2012
Legal Update
Seminar

This Course is approved by the DBPR Council of Community Association Managers, for 2 hours of continuing education credit in the area of:

Legal Update

Gold Coast Professional Schools, Inc Provider # 00842
Correspondence Course Approval # 9626344
Classroom Course Approval # 9626334

Introduction

This 2012 Legal Update Seminar includes changes to various statutes that were passed by the Legislature and signed into law by the Governor in 2011. We have included footnotes as appropriate to convey important information, for instance to note a different implementation date. You should review all footnotes carefully.

The content of this course is prescribed by the Department of Business & Professional Regulations (DBPR). This course is not designed to cover every change made in statute or rule. It does not discuss variances, waivers, or declaratory statements issued by the Department. While it includes selected arbitration decisions and references, it is not meant to be a comprehensive guide to such decisions.

This year, there were no changes to F.S. 468 Part VIII or the associated Florida Administrative Codes. While we have not included the statutes in administrative rules in full, we have excerpted out sections applicable to governing community association manager performance. It is important that every community association manager be familiar with the code of conduct, as well as areas in which a CAM may have a problem, or face disciplinary action.

While our focus is primarily on those legislative changes directly affecting community associations, we have also reviewed legislation that may indirectly affect your communities. This year, we have included the actual statutory language, so that you may read and reference it exactly. Note that, sections where statutory changes are not substantial have been omitted. As an example, if the legislation changed “the board of a condominium” to “a condominium board,” we omitted it, as it does not change the intent of the statute.

Many of the changes in statutes may apply solely to one type of association. Arbitration decisions, while serving as a guide for other associations, pertain exclusively to the association for which the decisions was rendered. Some of the information provided in this course may not apply to every community association manager or management firm, but only to those serving a specific type of community association. However, the DBPR requires that all community association managers be familiar with the laws and rules governing all types of associations. Further, by doing so, a manager may find himself more qualified to advance within the community association profession.

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Gold Coast Professional Schools
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Tamarac, Florida 33321

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Community Association Managers & Community Association Management Firms

There were no changes in either legislation or administrative rules for CAMs and CABs in during the 2011 legislative session. Therefore, we have not included the entire F.S. 468 Part VIII, F.A.C. 61E-14 and F.A.C. 61-20, we have not reprinted these in full. However, because many community associations and community association members are reporting CAMs and affiliated CABs for alleged violations of statutes and rules, we have extracted certain key information for your review.

F. S. 468.436 Disciplinary proceedings.—

(1) The department shall investigate complaints and allegations of a violation of this part, chapter 455, or any rule adopted thereunder, filed against community association managers or firms and forwarded from other divisions under the Department of Business and Professional Regulation. After a complaint is received, the department shall conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the department shall acknowledge the complaint in writing and notify the complainant whether or not the complaint is within the jurisdiction of the department and whether or not additional information is needed by the department from the complainant. The department shall conduct an investigation and shall, within 90 days after receipt of the original complaint or of a timely request for additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the department from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this part, chapter 455, or a rule of the department has occurred. If an investigation is not completed within the time limits established in this subsection, the department shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the department shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

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

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

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

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

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

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

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

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

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

(4) When the department finds any community association manager or firm guilty of any of the grounds set forth in subsection (2), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

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

(d) Issuance of a reprimand.

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

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

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

F.S. 468.437 Penalties.—

Any person who violates any of the provisions of this part shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

F.S. 775.082:Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;

(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

(5) Any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county.

(6) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment for an indeterminate period within minimum and maximum limits as provided by law, except as provided in subsection (1).

(11)The purpose of this section is to provide uniform punishment for those crimes made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

F. S. 775.083 Fines.—

(1) person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

(a) $15,000, when the conviction is of a life felony.

(b) $10,000, when the conviction is of a felony of the first or second degree.

(c) $ 5,000, when the conviction is of a felony of the third degree.

(d) $ 1,000, when the conviction is of a misdemeanor of the first degree.

(e) $ 500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

(f) Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.

(g) Any higher amount specifically authorized by statute.

Fines imposed in this subsection shall be deposited by the clerk of the court in the fine and forfeiture fund established pursuant to s. 142.01, except that the clerk shall remit fines imposed when adjudication is withheld to the Department of Revenue for deposit in the General Revenue Fund. If a defendant is unable to pay a fine, the court may defer payment of the fine to a date certain. As used in this subsection, the term "convicted" or "conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(2) In addition to the fines set forth in subsection (1), court costs shall be assessed and collected in each instance a defendant pleads nolo contendere to, or is convicted of, or adjudicated delinquent for, a felony, a misdemeanor, or a criminal traffic offense under state law, or a violation of any municipal or county ordinance if the violation constitutes a misdemeanor under state law. The court costs imposed by this section shall be $50 for a felony and $20 for any other offense and shall be deposited by the clerk of the court into an appropriate county account for disbursement for the purposes provided in this subsection. A county shall account for the funds separately from other county funds as crime prevention funds. The county, in consultation with the sheriff, must expend such funds for crime prevention programs in the county, including safe neighborhood programs under ss. 163.501-163.523.

