate, itemized, and detailed records of all receipts and expenditures.
 - b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.
 - c. All audits, reviews, accounting statements, and financial reports of the association.
 - d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.
10. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.
11. All rental records where the association is acting as agent for the rental of units.
12. A copy of the current question and answer sheet as described in s. 719.504.
13. All other records of the association not specifically included in the foregoing which are related to the operation of the association.
 - (b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the cooperative property or within the county in which the cooperative property is located within 10 working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the cooperative property or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in an electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.
 - (c) The official records of the association shall be open to inspection by any association member or the authorized representative of such member at all reasonable times. Failure to permit inspection of the association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum

damages for the association's willful failure to comply with this paragraph. The minimum damages shall be \$50 per calendar day up to 10 days, the calculation to begin on the 11th day after receipt of the written request. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet provided for in s. 719.501, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same.

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

(4) FINANCIAL REPORT.--

(a) **Within 90 days following the end of the fiscal or calendar year or annually on such date as is otherwise provided in the bylaws of the association, the board of administration of the association shall mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures for the previous 12 months, or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting procedures.** The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to, the following:

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

(b) The division shall adopt rules that may require that the association deliver to the unit owners, in lieu of the financial report required by this section, a complete set of financial statements for the preceding fiscal year. The financial statements shall be delivered within 90 days following the end of the previous fiscal year or annually on such other date as provided in the bylaws. The rules of the division may require that the financial statements be compiled, reviewed, or audited, and the rules shall take into consideration the criteria set forth in s. 719.501(1)(j).

719.105 Cooperative parcels; appurtenances; possession and enjoyment.--

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

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

(b) An undivided share in the assets of the association.

(c) The exclusive right to use that portion of the common areas as may be provided by the cooperative documents.

(d) An undivided share in the common surplus attributable to the unit.

(e) Any other appurtenances provided for in the cooperative documents.

(2) Each unit owner is entitled to the exclusive possession of his or her unit. The unit owner is entitled to use the common areas in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the rights of other unit owners.

(3) When a unit is leased, the tenant has all use rights in the association property available for use generally by the cooperative member and the member does not have such rights except as a guest. This subsection does not interfere with the access rights of the unit owner as a landlord pursuant to chapter 83. The association may adopt rules to prohibit dual usage by a unit owner and a tenant of cooperative property.

719.109 Right of owners to peaceably assemble.--

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

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

SECTION: I., 5., c. RIGHTS AND OBLIGATIONS OF DEVELOPER

719.202 Sales or reservation deposits prior to closing.--

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

(a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned.

(b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to the developer at the closing of the transaction.

(d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent receives from the buyer written notice of a dispute between the buyer and developer.

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

(3) If the contract for sale of the cooperative so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. The developer may use the funds in the actual construction and development of the cooperative property in which the unit to be sold is located.

SECTION: I., 5., d. Knowledge of Transition Requirements (Turnover)

719.301 Transfer of association control. -- TURNOVER

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

Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association when: (*whichever occurs first.*)

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business; or

(e) Seven years after creation of the cooperative association.

The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent in cooperatives with fewer than 500 units and 2 percent in cooperatives with 500 or more units in a cooperative operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the

same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority of the members of the board.

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

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

(a) Assessment of the developer as a unit owner for capital improvements.

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

(4) When unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

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

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

3. A copy of the bylaws.

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

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

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

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

determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments.

(d) Association funds or control thereof.

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

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

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

(h) Insurance policies.

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

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

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

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

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

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

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

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

(6) The division may adopt rules administering the provisions of this section.

FLORIDA ADMINISTRATIVE CODE for CHAPTER 719

SECTION: I., 5., a., b., c., d., F.A.C.

Chapters 61B-75 through 61B-79, Florida Administrative Code, are the administrative rules promulgated by the Division of Florida Land Sales, Condominium and Mobile Homes to interpret, enforce, and implement Chapter 719, Florida Statutes, the Cooperative Act. The administrative rules should be read in conjunction with the Cooperative Act. Due to the numerous changes to the statute, these administrative rules are subject to change. Each association should inquire periodically to ensure that the version you are referring to is the most recently revised copy. Inquiries concerning this information may be addressed to the Bureau of Condominiums at any one of the Bureau's three offices.

61B-76.005 Reserves

(1) Reserves required by statute. Reserves, required by §719.106(1)(j), Florida Statutes, for capital expenditures and deferred maintenance including roofing, painting, paving, and for any other items for which the deferred maintenance expense or replacement cost exceeds \$10,000

61B-76.001 Definitions.

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

- (1) **"Accounting records"** include all of the books and records identified in Section 719.104(2)(a)9., Florida Statutes, and any other records that identify, measure, record, and/or communicate financial information whether the records are maintained electronically or otherwise.
- (2) **"Capital expenditure"** means any expenditure of funds for:
 - (a) The purchase of an asset whose useful life is greater than one year in length;
 - (b) The replacement of an asset whose useful life is greater than one year in length; or
 - (c) The addition to an asset that extends the useful life of the previously existing asset for a period greater than one year in length.
- (3) **"Deferred maintenance"** means any maintenance or repair that:
 - (a) Will be performed less frequently than yearly; and
 - (b) Will result in maintaining the useful life of an asset.
- (4) **"Funds"** means money and negotiable instruments including for example, cash, checks, notes, and securities.
- (5) **"Reserves"** means any funds, other than operating funds, that are restricted for deferred maintenance and capital expenditures, including the items required by Section 719.106(1)(j)2., Florida Statutes, and any other funds restricted as to use by the cooperative documents or the cooperative association.

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;

61B-76.006 Financial Reporting Requirements.

- (1) Basis of accounting. The financial statements required by this rule, and Section 719.301(4), Florida Statutes, as well as financial statements voluntarily prepared in lieu of a financial report as provided in Section 719.104(4), Florida Statutes, shall be prepared on the accrual basis using fund accounting in accordance with generally accepted accounting principles. Reviewed financial statements shall be reviewed in accordance with standards for accounting and review services and audited financial statements shall be audited in accordance with generally accepted auditing standards. Reviews and audits of an association's financial statements shall be performed by an independent certified public accountant licensed by the Florida Board of Accountancy. As used in this rule the terms "generally accepted accounting principles," "standards for accounting and review services," and "generally accepted auditing standards" shall have the

same meaning as set forth in Chapter 61H1-20, Florida Administrative Code.

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

- (a) Accountant's or Auditor's Report;
- (b) Balance Sheet;
- (c) Statement of Revenues and Expenses;
- (d) Statement of Changes in Fund Balances;
- (e) Statement of Cash Flows, direct method; and
- (f) Notes to Financial Statements.

FINANCIAL REPORTS – In house

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

The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to, the following:

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

FINANCIAL STATEMENTS – Outside Preparer (719.104 F.S.)