(3) The purpose of this section is to provide uniform penalty authorization for criminal offenses and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

F.A.C. 61-20.010 Disciplinary Guidelines.

(1) PURPOSE. Pursuant to Section 455.2273, F.S., the department provides within this rule disciplinary guidelines which shall be imposed upon applicants, registrants, or licensees whom it regulates under Chapter 468, Part VIII, F.S. The purpose of this rule is to notify applicants, registrants, and licensees of the ranges of penalties which will routinely be imposed unless the department finds it necessary to deviate from the guidelines for the stated reasons given in subsection (2). The ranges of penalties provided in this rule are based upon a single count violation of each provision listed. Multiple counts of the violated provisions or a combination of the violation may result in a higher penalty than that for a single, isolated violation. Each range includes the lowest and highest penalty and all penalties falling between. The purposes of the imposition of discipline are to punish the applicants, registrants, or licensees for violations and to deter them from future violations; to offer opportunities for rehabilitation, when appropriate; and to deter other applicants, registrants, or licensees from violations.

(2) AGGRAVATING AND MITIGATING CIRCUMSTANCES. The department shall be entitled to deviate from the disciplinary guidelines provided by this rule upon a showing of aggravating or mitigating circumstances by clear and convincing evidence presented to the department prior to the imposition of a final penalty. The department must make a specific finding of mitigating or aggravating guidelines. Based upon consideration of the facts present in an individual case, the department shall consider the following factors in aggravation and mitigation when deviating from the disciplinary guidelines set forth in this rule:

(a) Danger to the public;
(b) Physical or financial harm resulting from the violation;
(c) Prior violations committed by the subject;
(d) Length of time the registrant or licensee has practiced;
(e) Deterrent effect of the penalty;
(f) Correction or attempted correction of the violation;

(g) Effect on the registrant's or licensee's livelihood;
(h) Any efforts toward rehabilitation;
(i) Any other aggravating or mitigating factor which is directly relevant under the circumstances.

(3) PENALTIES CUMULATIVE AND CONSECUTIVE. Where several violations occur in one or several cases being considered together, the penalties shall normally be cumulative and consecutive.

(4) STIPULATION OR SETTLEMENT. The provisions of this part are not intended and shall not be construed to limit the ability of the department to dispose disciplinary actions by stipulation, agreed settlement, or consent order pursuant to Section 120.57(4), F.S.

(5) VIOLATIONS AND RANGE OF PENALTIES. In imposing discipline upon applicants, registrants, and licensees in proceedings pursuant to Sections 120.569, 120.57(1) and (2), F.S., the department shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range corresponding to the violations as set forth in this subsection. The verbal identification of offenses is descriptive only. The full language of each statutory provision cited must be consulted in order to determine the conduct included.

	PENALTY RANGE	
VIOLATION	MINIMUM	MAXIMUM
(a) Section 468.436(1)(b)1., F.S. Violating any provision of this part, if not otherwise delineated in this rule.		
First Offense	Reprimand	$1000 fine; costs
Second Offense	$500 fine	Probation; $2500 fine; costs
Third Offense	Probation; $2500 fine	One year suspension; $5000 fine; costs
(b) Section 468.436(1)(b)2., F.S. Violating any lawful order or rule, if not otherwise delineated in this rule.		
First Offense	Reprimand	$1000 fine; costs
Second Offense	$500 fine	Probation; $2500 fine; costs
Third Offense	Probation; $2500 fine	One year suspension; $5000 fine; costs
(c) Section 468.436(1)(b)3., F.S. Being convicted of or pleading nolo contendere to a felony.		
First Offense	Reprimand; $500 fine	Revocation; $5000 fine; costs
Second Offense	One year suspension; $1000 fine; costs	Revocation; $5000 fine; costs
Third Offense	Two years suspension; $1000 fine	Revocation; $5000 fine; costs

(d) Section 468.436(1)(b)4., F.S. Obtaining a license or certification or any other order, ruling, or auithorization by means of fraud, misrepresentation, or concealment of material facts.		
First Offense	$1000 fine; costs	Revocation; $5000 fine; costs
Second Offense	One year suspension; $1000 fine; costs	Revocation; $5000 fine; costs
Third Offense	Revocation	Revocation; $5000 fine; costs
(e) Section 468.436(1)(b)5., F.S. Committing acts of gross misconduct or gross negligence in connection with the profession.		
First Offense	$500 fine	Revocation; $5000 fine; costs
Second Offense	$2500 fine; costs	Revocation; $5000 fine; costs
Third Offense	One year suspension; one year probation; $2500 fine	Revocation; $5000 fine; costs
(f) Subsection 61-20.002(1), F.A.C. Change of address, notification, license renewal.		
First Offense	Reprimand	$500 fine; costs
Second Offense	Reprimand	$1000 fine; costs
Third Offense	Reprimand	$2000 fine; costs
(g) Paragraph 61-20.002(3)(c), F.A.C. Legal name change, notification.		
First Offense	Reprimand	$500 fine; costs
Second Offense	Reprimand	$1000 fine; costs
Third Offense	Reprimand	$2000 fine; costs
(h) Subsection 61E14-2.001(2), F.A.C. A licensee or registrant shall not make an untrue statement of a material fact or fail to state a material fact.		
First Offense	Reprimand	One year suspension; $1000 fine; costs
Second Offense	One year probation; $500 fine; costs	One year suspension; two years probation; $5000 fine; costs
Third Offense	Two years suspension; $2500 fine; costs	Revocation; $5000 fine; costs
(i) Subsection 61E14-2.001(3), F.A.C.		

A licensee or registrant shall perform only those services which he or she can reasonably expect to complete with professional competence.		
First Offense	Reprimand	$1000 fine; costs
Second Offense	One year probation; $500 fine; costs	One year suspension; two years probation; $5000 fine; costs
Third Offense	Two years suspension; $2500 fine; costs	Revocation; $5000 fine; costs
(j) Paragraph 61E14-2.001(4)(a), F.A.C. A licensee or registrant shall exercise due professional care.		
First Offense	Reprimand	$1000 fine; costs
Second Offense	One year probation; $500 fine	One year suspension; two years probation; $5000 fine; costs
Third Offense	Two years suspension; $2500 fine; costs	Revocation; $5000 fine; costs
(k) Paragraph 61E14-2.001(4)(b), F.A.C. A licensee or registrant shall not knowingly fail to comply with the requirements of the documents by which the association is created or operated.		
First Offense	Reprimand	One year suspension; $2500 fine; costs
Second Offense	One year probation; $1000 fine; costs	One year suspension; two years probation; $5000 fine; costs
Third Offense	$2500 fine; costs	Revocation; $5000 fine; costs
(l) Subsection 61E14-2.001(5), F.A.C. A licensee or registrant shall not permit others to commit certain acts or omissions.		
First Offense	Reprimand	One year suspension; $1000 fine; costs
Second Offense	One year probation; $500 fine; costs	Two years suspension; two years probation; $5000 fine; costs
Third Offense	Two years suspension; $2500 fine; costs	Revocation; $5000 fine; costs
(m) Paragraph 61E14-2.001(6)(a), F.A.C. A licensee or registrant shall not withhold possession of records.		

First Offense	Reprimand	$2500 fine; one year suspension; costs
Second Offense	$500 fine	$2500 fine; Revocation; costs
Third Offense	$1000 fine	Revocation; $5000 fine; costs
(n) Paragraph 61E14-2.001(6)(b), F.A.C. A licensee or registrant shall not deny access to association records.		
First Offense	Reprimand	$1000 fine; costs
Second Offense	$500 fine; costs	$2500 fine; one year suspension; one year probation; costs
Third Offense	One year probation; $3000 fine; costs	One year suspension; two years probation; $5000 fine; costs
(o) Paragraph 61E14-2.001(6)(c), F.A.C. A licensee or registrant shall not create false records.		
First Offense	Reprimand; $1000 fine; costs	One year suspension; two years probation; $1000 fine; costs
Second Offense	One year suspension; two years probation; $2500 fine; costs	Revocation; $5000 fine; costs
Third Offense	Two years suspension; two years probation; $5000 fine; costs	Revocation; $5000 fine; costs
(p) Paragraph 61E14-2.001(6)(d), F.A.C. A licensee or registrant shall not fail to maintain records.		
First Offense	Reprimand	One year suspension; $1000 fine; costs
Second Offense	$500 fine; costs	Two years suspension; $2500 fine; two years probation; costs
Third Offense	One year suspension; two years probation	Revocation; $5000 fine; costs
(q) Subsection 61E14-2.001(7), F.A.C. Use funds for intended purpose.		
First Offense	$1000 fine; costs	Revocation; $5000 fine; costs
Second Offense	$2500; two years probation; costs	Revocation; $5000 fine; costs

Third Offense	One year suspension; two years probation; $5000 fine; costs	Revocation; $5000 fine; costs
(r) Paragraph 61E14-2.001(8)(a), F.A.C. Other license suspended, revoked,misconduct.		
First Offense	Two years probation	Revocation; $5000 fine; costs
Second Offense	$1000 fine; costs	Revocation; $5000 fine; costs
Third Offense	$2500 fine; costs	Revocation; $5000 fine; costs
(s) Paragraph 61E14-2.001(8)(b), F.A.C. Perform services requiring licensure without requisite licensure.		
First Offense	Reprimand	$2500 fine; costs
Second Offense	$1000 fine; costs	$5000 fine; one year suspension; two years probation; costs
Third Offense	$2500 fine; costs	Revocation; $5000 fine; costs
(t) Paragraph 61E14-2.001(8)(c), F.A.C. Other licenses, reveal.		
First Offense	Reprimand	Reprimand; $1000 fine; costs
Second Offense	$500 fine; costs	One year suspension; two years probation; $3000 fine; costs
Third Offense	$1000 fine; costs	Revocation; $5000 fine; costs
(u) Subsection 61E14-4.001(1), F.A.C. Continuing Education.		
First Offense	Reprimand	One year probation; $1000 fine; compliance; costs
Second Offense	$250 fine; compliance within 60 days	Suspension until compliance; $2500 fine; costs
Third Offense	$1000 fine; compliance within 60 days	One year suspension or until compliance, whichever is greater; $5000 fine; compliance; costs
(v) Subsection 61-20.5083(5), F.A.C. Continuing education audit, failure to respond.		