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

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

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

Financial statements prepared in lieu of financial reports. Rather than providing the financial report specified in Section 719.104(4)(a), Florida Statutes, associations operating more than 50 cooperative units and having annual revenues of more than \$150,000.00 shall prepare and distribute to the unit owners a complete set of association financial statements meeting the requirements of this rule, unless this requirement is waived according to Section 719.104(4)(b),

Florida Statutes. *Except as provided in paragraph (c), an association whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:*

1. An association with total annual revenues between \$150,000 and \$299,999 shall prepare a compiled financial statement.
2. An association with total annual revenues between \$300,000 and \$499,999 shall prepare a reviewed financial statement.
3. An association with total annual revenues of \$500,000 or more shall prepare an audited financial statement.

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

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

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

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

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

61B-76.0062 Transition Financial Statements; Turnover Audit.

(1) Period covered. The audit required by Section 719.301(4)(c), Florida Statutes, applies to all transfers of association control from developers to unit owners pursuant to Section 719.301(4), Florida Statutes. The audit shall cover a period beginning with the date of incorporation of the association, or from the end of the fiscal period covered by the last audit if all fiscal periods have been audited, and ending with the date of the transfer of association control to unit owners other than the developer. Nothing herein precludes the developer from exceeding the requirements of this rule by engaging a certified public accountant to audit the entire period of developer control rather than from the period covered by the last audit. For the purpose of this paragraph: not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer including the turnover audit.

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

- (a) A statement that the financial statements were prepared pursuant to Section 719.301(4)(c), Florida Statutes;
- (b) A statement of total cash payments made by the developer to the association;
- (c) If the developer claims to have paid common expenses of the association that do not appear on the books and records of the association, the amount and purpose of each such expenditure shall be identified separately; and
- (d) If a guarantee pursuant to Section 719.108(8), Florida Statutes, existed at any time during the period covered by

the audit, the financial statements shall disclose the following:

1. The period of time covered by the guarantee;
 2. The amount of common expenses incurred during the guarantee period;
 3. The amount of assessments charged to the non-developer unit owners during the guarantee period;
 4. The amount of the developer's payments pursuant to the guarantee; and
5. Any financial obligation due to or from the developer resulting from the guarantee.

FLORIDA VACATION PLAN and TIMESHARE ACT- Chapter 721 F.S.

721.01 Short title.--This chapter shall be known and may be cited as the "**Florida Vacation Plan and Timesharing Act.**"

721.02 Purposes.--The purposes of this chapter are to:

- (1) Give statutory recognition to real property timeshare plans and personal property timeshare plans in this state.
- (2) Establish procedures for the creation, sale, exchange, promotion, and operation of timeshare plans.
- (3) Provide full and fair disclosure to the purchasers and prospective purchasers of timeshare plans.
- (4) Require every timeshare plan offered for sale or created and existing in this state to be subjected to the provisions of this chapter.

(5) Recognize that the tourism industry in this state is a vital part of the state's economy; that the sale, promotion, and use of timeshare plans is an emerging, dynamic segment of the tourism industry; that this segment of the tourism industry continues to grow, both in volume of sales and in complexity and variety of product structure; and that a uniform and consistent method of regulation is necessary in order to safeguard Florida's tourism industry and the state's economic well-being. In order to protect the quality of Florida timeshare plans and the consumers who purchase them, it is the intent of the Legislature that this chapter be interpreted broadly in order to encompass all forms of timeshare plans with a duration of at least 3 years that are created with respect to accommodations and facilities that are located in the state or that are offered for sale in the state as provided herein, including, but not limited to, condominiums, cooperatives, undivided interest campgrounds, cruise ships, vessels, houseboats, and recreational vehicles and other motor vehicles, and including vacation clubs, multisite vacation plans, and multiyear vacation and lodging certificates.

721.05 Definitions.--As used in this chapter, the term:

Note: not all definitions are listed

- (1) "**Accommodation**" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, campground, cruise ship cabin, houseboat or other vessel, recreational or other motor vehicle, or any private or commercial structure which is real or personal property and designed for overnight occupancy by one or more individuals. The term does not include an incidental benefit as defined in this section.

SECTION: I., 3., b. Knowledge of differences between timeshare and other forms of regulated property ownership.

“Timeshare plan” means any arrangement plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, whereby a purchaser, for consideration, receives ownership rights in or a right to use accommodations, and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.

“Timeshare property” means one or more timeshares units subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those timeshare units. Notwithstanding to the contrary contained in chapter 718 or chapter 719, the timeshare instrument for a timeshare condominium or cooperative may designate personal property, contractual rights, affiliation agreements of component sites of vacation clubs, exchange companies, or reservation systems, or any other agreements or personal property, as common elements or limited common elements of the timeshare condominium or cooperative.

“Timeshare unit” means an accommodation of a timeshare plan which is divided into timeshare periods. Any timeshare unit in which a door or doors connecting two or more separate rooms are capable of being locked to create two or more private dwellings shall only constitute one timeshare unit for purposes of this chapter, unless the timeshare instrument provides that timeshare interests may be separately conveyed in such locked-off portions.

“Vacation ownership plan” means any timeshare plan consisting exclusively of timeshare estates.

“Vacation plan” or “vacation membership plan” means any timeshare plan consisting exclusively of timeshare licenses or consisting of a combination of timeshare licenses and timeshare estates.

721.13 Management 721.13 (3) (d)1.

(d)1. Maintenance of all books and records concerning the timeshare plan so that all such books and records are reasonably available for inspection by any purchaser or the authorized agent of such purchaser. **For purposes of this subparagraph, the books and records of the timeshare plan shall be considered "reasonably available" if copies of the requested portions are delivered to the purchaser or the purchaser's agent within 7 days after the date the managing entity receives a written request for the records signed by the purchaser.** The managing entity may charge the purchaser a reasonable fee for copying the requested information not to exceed 25 cents per page. However, any purchaser or agent of such purchaser shall be permitted to personally inspect and examine the books and records wherever located at any reasonable time, under reasonable conditions, and under the supervision of the custodian of those records. The custodian shall supply copies of the records where requested and upon payment of the copying fee. No fees other than those set forth in this section may be charged for the providing of, inspection, or examination of books and records. All books and financial records of the timeshare plan must be maintained in accordance with generally accepted accounting practices.

2. If the books and records of the timeshare plan are not maintained on the premises of the accommodations and facilities of the timeshare plan, the managing entity shall inform the division in writing of the location of the books and records and the name and address of the person who acts as custodian of the books and records at that location. In the event that the location of the books and records changes, the managing entity shall notify the division of the change in location and the name and address of the new custodian within 30 days after the date the books and records are moved. The purchasers shall be notified of the location of the books and records and the name and address of the custodian in the copy of the annual budget provided to them pursuant to paragraph (c).

3. The division is authorized to adopt rules which specify those items and matters that shall be included in the books and records of the timeshare plan and which specify procedures to be followed in requesting and delivering copies of the books and records.

4. Notwithstanding any provision of chapter 718 or chapter 719 to the contrary, the managing entity may not furnish the name, address, or electronic mail address of any purchaser to any other purchaser or authorized agent thereof unless the purchaser whose name, address, or electronic mail address is requested first approves the disclosure in writing.

Arranging for an annual audit of the financial statements of the timeshare plan by **a certified public accountant licensed by the Board of Accountancy of the Department of Business and Professional Regulation, in accordance with generally accepted auditing standards as defined by the rules of the Board of Accountancy of the Department of Business and Professional Regulation.** The financial statements required by this section must be prepared on an accrual basis using fund accounting, and must be presented in accordance with generally accepted accounting principles. A copy of the audited financial statements must be filed with the division for review and forwarded to the board of directors and officers of the owners' association, if one exists, no later than 5 calendar months after the end of the timeshare plan's fiscal year. If no owners' association exists, each purchaser must be notified, no later than 5 months after the end of the timeshare plan's fiscal year, that a copy of the audited financial statements is available upon request to the managing entity. **Notwithstanding any requirement of § 718.111(13) or § 719.104(4), the audited financial statements required by this section are the only annual financial reporting requirements for timeshare condominiums or timeshare cooperatives.**

Note to student: whenever the term **AUDIT** is used in the Florida Statutes, the audit must be performed as noted above.

**SECTION: I., 6., Utilize the HOMEOWNERS ASSOCIATION Chapter 720, F.S and F.A.C.
CHAPTER 720 HOMEOWNERS' ASSOCIATIONS**

Note: Chapter 720 was created in 2000 from parts of chapter 617 which still exists.

720.301 Definitions.

720.302 Purposes, scope, and application.

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls

720.304 Right of owners to peaceably assemble

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights. Failure to fill vacancies on board of directors sufficient to constitute a quorum; appointment of receiver upon petition of member.

720.306 Meetings of members; voting and election procedures; amendments.

720.307 Transition of association control in a community.

720.3075 Prohibited clauses in association documents.

720.308 Assessments and charges.

720.309 Agreements entered into by the association.

720.310 Recreational leaseholds; right to acquire; escalation clauses.

720.311 Dispute resolution.

720.312 Declaration of covenants; survival after tax deed or foreclosure.

720.301 Definitions.--As used in this chapter, the term:

(1) "Assessment" or "amenity fee" means a sum or sums of money payable to the association, to the developer or other owner of common areas, or to recreational facilities and other properties serving the parcels by the owners of one or more parcels as authorized in the governing documents, which if not paid by the owner of a parcel, can result in a lien against the parcel.

(2) "Common area" means all real property within a community which is owned or leased by an association or dedicated for use or maintenance by the association or its members, including, regardless of whether title has been conveyed to the association:

- (a) Real property the use of which is dedicated to the association or its members by a recorded plat; or

(b) Real property committed by a declaration of covenants to be leased or conveyed to the association.

(3) "Community" means the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term "community" includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto.

(4) "Declaration of covenants," or "declaration," means a recorded written instrument in the nature of covenants running with the land which subjects the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members.

(5) "Department" means the Department of Business and Professional Regulation. There is no other governmental division assigned to oversee HOA's.

(6) "Developer" means a person or entity that:

- (a) Creates the community served by the association; or
- (b) Succeeds to the rights and liabilities of the person or entity that created the community served by the association, provided that such is evidenced in writing.

(7) "Division" means the Division of Florida Condominiums, Timeshares, and Mobile Homes in the Department of Business and Professional Regulation.

(8) "Governing documents" means:

- (a) The recorded declaration of covenants for a community, and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- (b) The articles of incorporation and bylaws of the homeowners' association, and any duly adopted amendments thereto.

(9) "Homeowners' association" or "association" means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

(10) "Member" means a member of an association, and may include, but is not limited to, a parcel owner or an association representing parcel owners or a combination thereof, and includes any person or entity obligated by the governing documents to pay an assessment or amenity fee.

(11) "Parcel" means a platted or unplatted lot, tract, unit, or other subdivision of real property within a community, as described in the declaration:

- (a) Which is capable of separate conveyance; and
- (b) Of which the parcel owner, or an association in which the parcel owner must be a member, is obligated:
 - 1. By the governing documents to be a member of an association that serves the community; and
 - 2. To pay to the homeowners' association assessments that, if not paid, may result in a lien.

(12) "Parcel owner" means the record owner of legal title to a parcel.

(13) "Voting interest" means the voting rights distributed to the members of the homeowners' association, pursuant to the governing documents.

720.302 Purposes, scope, and application.--

(1) The purposes of this chapter (720 F.S.) are to give statutory recognition to corporations not for profit that operate residential communities in this state, to provide procedures for operating homeowners' associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions.

(2) The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with § 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and pre-suit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

(3) This chapter does not apply to:

(a) A community that is composed of property primarily intended for commercial, industrial, or other nonresidential use; or

(b) The commercial or industrial parcels in a community that contains both residential parcels and parcels intended for commercial or industrial use.

(4) This chapter does not apply to any association that is subject to regulation under chapter 718, chapter 719, or chapter 721 or to any non-mandatory association formed under chapter 723, except to the extent that a provision of chapter 718, chapter 719, or chapter 721 is expressly incorporated into this chapter for the purpose of regulating homeowners' associations.

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.--(1) POWERS AND DUTIES.--An association which operates a community as defined in § 720.301, must be operated by an association that is a Florida corporation. After October 1, 1995, the association must be incorporated and the initial governing documents must be recorded in the official records of the county in which the community is located. An association may operate more than one community. The officers and directors of an association have a fiduciary relationship to the members who are served by the association. The powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents. After control of the association is obtained by members other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members, including, but not limited to, the common areas; roof or structural components of a building, or other improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible; representations of the developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities. The association may defend actions in eminent domain or bring inverse condemnation actions. Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of \$100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained. This subsection does not limit any statutory or common-law right of any individual member or class of members to bring any action without participation by the association. A member does not have authority to act for the association by virtue of being a member. An association may have more than one class of members and may issue membership certificates.

An association of 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner or owners.

(2) BOARD MEETINGS.—720.303 F.S.

(a) A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. All meetings of the board must be open to all members except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of anybody vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(b) Members have the right to attend all meetings of the board and to speak on any matter placed on the agenda for at least 3 minutes. The association may adopt written reasonable rules expanding the right of members to speak and governing the frequency, duration, and other manner of member statements, which rules must be consistent with this paragraph and may include a sign-up sheet for members wishing to speak. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the members is inapplicable to meetings between the board or a committee and the association's attorney, with respect to meetings of the board held for the purpose of discussing pending or proposed litigation. The discussion of personnel matters may also qualify for a closed meeting either with or without the attorney present.

(c) The bylaws shall provide for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to provide the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The bylaws or amended bylaws may provide for giving notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to anybody vested with the power to

approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(d) 1. **If 20 percent of the total voting interests petition the board to address an item of business, the board shall at its next regular board meeting or at a special meeting of the board, but not later than 60 days after the receipt of the petition, take the petitioned item up on an agenda.** The board shall give all members notice of the meeting at which the petitioned item shall be addressed in accordance with the 14-day notice requirement pursuant to subparagraph (c)

2. Each member shall have the right to speak for at least 3 minutes on each matter placed on the agenda by petition, provided that the member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the board is not obligated to take any other action requested by the petition.