First Offense	Reprimand	$500 fine; costs
Second Offense	$500 fine	$2500 fine; costs
Third Offense	One year probation; $2500 fine; costs	One year suspension; $2500 fine; costs
(w) Subsection 61E14-2.001(2), F.A.C. Practice through unregistered entity 3 months or less.		
First Offense	Reprimand	$500 fine; costs
Second Offense	$500 fine; costs	$2500 fine; costs
Third Offense	One year probation; $1000 fine; costs	One year suspension; $5000 fine; costs
(x) Section 455.271(1), F.S. Practice on delinquent, inactive license.		
First Offense	Reprimand	$100 per month fine
Second Offense	$100 per month fine	$2500 fine; costs
Third Offense	$1000 fine; costs	Revocation; $5000 fine; costs
(y) Section 455.227(1)(c), F.S. Being convicted or found guilty of a crime related to the practice of a licensee's or registrant's profession.		
First Offense	One year suspension; $1000 fine; costs	Revocation; $5000 fine; costs
Second Offense	One year suspension; $1500 fine; costs	Revocation; $5000 fine; costs
Third Offense	Two years suspension; $3000 fine; costs	Revocation; $5000 fine; costs
(z) Section 455.227(1)(g), F.S. Filing a false report or complaint with the department.		
First Offense	$500 fine	One year suspension; $3000 fine; costs
Second Offense	Two years probation; $1000 fine; costs	Revocation; $5000 fine; costs
Third Offense	One year suspension; $2500 fine; costs	Revocation; $5000 fine; costs
(aa) Section 455.227(1)(h), F.S.		

Attempting, obtaining, or renewing a license by bribery or fraud.		
First Offense	$1000 fine; costs	Revocation; $5000 fine; costs
Second Offense	One year suspension; $3000 fine; costs	Revocation; $5000 fine; costs
Third Offense	Two years suspension; $5000 fine; costs	Revocation; $5000 fine; costs
(bb) Section 455.227(1)(i), F.S. Failing to report any person in violation of this part or the chapter regulating the alleged violator.		
First Offense	Reprimand	One year suspension; $3000 fine; costs
Second Offense	Reprimand; one year probation	Two years suspension; $5000 fine; costs
Third Offense	Reprimand; two years probation; costs	Revocation; $5000 fine; costs
(cc) Section 455.227(1)(j), F.S. Aiding, assisting, unlicensed persons or entity.		
First Offense	Reprimand	One year suspension; $3000 fine; costs
Second Offense	$1000 fine; costs	Two years suspension; two years probation; $5000 fine; costs
Third Offense	One year suspension; one year probation; costs	Revocation; $5000 fine; costs
(dd) Section 455.227(1)(k), F.S. Failing to perform any statutory or legal obligation placed on a licensee or registrant, if the obligation is not otherwise covered by this rule.		
First Offense	Reprimand	One year suspension; two years probation; $3000 fine; costs
Second Offense	Reprimand	Two year suspension; two years probation; $5000 fine;costs
Third Offense	Reprimand; $500 fine; costs	Revocation; $5000 fine; costs

(ee) Section 455.227(1)(l), F.S.
Making a report that the licensee or registrant knows to be false, failing to file a required report.

First Offense	$500 fine; costs	Revocation; $5000 fine; costs
Second Offense	$1000 fine; costs	Revocation; $5000 fine; costs
Third Offense	$2500 fine; costs	Revocation; $5000 fine; costs

(ff) Section 455.227(1)(m), F.S.
Making deceptive, untrue, or fraudulent misrepresentations, trick or scheme, related to the practice or profession.

First Offense	Reprimand; $500 fine	Revocation; $5000 fine; costs
Second Offense	One year probation; $1000 fine; costs	Revocation; $5000 fine; costs
Third Offense	One year suspension; two years probation; $2500 fine; costs	Revocation; $5000 fine; costs

(gg) Section 455.227(1)(p), F.S.
Knowingly delegating or contracting for the performance of professional responsibilities.

First Offense	Reprimand; costs	One year suspension; $3000 fine; costs
Second Offense	Two years probation; $500 fine; costs	Two years suspension; two years probation; $5000 fine; costs
Third Offense	One year suspension; two years probation; $2500 fine; costs	Revocation; $5000 fine; costs

(hh) Section 455.227(1)(r), F.S.
Improperly interfering with an investigation or Inspection authorized by statute, or within any disciplinary proceedings.

First Offense	$1000 fine	Revocation; $5000 fine; costs
Second Offense	One year suspension; $2500 fine; costs	Revocation; $5000 fine; costs
Third Offense	Two years suspension; $5000 fine; costs	Revocation; $5000 fine; costs

F.A.C. 61E14-2.001 Standards of Professional Conduct.