(3) **MINUTES.**--Minutes of all meetings of the members of an association and of the board of directors of an association must be maintained in written form or in another form that can be converted into written form within a reasonable time. **A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.**

(4) **OFFICIAL RECORDS.**--The association shall maintain each of the following items, when applicable, which constitute the official records of the association: Just about all written documents.

(a) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the association is obligated to maintain, repair, or replace.

(b) A copy of the bylaws of the association and of each amendment to the bylaws.

(c) A copy of the articles of incorporation of the association and of each amendment thereto.

(d) A copy of the declaration of covenants and a copy of each amendment thereto.

(e) A copy of the current rules of the homeowners' association.

(f) The minutes of all meetings of the board of directors and of the members, such minutes must be retained for at least 7 years.

(g) A current roster of all members and their mailing addresses and parcel identifications. The association shall also maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent by the member is not given. **As revised §720.303(5)(c) now provides that the owner may consent in writing to the disclosure of the protected information ("social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements).** **HB 7119- Allows an HOA to print and distribute a social directory containing the name, parcel address and telephone numbers of the members unless an owner has requested in writing that his or her number be excluded from that directory.**

However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

(h) All of the association's insurance policies or a copy thereof, which policies must be retained for at least 7 years.

(i) A current copy of all contracts to which the association is a party, including, without limitation, any management agreement, lease, or other contract under which the association has any obligation or responsibility.

Bids received by the association for work to be performed that was NOT awarded must also be considered official records and kept on file for a period of 1 year.

(j) The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:

- 1. Accurate, itemized, and detailed records of all receipts and expenditures.*
- 2. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.*
- 3. All tax returns, financial statements, and financial reports of the association.*
 - (a) Financial statements presented in conformity with generally accepted accounting principles; or*
 - (b) A financial report of actual receipts and expenditures, cash basis, which report must show:*
 - 1. The amount of receipts and expenditures by classification; and*
 - 2. The beginning and ending cash balances of the association.*
- 4. Any other records that identify, measure, record, or communicate financial information.*

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

This subsection may be complied with by having a copy of the official records available for inspection or copying in the community.

(a) The failure of an association to provide access to the records within 10 business days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(b) A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this subsection. The minimum damages are to be \$50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.

c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections. The association may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members, and may charge only its actual costs for replacing and furnishing these documents to those persons who are entitled to receive them.

(6) BUDGETS.--

(a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

(7) FINANCIAL REPORTING.—The association shall prepare an annual financial report within 90 days after the close of the fiscal year. The association shall, within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

(a) Financial statements presented in conformity with generally accepted accounting principles; or

(b) A financial report of actual receipts and expenditures, cash basis, which report must show:

1. *The amount of receipts and expenditures by classification; and*
2. *The beginning and ending cash balances of the association.*

(8) ASSOCIATION FUNDS; COMMINGLING.--

(a) All association funds held by a developer shall be maintained separately in the association's name. Reserve and operating funds of the association shall not be commingled prior to turnover except the association may jointly invest reserve funds; however, such jointly invested funds must be accounted for separately.

(b) No developer in control of a homeowners' association shall commingle any association funds with his or her funds or with the funds of any other homeowners' association or community association.

(9) APPLICABILITY.--Sections 617.1601-617.1604 do not apply to a homeowners' association in which the members have the inspection and copying rights set forth in this section.

720.304 Right of owners to peaceably assemble; display of flag; SLAPP suits prohibited.--

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

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

SLAPP means – Strategic Lawsuit Against Public Participation is a lawsuit that is intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. The typical SLAPP plaintiff does not normally expect to win the lawsuit. The plaintiff's goals are accomplished if the defendant succumbs to fear, intimidation, mounting legal costs or simple exhaustion and

abandons the criticism. A SLAPP may also intimidate others from participating in the debate. A SLAPP is often preceded by a legal threat.

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.--

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

- (a) The association;
- (b) A member;
- (c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and
- (d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) If the governing documents so provide, an association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines, not to exceed \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate unless otherwise provided in the governing documents.

(a) A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

(b) The requirements of this subsection do apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the governing documents.

(c) Suspension of common-area-use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(3) If the governing documents so provide, an association may suspend the voting rights of a member for the nonpayment of regular annual assessments that are delinquent in excess of 90 days.

Suspension of Voting Rights for Non-payment: In addition to suspension of use rights for non-payment an Association can also suspend the voting rights of a unit or member due to non-payment to the association of any monetary obligation that is more than 90 day delinquent after approval at a properly noticed board meeting and then notification to the violator by mail or hand delivery. If the vote has been properly suspended, the unit vote **may not** be counted towards "the total number of voting interests (TVI) for any purpose, *including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under (Chapter 720) or pursuant to the governing documents.* **In a 100 unit HOA that has suspended 20 owners, the TVI would now be 80.**

(4) If an association fails to fill vacancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws, any member may give notice of the member's intent to apply to the circuit court within whose jurisdiction the association lies for the appointment of a receiver to manage the affairs of the association. At least 30 days before applying to the circuit court, the member shall mail to the association, by certified or registered mail, and post in a conspicuous place on the property of the community served by the association, a notice describing the intended action, giving the association 30 days to fill the vacancies. If during such time the association fails to fill a sufficient number of vacancies so that a quorum can be assembled, the member may proceed with the petition. If a receiver is appointed, the homeowners' association shall be responsible for the salary of the receiver, court costs, attorney's fees, and all other expenses of the receivership. The receiver has all the powers and duties of a duly constituted board of directors and shall serve until the association fills a sufficient number of vacancies on the board so that a quorum can be assembled.

720.306 Definitions:

(1) **QUORUM; AMENDMENTS.**—(a) Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be 30 percent of the total voting interests. Unless otherwise provided in this chapter or in the articles of incorporations or bylaws, declarations that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained.

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association.

(c) Unless otherwise provided in the governing documents as originally recorded, an amendment may not affect vested rights unless the record owner of the affected parcel and all record owners of liens on the affected parcels join in the execution of the amendment.

(2) ANNUAL MEETING.—

The association shall hold a meeting of its members annually for the transaction of *any and all* proper business at a time, date, and place stated in, or fixed in accordance with, the bylaws. The election of directors, if one is required to be held, must be held at, or in conjunction with, the annual meeting or as provided in the governing documents.

(3) SPECIAL MEETINGS.—

Special meetings must be held when called by the board of directors or, unless a different percentage is stated in the governing documents, by at least 10 percent of the total voting interest of the association. Business conducted at a special meeting is limited to the purpose or purposes described in the notice of the meeting.

(4) CONTENT OF NOTICE.—

Unless law or the governing documents require otherwise, notice of an *annual* meeting need not include a description of the purpose or purposes for which the meeting is called.

(5) ADJOURNMENT.—

Unless the bylaws require otherwise, adjournment of an annual or special meeting to a different date, time, or place must be given of the new date, time, or place pursuant to § 720.303(2). Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned

meeting is or must be fixed under § 617.0707, notice of the adjourned meeting must be given to persons who are entitled to vote and are members as of the new record date but were not members as of the previous record date.

(6) LIMITED PROXY VOTING.—

The members have the right, unless otherwise provided in this subsection or in the governing documents, to vote in person or by proxy. **To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires 90 days after the date of the meeting for which it was originally given.** A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place. *See form on page 146.*

(7) ELECTIONS.—

Elections of directors must be conducted in accordance with title procedures set forth in the governing documents of the association. **All members of the association shall be eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held.** Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. * **HB 7119 (7/1/13) - Clarifies that an HOA does not have to allow nominations from the floor the night of an election if there is a process in place for candidates to be nominated prior to the election meeting. Further clarifies that an election is not required unless more candidates are nominated than vacancies exist.**

If the documents provide for secret ballots, the HOA will follow the provisions of Ch. 718 F.S..

(8) RECORDING.—Any parcel owner may tape record or videotape meetings of the board of directors and meetings. The board of directors of the association may adopt reasonable rules governing the taping of meetings of the board and the membership.

720.307 Transition of association control in a community.--With respect to homeowners' associations:

**** Members other than the developer are permitted to elect at least one member of the board once 50% of the parcels in all phases of the community have been conveyed to members.**

(1) Members other than the developer are entitled to elect at least a majority of the members of the board of directors of the homeowners' association when the earlier of the following events occurs:

(a) **Three months after 90 percent of the parcels in all phases of the community that will ultimately be operated by the homeowners' association have been conveyed to members;** or

(b) Such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of parcels.

For purposes of this section, the term "members other than the developer" shall not include builders, contractors, or others who purchase a parcel for the purpose of constructing improvements thereon for resale.

(2) The developer is entitled to elect at least one member of the board of directors of the homeowners' association as long as the developer holds for sale in the ordinary course of business at least 5 percent of the parcels in all phases of the community. After the developer relinquishes control of the homeowners' association, the developer may exercise

the right to vote any developer-owned voting interests in the same manner as any other member, except for purposes of reacquiring control of the homeowners' association or selecting the majority of the members of the board of directors.

(3) At the time the members are entitled to elect at least a majority of the board of directors of the homeowners' association, **the developer shall, at the developer's expense, within no more than 90 days deliver the following documents to the board:**

- (a) All deeds to common property owned by the association.
- (b) The original of the association's declarations of covenants and restrictions.
- (c) A certified copy of the articles of incorporation of the association.
- (d) A copy of the bylaws.
- (e) The minute books, including all minutes.
- (f) The books and records of the association.
- (g) Policies, rules, and regulations, if any, which have been adopted.
- (h) **Resignations of directors who are required to resign because the developer is required to relinquish control of the association.**
- (i) The financial records and audit of the association from the date of incorporation through the date of turnover.
- (j) All association funds and control thereof.
- (k) All tangible property of the association.
- (l) A copy of all contracts which may be in force with the association as one of the parties.
- (m) A list of the names and addresses and telephone numbers of all contractors, subcontractors, or others in the current employ of the association.
- (n) Any and all insurance policies in effect.
- (o) Any permits issued to the association by governmental entities.
- (p) Any and all warranties in effect.
- (q) A roster of current homeowners and their addresses and telephone numbers and section and lot numbers.
- (r) Employment and service contracts in effect.
- (s) All other contracts in effect to which the association is a party

(4) This section does not apply to a homeowners' association in existence on the effective date of this act, or to a homeowners' association, no matter when created, if such association is created in a community that is included in an effective development-of-regional-impact development order as of the effective date of this act, together with any approved modifications thereof.

720.3075- Prohibited clauses in association documents.--

Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the display of one portable, removable United States flag by property owners. However, the flag must be displayed in a respectful manner, consistent with Title 36 U.S.C. chapter 10. Documents may also not prohibit clotheslines, solar panels, windmills, generators or television signal receiving devices. The association MAY adopt reasonable rules governing their use, however.

720.308 Assessments and charges.--

(1) **ASSESSMENTS.**--For any community created after October 1, 1995, the governing documents must describe the manner in which expenses are shared and specify the member's proportional share thereof.

(a) Assessments levied pursuant to the annual budget or special assessment must be in the member's proportional share of expenses as described in the governing document, which share may be different among classes of parcels based upon the state of development thereof, levels of services received by the applicable members, or other relevant factors.

(b) While the developer is in control of the homeowners' association, it may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the developer has, in the declaration, obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the association.

(d) This section does not apply to an association, no matter when created, if the association is created in a community that is included in an effective development-of-regional-impact development order as of October 1, 1995, together with any approved modifications thereto.

720.309 Agreements entered into by the association.--Any grant or reservation made by any document, and any contract with a term in excess of 10 years made by an association before control of the association is turned over to the members other than the developer, which provide for operation, maintenance, or management of the association or common areas must be fair and reasonable.

720.31 Recreational leaseholds; right to acquire; escalation clauses.--

(1) Any lease of recreational or other commonly used facilities serving a community, which lease is entered into by the association or its members before control of the homeowners' association is turned over to the members other than the developer, must provide as follows:

(a) That the facilities may not be offered for sale unless the homeowners' association has the option to purchase the facilities, provided the homeowners' association meets the price and terms and conditions of the facility owner by executing a contract with the facility owner within 90 days, unless agreed to otherwise, from the date of mailing of the notice by the facility owner to the homeowners' association. If the facility owner offers the facilities for sale, he or she shall notify the homeowners' association in writing stating the price and the terms and conditions of sale.

(b) If a contract between the facility owner and the association is not executed within such 90-day period, unless extended by mutual agreement, then, unless the facility owner thereafter elects to offer the facilities at a price lower than the price specified in his or her notice to the homeowners' association, he or she has no further obligations under this subsection, and his or her only obligation shall be as set forth in subsection (2).

(c) If the facility owner thereafter elects to offer the facilities at a price lower than the price specified in his or her notice to the homeowners' association, the homeowners' association will have an additional 10 days to meet the price and terms and condition of the facility owner by executing a contract.

(2) If a facility owner receives a bona fide offer to purchase the facilities that he or she intends to consider or make a counteroffer to, his or her only obligations shall be to notify the homeowners' association that he or she has received an offer, to disclose the price and material terms and conditions upon which he or she would consider selling the facilities, and to consider any offer made by the homeowners' association. The facility owner shall be under no obligation to sell to the homeowners' association or to interrupt or delay other negotiations, and he or she shall be free at any time to execute a contract for the sale of the facilities to a party or parties other than the homeowners' association.

(3)(a) As used in subsections (1) and (2), the term "notify" means the placing of a notice in the United States mail addressed to the president of the homeowners' association. Each such notice shall be deemed to have been given upon the deposit of the notice in the United States mail.

(b) As used in subsection (1), the term "offer" means any solicitation by the facility owner directed to the general public.

720.311 Dispute resolution.--

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation.