Licensees shall adhere to the following provisions, standards of professional conduct, and such provisions and standards shall be deemed automatically incorporated, as duties of all licensees, into any written or oral agreement for the rendition of community association management services, the violation of which shall constitute gross misconduct or gross negligence:

(1) Definitions. As used in this rule, the following definitions apply:

(a) The word "control" means the authority to direct or prevent the actions of another person or entity pursuant to law, contract, subcontract or employment relationship, but shall specifically exclude a licensee's relationship with a community association, its board of directors, any committee thereof or any member of any board or committee.

(b) "Licensee" means a person licensed pursuant to Sections 468.432(1) and (2), F.S.

(c) The word "funds" as used in this rule includes money and negotiable instruments including checks, notes and securities.

(2) Honesty. During the performance of management services, a licensee shall not knowingly make an untrue statement of a material fact or knowingly fail to state a material fact.

(3) Professional Competence. A licensee shall undertake to perform only those community association management services which he or it can reasonably expect to complete with professional competence.

(4) Due Professional Care.

(a) A licensee shall exercise due professional care in the performance of community association management services.

(b) A licensee shall not knowingly fail to comply with the requirements of the documents by which the association is created or operated so long as such documents comply with the requirements of law.

(5) Control of Others. A licensee shall not permit others under his or the management firm's control to commit on his or the firm's behalf, acts or omissions which, if made by either licensee, would place that licensee in violation of Chapter 455, 468, Part VIII, F.S., or Chapter 61-20, F.A.C. or other applicable statutes or rules. A licensee shall be deemed responsible by the department for the actions of all persons who perform community association management related functions under his or its supervision or control.

(6) Records.

(a) A licensee shall not withhold possession of any original books, records, accounts, funds, or other property of a community association when requested by the community association to deliver the same to the association upon reasonable notice. Reasonable notice shall extend no later than 10 business days after termination of any management or employment agreement and receipt of a written request from the association. The manager may retain those records necessary for up to 20 days to complete an ending financial statement or report. Failure of the association to provide access or retention of accounting records to prepare the statement or report shall relieve the manager of any further responsibility or liability for preparation of the statement or report. The provisions of this rule apply regardless of any contractual or other dispute between the licensee and the community association. It shall be considered gross misconduct, as provided by Section 468.436(2), F.S., for a licensee to violate the provisions of this subsection.

(b) A licensee shall not deny access to association records, for the purpose of inspecting or

photocopying the same, to a person entitled to such by law, to the extent and under the procedures set forth in the applicable law.

(c) A licensee shall not create false records or alter records of a community association or of the licensee except in such cases where an alteration is permitted by law (e.g., the correction of minutes per direction given at a meeting at which the minutes are submitted for approval).

(d) A licensee shall not, to the extent charged with the responsibility of maintaining records, fail to maintain his or its records, and the records of any applicable community association, in accordance with the laws and documents requiring or governing the records.

(7) Financial Matters. A licensee shall use funds received by him or it on the account of any community association or its members only for the specific purpose or purposes for which the funds were remitted.

(8) Other Licenses.

(a) A licensee shall not commit acts of gross negligence or gross misconduct in the pursuit of community association management or any other profession for which a state or federal license is required or permitted. It shall be presumed that gross negligence or gross misconduct has been committed where a licensee's other professional license has been suspended or revoked for reasons other than non-payment of fees or noncompliance with applicable continuing education requirements.

(b) A licensee shall not perform, agree to perform or hold himself or itself out as being qualified to perform any services which, under the laws of the State of Florida or of the United States, are to be performed only by a person or entity holding the requisite license for same, unless the licensee also holds such license or registration; provided, however, that no violation hereof shall be deemed to have occurred unless and until the authority administering the license or registration in question makes a final determination that the licensee or registrant has failed to obtain a license or registration in violation of the law requiring same.

(c) A licensee shall reveal all other licenses or registrations held by him or it under the laws of the State of Florida or the United States, if, as a result of such license or registration, a licensee receives any payment for services or goods from the community association or its board.

(d) Violation of any provision of Section 455.227(1), F.S., or of any part of this rule shall subject the licensee to disciplinary measures as set out in Section 468.436, F.S.

Summary – Legislation 2011[1]

Chapter	Bill #	Area	Effective
2011-159	CS/HB – 59	Service of Process	July 1, 2011
2011-196	CS/CS/CS/HB-1195	Condominium, Cooperative & Home-owners' Associations	July 1, 2011
2011-119	CS/CS/CS/HB – 883	Public Lodging & Food Service (Time Shares)	June 2, 2011
2011-105	CB/SB-650	Mobile Home Associations	June 2, 1011
2011-39	CS/CS/CSBS - 408	Insurance	July 1, 2011[2]

[1] Underline indicates new text in statute; ~~cross-thru~~ indicates removal of text from statute

[2] Except as otherwise provided in legislation.