720.312 Declaration of covenants; survival after tax deed or foreclosure.--All provisions of a declaration of covenants relating to a parcel that has been sold for taxes or special assessments survive and are enforceable after the issuance of a tax deed or master's deed, or upon the foreclosure of an assessment, a certificate or lien, a tax deed, tax certificate, or tax lien, to the same extent that they would be enforceable against a voluntary grantee of title to the parcel immediately before the delivery of the tax deed or master's deed or immediately before the foreclosure.

SECTION: I., 4., a. Knowledge of Protected Categories

FAIR HOUSING ACT (SS. 760)

760.07 Remedies for unlawful discrimination.--Any violation of any Florida statute making unlawful discrimination because of race, color, religion, gender, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages described in § 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

760.20 Fair Housing Act; short title.--Sections 760.20-760.37 may be cited as the "**Fair Housing Act.**"

760.21 State policy on fair housing.--It is the policy of this state to provide, within constitutional limitations, for fair housing throughout the state.

760.2 Definitions.--As used in ss. 760.20-760.37, the term:

SECTION: I., 4., b. Knowledge of Familial Status Provisions

"**Familial status**" is established when an individual who has not attained the age of 18 years is domiciled with:

(a) A parent or other person having legal custody of such individual; or

(b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

"Family" can include a unmarried individual that meets A. or B. above.

SECTION: I., 4., c. Knowledge of Handicap Provisions

"**Handicap**" means:

(a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

(b) A person has a developmental disability as defined in § 393.063.

760.23 Discrimination in the sale or rental of housing and other prohibited practices.--

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.

1. Has been removed

2. Anyone that has, within the preceding 12 months, participated as agent, other than in the sale of his or her own personal residence, *in* providing sales or *rental* facilities or sales or rental services in *two* or more transactions involving the sale or rental of any dwelling or interest therein; or

3. Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(2) Nothing in ss. 760.20-760.37 prohibits a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of any dwelling which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nothing in ss. 760.20-760.37 prohibits a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(3) Nothing in ss. 760.20 – 760.37 requires any person renting or selling a dwelling constructed before March 13, 1991, to modify, alter, or adjust the dwelling in order to provide physical accessibility except as otherwise required by law.

(4)(a) Any provisions of ss. 760.20 – 760.37 regarding familial status does not apply with respect to housing for older persons.

(b) As used in this subsection, the term “housing for older persons” means housing:

1. Provided under any state or federal program that the commission determines is specifically designed and operated to assist elderly persons, as defined in the state of federal program;

2. Intended for, and solely occupied by, persons 62 years of age or older, or

3. Intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:

a. At least 80 percent of the occupied units are occupied by at least one person 55 years age or older.

b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph. If the housing facility or community meets the requirements of sub-paragraphs a. and b. and the recorded governing documents provide for an adult, senior, or retirement housing facility or community and the governing documents lack an amendatory procedure, prohibit amendments, or restrict amendments until specified future date, then that housing facility or community shall be deemed housing for older persons intended and operated for occupancy by persons 55 years of age or older. If those documents further provide a prohibition against residents 16 years of age or younger, that provision shall be construed, for purposes of the *Fair Housing Act*, to only apply to residents 18 years of age or younger, in order to conform with federal law requirements. Governing documents which can be amended at a future date must be amended and properly recorded within 1 year after that date to reflect the requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons.

760.25 Discrimination in the financing of housing or in residential real estate transactions.--

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national

origin, sex, handicap, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, handicap, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2)(a) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, handicap, familial status, or religion.

SECTION: I., 4., d. Knowledge of Exemption Options

760.29 Exemptions.--

(1)(a) Nothing in ss. 760.23 and 760.25 applies to:

1. Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three single-family houses at any one time. In the case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this paragraph applies only with respect to one sale within any 24-month period. In addition, the bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three single-family houses at any one time. The sale or rental of any single-family house shall be accepted from the application of ss. 760.20-760.37 only if the house is sold or rented:

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate licensee or such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such licensee or person; and

b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of § 760.23(3).

760.50 Discrimination on the basis of AIDS, AIDS-related complex, and HIV prohibited.--

(1) The Legislature finds and declares that persons infected or believed to be infected with human immunodeficiency virus have suffered and will continue to suffer irrational and scientifically unfounded discrimination. The Legislature further finds and declares that society itself is harmed by this discrimination, as otherwise able-bodied persons are deprived of the means of supporting themselves, providing for their own health care, housing themselves, and participating in the opportunities otherwise available to them in society. The Legislature further finds and declares that remedies are needed to correct these problems.

(2) Any person with or perceived as having acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, or human immunodeficiency virus shall have every protection made available to handicapped persons.

(3)(a) No person may require an individual to take a human immunodeficiency virus-related test as a condition of hiring, promotion, or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question.

(b) No person may fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of knowledge or belief that the individual has taken a human immunodeficiency virus test or the results or perceived results of such test unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification of the job in question.

(c) A person who asserts that a bona fide occupational qualification exists for human immunodeficiency virus-related testing shall have the burden of proving that:

1. The human immunodeficiency virus-related test is necessary to ascertain whether an employee is currently able to perform in a reasonable manner the duties of the particular job or whether an employee will present a significant risk of transmitting human immunodeficiency virus infection to other persons in the course of normal work activities; and
2. There exists no means of reasonable accommodation short of requiring that the individual be free of human immunodeficiency virus infection.

Section: I., 7., a. Knowledge of Americans with Disabilities Act, (ADA)

Public Law 101-336. Text of the Americans with Disabilities Act, Public Law 336 of the 101st Congress, enacted July 26, 1990. The ADA prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. The ADA also prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public by State and local governments, except public transportation. The U.S. Department of Justice provides free ADA materials.

MATERIALS AVAILABLE FREE FROM THE U.S. DEPARTMENT OF JUSTICE

Printed materials may be ordered by calling the **ADA Information Line 1-800-514-0301.**

SECTION: I., 8., a. b. Utilize Lien Laws

SECTION: I., 8., a. Knowledge of Statutory and Documentary Assessment Lien Laws

The association has the right to file a Claim of Lien for unpaid assessments and foreclose on a unit if the proper procedure is followed.

Claim of Lien. The association has a lien for all unpaid assessments and evidences its claim for a delinquent assessment or assessment installment by filing a “claim of lien” with the Clerk of the Circuit Court in the county where the condominium is located. The claim of lien is effective from the time of its recording for a period of one (1) year. It secures all unpaid assessments, interests, costs and attorney’s fees that are due, and all those that come due during enforcement proceedings until the entry of a final judgment in foreclosure (§718.116 (5),(a), F.S.). The board of administration must be aware of the one (1) year period of the lien, which begins on the date that the claim of lien is recorded with the Clerk. If an enforcement action is not started by the board within one (1) year period, the lien will be void (§718.116 (5)(a), F.S.)

A claim of lien must state the legal description of the condominium unit, the owner of the unit, and the amount and date when the assessment or installment became due. The lien must be signed by an officer or agent of the association with the formality of a deed prior to recording. The association attorney or manager may serve as an authorized agent for executing the claim of lien of the association if the board of administration approves such authority (§718.116 (5),(a),

F.S.)

When the recorded claim of lien is returned from the Clerk, a copy should be forwarded to the unit owner with a notice of the association's claim. The notice must be given personally to unit owner or provided by certified or registered mail with a return receipt requested. The notice should include a copy of the lien and a statement of the interest and costs secured by the lien. The notice should additionally contain a statement advising the owner that the association intends to foreclose the lien if the owner has not satisfied the obligation within thirty (30) days from the date of receiving the notice (§718.116 (6),(h), F.S.)

A lien may be contested. An owner wishing to object to a claim of lien may do so by the filing of a "notice of contest of lien" with the Clerk of the Circuit Court. The notice of contest will state that the owner objects to the lien by referring to the official record book and page where it is recorded and stating that the association must commence enforcement within ninety (90) days from the date that the notice of contest is received by the board.

Foreclosing the Lien.

The board of administration may bring an action to foreclose a claim of lien for unpaid assessments in the Circuit Courts in the same way that a mortgage on real estate is foreclosed. The homestead protections provided by Florida's Constitution do not prevent the foreclosure and sale of the condominium unit (§718.116 (6)(a), F.S.). To preserve its right to recover the fees and costs secured by the claim of lien, the association must give the delinquent owner written notice of its intention to foreclose thirty (30) days before the action is commenced. If the notice is not given, the fees and costs cannot be recovered.

The foreclosure notice requirements are considered satisfied when the owner records a notice of contest of lien. They may also be dispensed with when a mortgage foreclosure suit is already pending against the unit and the position of the association may be prejudiced by waiting the thirty (30) day period (§718.116 (6)(b) F.S.). In addition to an action of foreclosure, the board of administration may also seek to recover a separate money judgment for the unpaid assessments without waiving the claim of lien (§718.116 (6)(a), F.S.).

718.121 Liens

(1) Subsequent to recording the declaration and while the property remains subject to the declaration, no liens of any nature are valid against the condominium property as a whole except with the unanimous consent of the unit owners. During this period, liens may arise or be created only against individual condominium parcels.

(2) Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to part 1 of chapter 713, the Construction Lien Law, against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements, but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

(3) If a lien against two or more condominium parcels becomes effective, each owner may relieve his or her condominium parcel of the lien by exercising any of the rights of a property owner under chapter 713, or by payment of the proportionate amount attributable to his or her condominium parcel. Upon the payment, the lienor shall release the lien of record for that condominium parcel.

HB 87 – Updated Foreclosure Tools – Effective 7/1/13

- *Reduces the time period within which a lender can seek a deficiency judgment from the current 5 years to 1 year.*

- *Requires that the lender's complaint disclose certain facts and confirm the availability of certain documentation supporting the lender's right to foreclose in order to ensure that the foreclosure can be successfully prosecuted.*
- *Makes it harder for parties seeking to set aside or challenge a final judgment of foreclosure in order to safeguard the quality or character of the title to the property.*
- *In the case of an owner-occupied residential property, the amount of a deficiency judgment may not exceed the difference between the judgment amount (or in the case of a short sale, the outstanding debt) and the fair market value of the property on the date of sale.*
- *A condominium association, cooperative association or homeowner's association may request an order to show cause for the entry of a final judgment in the bank's foreclosure action in chambers and without a hearing.*
- *The order to show cause shall set the date and time for a hearing to show cause and that hearing date may not occur sooner than the later of 20 days after service of the order to show cause or 45 days after service of the initial complaint.*
- *The order to show cause shall state that the court may enter an order of final judgment of foreclosure at the hearing and order the clerk of the court to conduct a foreclosure sale.*
- *The court may enter a default against the lender if it fails to appear at the hearing to show cause, fails to file defenses by a motion or by a verified or sworn answer or files an answer which does not contest the foreclosure.*
- *Allows for the granting of attorney's fees for the order to show cause if the mortgage provides for reasonable attorney's fees and the requested fees do not exceed 3% of the principal amount owed at the time of filing the complaint.*
- *The provisions of this bill apply to "all mortgages encumbering real property and all promissory notes secured by a mortgage, whether executed before, on, or after the effective date of this act." However, the order to show cause provisions "apply to causes of action pending on the effective date of this act."*

SECTION: I., 8., b. Knowledge of Statutory and Documentory Construction Lien Laws

CHAPTER 713.001 F.S. Short Title – “CONSTRUCTION LIEN LAW”

A number of topics covered in this section are quite diverse in nature and quite complex in structure. The effort provided in the material which follows is only to briefly acquaint the learner with the general parameters of the topic being discussed. Precautionary practices can be instituted to avoid potential problems. As always, if a specific problem arises, competent counsel should be consulted. Many of the items discussed are too complex for the association or manager to handle and an expert should be hired to handle the complexity of foreclosures.

Perhaps one of the most misunderstood, and unused provisions of the Florida Statutes, is that pertaining to construction liens. Undoubtedly, it can also be one of the biggest traps for the condominium association, unless its provisions are followed closely, the association can find itself and its members having liens placed against units, and having paying twice, for a variety of materials or labor supplied by outside sources.

IMPORTANT! Obtain a Notarized Partial Release or Notarized Release from the contractor when they present a partial or completed bill/invoice. Don't pay without such a instrument! Sample forms for this purpose are provided in the

forms section on **pages 139,140 and 141.**

CAUTION: An architect, landscape architect, interior designer, engineer, or surveyor and mapper, engaged by anyone to perform services in connection with the condominium property in amount exceeding \$2,500, may place a lien on the condominium property for an unpaid bill.

Any materialman (supplier), laborer, or contractor, engaged by the association, who furnishes materials, or performs labor or services in connection with the condominium property in any amount, may have a lien on the condominium property for his unpaid invoices.

Anyone who furnishes materials, or performs labor or services in connection with the condominium property where the underlying cost exceeds \$2,500,- may have a lien on the condominium property for his unpaid bill.

While some of the very basic provisions of the construction lien statute and some steps that the association can take to protect itself, it cannot be overemphasized that the nature of the statute is very complex. At best, only a general overview can be offered here, and any association should always be under the guide of its competent legal counsel when undertaking an improvement project.

Lien Release are Important! Certainly, the association itself will always be aware of any financial transactions involving condominium projects with regard to the individuals with whom it is dealing, and the status of any unpaid bills; *but can it always be sure that the contractor hired to do the job has paid his materialman, laborers, or subcontractors promptly, and in full?* How would the association know which materialman, laborers or subcontractors are hired by a contractor, or subcontractor of the contractor, and how much was paid?

713.01 Definitions.--As used in this part, the term:

(1) "Abandoned property" means all tangible personal property that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition.

(2) "Architect" means a person or firm that is authorized to practice architecture pursuant to chapter 481 or a general contractor who provides architectural services under a design-build contract authorized by § 481.229(3).