2011-222	CS/CS/CS/HB-849	Elevators, Building Codes, ADA, Pools	July 1, 2011[3]
2011-142	SB – 2156	Hurricane Mitigation: Manufactured Homes	July 1, 2011

CS/HB – 59 (Chapter 2011-159, F.S. – Effective July 1, 2011)

Sheriffs' fees for service of summons, subpoenas, and executions (F.S. 30.231)

(3) ~~It shall be the responsibility of~~ The party requesting service of process must ~~to~~ furnish to the sheriff the original process, ~~or~~ a certified copy of the process, or an electronic copy of the process, which was signed and certified by the clerk of court, and sufficient copies to be served on the parties receiving the service of process. The party requesting service of process shall provide the sheriff with the best known address where the person may be served. Failure to perfect service at the address provided does not excuse the sheriff from his or her duty to exercise due diligence in locating the person to be served.

Service of process & witness subpoenas (F.S. 48.031)

(5) A person serving process shall place, on the first page of at least one of the processes ~~copy~~ served, the date and time of service and his or her identification number and initials for all service of process. The person serving process shall list on the return-of-service form all initial pleadings delivered and served along with the process. The person issuing the process shall file the return-of-service form with the court.

(7) A gated residential community, including a condominium association or a cooperative, shall grant unannounced entry into the community, including its common areas and common elements, to a person who is attempting to serve process on a defendant or witness who resides within or is known to be within the community.

CS/CS/CS/HB – 1195 (Chapter 2011-196, F.S. – Effective July 1, 2011)[4]

Florida Fire Prevention Code (F.S. 633.0215)

(14) A condominium, cooperative, or multifamily residential building that is less than four ~~one or two~~ stories in height and has an exterior corridor providing a means of egress is exempt from installing a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in the Florida Fire Prevention Code. This is intended to clarify existing law.

Condominium Official Records (F.S. 718.111(12))

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes ~~shall constitute~~ the official records of the association:

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and facsimile ~~the numbers designated by unit owners for receiving notice sent by electronic transmission~~ of ~~those~~ unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile ~~telephone~~ numbers are not accessible to unit owners ~~must be removed from association records~~ if consent to receive notice by electronic transmission is not provided in accordance with subparagraph (c)5 ~~revoked~~. However, the association is not liable for an inadvertent ~~erroneous~~ disclosure

[3] Except as otherwise provided in legislation.
[4] Note: Excludes minor changes in language that do not substantially affect legislation.

of the electronic mail address or facsimile ~~the~~ number for receiving electronic transmission of notices.

(c) Records not accessible to unit owners:

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

5. Social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, ~~any~~ 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, ~~and~~ property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. However, an owner may consent in writing to the disclosure of protected information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

Condominium Bylaws: Board of Administration Meetings (F.S. 718.112(2)(c))

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply ~~is inapplicable~~ to:

b. Board meetings held for the purpose of discussing personnel matters.

Condominium Bylaws: Unit Owner Meetings (F.S. 718.112(2)(d))

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot. An election is not required ~~However~~, if the number of vacancies equals or exceeds the number of candidates~~, an election is not required~~. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members terms would otherwise expire but there are no candidates, the terms of all board members ~~of the board~~ expire at the annual meeting, and such ~~board~~ members may stand for reelection unless prohibited ~~otherwise permitted~~ by the bylaws. If the bylaws permit staggered terms of no more than 2 years and upon approval of a majority of the total voting interests, the association board members may serve 2-year staggered terms. If the number of board members whose terms expire at the annual meeting equals or ~~have expired~~ exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director ~~eligible members showing interest in or demonstrating an intention to run for the vacant positions, each board member whose term has expired is eligible for reappointment to the board of administration and need not stand for reelection.~~ In a condominium association of more than 10 units or in a condominium association that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the

board at the time of the vacancy. Any unit owner desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board ~~3.a.~~ A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any fee, fine, or special or regular assessment as provided in paragraph (n), is not eligible for board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which ~~that~~ would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date ~~on which~~ such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member ~~of the board~~ is ineligible for board membership due to having been convicted of a felony.

4. a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, ~~whether~~ by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3. ~~2.~~, the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election ~~of members of the board~~. A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. A, ~~provided any~~ unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. ~~This sub-subparagraph does not apply to timeshare condominium associations~~. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or ap-

pointed director may submit a certificate of having satisfactorily completed ~~satisfactory completion of~~ the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association.

Condominium Hurricane Protection (F.S. 718.113 (5):

(a) The board may, subject to the provisions of s. 718.3026, and the approval of a majority of voting interests of the condominium, install hurricane shutters, impact glass or other code-compliant windows, or hurricane protection that complies with or exceeds the applicable building code. However, ~~or both~~, except that a vote of the owners is not required if the maintenance, repair, and replacement of hurricane shutters, impact glass, or other code-compliant windows ~~or other forms of hurricane protection~~ are the responsibility of the association pursuant to the declaration of condominium. If ~~However, where~~ hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection which complies with or exceeds the current applicable building code has been previously installed, the board may not install hurricane shutters, ~~or other~~ hurricane protection, or impact glass or other code-compliant windows except upon approval by a majority vote of the voting interests.