(3) "Claim of lien" means the claim recorded as provided in § 713.08.

(4) **"Clerk's office" means the office of the clerk of the circuit court of the county in which the real property is located.**

(5) "Commencement of the improvement" means the time of filing for record of the notice of commencement provided in § 713.13.

(6) "Contract" means an agreement for improving real property, written or unwritten, express or implied, and includes extras or change orders.

(7) "Contract price" means the amount agreed upon by the contracting parties for performing all labor and services and furnishing all materials covered by their contract and must be increased or diminished by the price of extras or change orders, or by any amounts attributable to changes in the scope of the work or defects in workmanship or materials or any other breaches of the contract; but no penalty or liquidated damages between the owner and a contractor diminishes the contract price as to any other lienor. If no price is agreed upon by the contracting parties, this term means the value of all labor, services, or materials covered by their contract, with any increases and diminutions, as provided in this subsection. Allowance items are a part of the contract when accepted by the owner.

(8) "Contractor" means a person other than a material man or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such

contract. The term "contractor" includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by § 489.103(16).

(9) "Direct contract" means a contract between the owner and any other person.

(10) "Engineer" means a person or firm that is authorized to practice engineering pursuant to chapter 471 or a general contractor who provides engineering services under a design-build contract authorized by § 471.003(2)(i).

(11) "Extras or change orders" means labor, services, or materials for improving real property authorized by the owner and added to or deleted from labor, services, or materials covered by a previous contract between the same parties.

(12) "Final furnishing" means the last date that the lienor furnishes labor, services, or materials. Such date may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include correction of deficiencies in the lienors' previously performed work or materials supplied. With respect to rental equipment, the term means the date that the rental equipment was last on the job site and available for use.

(13) "Furnish materials" means supply materials which are incorporated in the improvement including normal wastage in construction operations; or specially fabricated materials for incorporation in the improvement, not including any design work, submittals, or the like preliminary to actual fabrication of the materials; or supply materials used for the construction and not remaining in the improvement, subject to diminution by the salvage value of such materials; and includes supplying rental equipment, but does not include supplying hand tools. The delivery of materials to the site of the improvement is prima facie evidence of incorporation of such materials in the improvement. The delivery of rental equipment to the site of the improvement is prima facie evidence of the period of the actual use of the rental equipment from the delivery through the time the equipment is last available for use at the site, or 2 business days after the lessor of the rental equipment receives a written notice from the owner or the lessee of the rental equipment to pick up the equipment, whichever occurs first.

(14) "Improve" means build, erect, place, make, alter, remove, repair, or demolish any improvement over, upon, connected with, or beneath the surface of real property, or excavate any land, or furnish materials for any of these purposes, or perform any labor or services upon the improvements, including the furnishing of carpet or rugs or appliances that are permanently affixed to the real property and final construction cleanup to prepare a structure for occupancy; or perform any labor or services or furnish any materials in grading, seeding, sodding, or planting for landscaping purposes, including the furnishing of trees, shrubs, bushes, or plants that are planted on the real property, or in equipping any improvement with fixtures or permanent apparatus or provide any solid-waste collection or disposal on the site of the improvement.

(15) "Improvement" means any building, structure, construction, demolition, excavation, solid-waste removal, landscaping, or any part thereof existing, built, erected, placed, made, or done on land or other real property for its permanent benefit.

(16) "Laborer" means any person other than an architect, landscape architect, engineer, surveyor and mapper, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.

(17) "Lender" means any person who loans money to an owner for construction of an improvement to real property, who secures that loan by recording a mortgage on the real property, and who periodically disburses portions of the proceeds of that loan for the payment of the improvement.

(18) "Lienor" means a person who is:

- (a) A contractor;
- (b) A subcontractor;
- (c) A sub-subcontractor;
- (d) A laborer;
- (e) A material man who contracts with the owner, a contractor, a subcontractor, or a sub-subcontractor; or
- (f) A professional lienor under § 713.03;

and who has a lien or prospective lien upon real property under this part, and includes his or her successor in interest. No other person may have a lien under this part.

(19) "Lienor giving notice" means any lienor, except a contractor, who has duly and timely served a notice to the owner and, if required, to the contractor and subcontractor, as provided in § 713.06(2).

(20) "Material man" means any person who furnishes materials under contract to the owner, contractor, subcontractor, or sub-subcontractor on the site of the improvement or for direct delivery to the site of the improvement or, for specially fabricated materials, off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.

(21) "Notice by lienor" means the notice to owner served as provided in § 713.06(2).

(22) "Notice of commencement" means the notice recorded as provided in § 713.13.

(23) "Owner" means a person who is the owner of any legal or equitable interest in real property, which interest can be sold by legal process, and who enters into a contract for the improvement of the real property. The term includes a condominium association pursuant to chapter 718 as to improvements made to association property or common elements. The term does not include any political subdivision, agency, or department of the state, a municipality, or other governmental entity.

(24) "Perform" or "furnish" when used in connection with the words "labor" or "services" or "materials" means performance or furnishing by the lienor or by another for him or her.

(25) "Post" or "posting" means placing the document referred to on the site of the improvement in a conspicuous place at the front of the site and in a manner that protects the document from the weather.

(26) "Real property" means the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or governmental agency, commission, or political subdivision.

(27) "Site of the improvement" means the real property which is being improved and on which labor or services are performed or materials furnished in furtherance of the operations of improving such real property. In cases of removal, without demolition and under contract, of an improvement from one lot, parcel, or tract of land to another, this term means the real property to which the improvement is removed.

(28) "Subcontractor" means a person other than a material man or laborer who enters into a contract with a contractor for the performance of any part of such contractor's contract, including the removal of solid waste from the real property. The term includes a temporary help firm as defined in s. 443.101.

(29) "Sub-subcontractor" means a person other than a material man or laborer who enters into a contract with a subcontractor for the performance of any part of such subcontractor's contract, including the removal of solid waste from the real property. The term includes a temporary help firm as defined in § 443.101.

713.03 Liens for professional services.--

(1) Any person who performs services as architect, landscape architect, interior designer, engineer, or surveyor and mapper, subject to compliance with and the limitations imposed by this part, has a lien on the real property improved for any money that is owing to him or her for his or her services used in connection with improving the real property or for his or her services in supervising any portion of the work of improving the real property, rendered in accordance with his or her contract and with the direct contract.

(2) Any architect, landscape architect, interior designer, engineer, or surveyor and mapper who has a direct contract and who in the practice of his or her profession shall perform services, by himself or herself or others, in connection with a specific parcel of real property and subject to said compliances and limitations, shall have a lien upon such real property for the money owing to him or her for his or her professional services, regardless of whether such real property is actually improved. (3) No liens under this section shall be acquired until a claim of lien is recorded. No lienor under this section shall be required to serve a notice to owner as provided in § 713.06(2) or an affidavit concerning unpaid lienors as provided in § 713.06(3).

For more information on The Construction Lien Laws Ch. 713 F.S. – Please review pages 147 & 148 or visit online sunshine at: www.leg.state.fl.us/