Condominium Leaseholds, Memberships & Other Possessory or Use Interests (F.S. 718.114):

An association may ~~has the power to~~ enter into agreements~~,~~ to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. ~~It has this power~~ whether or not the lands or facilities are contiguous to the lands of the condominium, if such lands and facilities ~~they~~ are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All of these leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to the recording of the declaration, agreements acquiring these leaseholds, memberships, or other possessory or use interests which are not entered into within 12 months following the recording of the declaration are ~~shall be considered~~ a material alteration or substantial addition to the real property that is association property, and the association may not acquire or enter into such agreements ~~acquiring these leaseholds, memberships, or other possessory or use interests~~ except upon a vote of, or written consent by, a majority of the total voting interests or as authorized by the declaration as provided in s. 718.113. The declaration may provide that the rental, membership fees, operations, replacements, and other expenses are common expenses and may impose covenants and restrictions concerning their use and may contain other provisions not inconsistent with this chapter. A condominium association may conduct bingo games as provided in s. 849.0931.

Condominium Assessments – Liability, Lien & Priority (F.S. 718.116(1)(b)):

2. An association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in s. 718.103(2) or s. 720.301(9), which holds a superior lien interest on the unit. This subparagraph is intended to clarify existing law.

Condominium Assessments – Payment by Tenant when Owner is Delinquent (F.S. 718.116(11)):

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

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

> Pursuant to section 718.116(11), Florida Statutes, the association demands that you pay your rent directly to the condominium association and continue doing so until the association notifies you otherwise.
>
> Payment due the condominium association may be in the same form as you paid your landlord and must be sent by United States mail or hand delivery to …(full address)…, payable to …(name)….
>
> Your obligation to pay your rent to the association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the
>
> association written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the association would then begin with the next rental period.
>
> Pursuant to section 718.116(11), Florida Statutes, your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord for all amounts timely paid to the association.

4. A tenant ~~who acts in good faith in response to a written demand from an association~~ is immune from any claim by ~~from~~ the landlord or unit owner related to the rent timely paid to the association after the association has made written demand.

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

(c)~~(b) The tenant is not liable for increases in the amount of the regular monetary obligations due unless the tenant was notified in writing of the increase at least 10 days before the date on which the rent is due.~~ The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the landlord ~~unit owner~~ in the amount of moneys paid to the association ~~under this section~~.

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

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

Condominium – Termination because of Economic Waster or Impossibility (F.S. 718.117):

(2) TERMINATION BECAUSE OF ECONOMIC WASTE OR IMPOSSIBILITY.—

(a) Notwithstanding any provision in the declaration, the condominium form of ownership of a property may be terminated by a plan of termination approved by the lesser of the lowest percentage of voting interests necessary to amend the declaration or as otherwise provided in the declaration for approval of termination if:

1. The total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs; or

2. It becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.

(b) Notwithstanding paragraph (a), a condominium in which 75 percent or more of the units are timeshare units may be terminated only pursuant to a plan of termination approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.

(c) Notwithstanding paragraph (a), a condominium that includes units and timeshare estates where the improvements have been totally destroyed or demolished may be terminated pursuant to a plan of termination proposed by a unit owner upon the filing of a petition in court seeking equitable relief. Within 10 days after the filing of a petition as provided in this paragraph and in lieu of the requirements of paragraph (15)(a), the petitioner shall record the proposed plan of termination and mail a copy of the proposed plan and a copy of the petition to:

1. If the association has not been dissolved as a matter of law, each member of the board of directors of the association identified in the most recent annual report filed with the Department of State and the registered agent of the association;

2. The managing entity as defined in s. 721.05(22);

3. Each unit owner and each timeshare estate owner at the address reflected in the official records of the association, or, if the association records cannot be obtained by the petitioner, each unit owner and each timeshare estate owner at the address listed in the office of the tax collector for tax notices; and

4. Each holder of a recorded mortgage lien affecting a unit or timeshare estate at the address appearing on the recorded mortgage or any recorded assignment thereof.

The association, if it has not been dissolved as a matter of law, acting as class representative, or the managing entity as defined in s. s21.05(22), any unit owner, any timeshare estate owner, or any holder of a recorded mortgage lien affecting a unit or timeshare estate may intervene in the proceedings to contest the proposed plan of termination brought pursuant to this paragraph. The provisions of subsection (9), to the extent inconsistent with this paragraph, and subsection (16) are not applicable to a party contesting a plan of termination under this paragraph. If no party intervenes to contest the proposed plan within 45 days after the filing of the petition, the petitioner may move the court to enter a final judgment to authorize implementation of the plan of termination. If a party timely intervenes to contest the proposed plan, the plan may not be implemented until a final judgment has been entered by the court finding that the proposed plan of termination is fair and reasonable and authorizing implementation of the plan.

(3) OPTIONAL TERMINATION.—Except as provided in subsection (2) or unless the declaration provides for a lower percentage, the condominium form of ownership ~~of the property~~ may be terminated for all or a portion of the condominium property pursuant to a plan of termination approved by at least 80 percent of the total voting interests of the condominium if no ~~not~~ more than 10 percent of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections ~~thereto~~. This subsection does not apply to condominiums in which 75 percent or more of the units are timeshare units.

(4) EXEMPTION.—A plan of termination is not an amendment subject to s. 718.110(4). In a partial termination, a plan of termination is not an amendment subject to s. 718.110(4) if the ownership share of the common elements of a surviving unit in the condominium remains in the same proportion to the surviving units as it was before the partial termination.

(11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL TERMINATION.—

(a) The plan of termination may provide that each unit owner retains the exclusive right of possession to the portion of the real estate which ~~that~~ formerly constituted the unit if~~, in which case~~ the plan specifies ~~must specify~~ the conditions of possession. In a partial termination, the plan of termination as specified in subsection (10) must also identify the units that survive the partial termination and provide that such units remain in the condominium form of ownership pursuant to an amendment to the declaration of condominium or an amended and restated declaration. In a partial termination, title to the surviving units and common elements that remain part of the condominium property specified in the plan of termination remain vested in the ownership shown in the public records and do not vest in the termination trustee.

(12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM PROPERTY.—

(a) Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan of termination must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair market values immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee. In a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined, and the plan of termination must specify the allocation of the proceeds of sale for the units and common elements.

(d) Liens that encumber a unit shall be transferred to the proceeds of sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority. In a partial termination,

liens that encumber a unit being terminated must be transferred to the proceeds of sale of that portion of the condominium property being terminated which are attributable to such unit. The proceeds of any sale of condominium property pursuant to a plan of termination may not be deemed to be common surplus or association property.

(14) TITLE VESTED IN TERMINATION TRUSTEE.—If termination is pursuant to a plan of termination under subsection (2) or subsection (3), ~~the unit owners' rights and~~ title to ~~as tenants in common in undivided interests~~ in the condominium property being terminated vests ~~vest~~ in the termination trustee when the plan is recorded or at a later date specified in the plan. The unit owners thereafter become the beneficiaries of the proceeds realized from the plan of termination as set forth in the plan. The termination trustee may deal with the condominium property being terminated or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee, on behalf of the unit owners, may contract for the sale of real property being terminated, but the contract is not binding on the unit owners until the plan is approved pursuant to subsection (2) or subsection (3).

(17) DISTRIBUTION.—

(a) Following termination of the condominium, the condominium property, association property, common surplus, and other assets of the association shall be held by the termination trustee pursuant to the plan of termination, as trustee for unit owners and holders of liens on the units, in their order of priority unless otherwise set forth in the plan of termination.

(18) ASSOCIATION STATUS.—The termination of a condominium does not change the corporate status of the association that operated the condominium property. The association continues to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not to act except as necessary to conclude its affairs. In a partial termination, the association may continue as the condominium association for the property that remains subject to the declaration of condominium.

(19) CREATION OF ANOTHER CONDOMINIUM.—The termination or partial termination of a condominium does not bar the filing of a new declaration of condominium ~~or an amended and restated declaration of condominium~~ by the termination trustee, or the trustee's successor in interest, for the terminated property or ~~affecting~~ any portion thereof ~~of the same property~~. The partial termination of a condominium may provide for the simultaneous filing of an amendment to the declaration of condominium or an amended and restated declaration of condominium by the condominium association for any portion of the property not terminated from the condominium form of ownership.

Condominium: Fines & Delinquencies (F.S. 718.303)

(3) ~~If a unit owner is delinquent for more than 90 days in paying a monetary obligation due to the association, the association may suspend the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligation is paid. This subsection does not apply to limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators.~~ The association may also levy reasonable fines for the failure of the owner of the unit~~,~~ or its occupant, licensee, or invitee~~,~~ to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may ~~does~~ not become a lien against a unit. ~~A fine may not exceed $100 per violation. However,~~ A fine may be levied on the basis of each day of a continuing violation,

with a single notice and opportunity for hearing. However, the fine may not exceed $100 per violation, or $1,000 in the aggregate ~~exceed $1,000~~.

(a) An association may suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

(b) A fine or suspension may not be imposed ~~levied and a suspension may not be imposed~~ unless the association first provides at least 14 days' written notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board member's household. If the committee does not agree ~~with the fine or suspension~~, the fine or suspension may not be ~~levied or~~ imposed.

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

~~(4) The notice and hearing requirements of subsection (3) do not apply to the imposition of suspensions or fines against a unit owner or a unit's occupant, licensee, or invitee because of failing to pay any amounts due the association. If such a fine or suspension is imposed, the association must levy the fine or impose a reasonable suspension at a properly noticed board meeting, and after the imposition of such fine or suspension, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.~~

(5) An association may ~~also~~ suspend the voting rights of a unit or member due to nonpayment of any monetary obligation due to the association which is more than 90 days delinquent. A voting interest or consent right allocated to a unit or member which has been suspended by the association may not be counted towards the total number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(6) All suspensions imposed pursuant to subsection (4) or subsection (5) must be approved at a properly noticed board meeting. Upon approval, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.

Condominium: Bulk Assignee & Buy Buyer (F.S. 718.703):

(1) "Bulk assignee" means a person who is not a bulk buyer and who:

(a) Acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707; and

(b) Receives an assignment of any of the developer rights, other than or in addition to those rights described in subsection (2), ~~some or all of the rights of the developer~~ as set forth in the declaration of condominium or this chapter: ~~by~~

1. By a written instrument recorded as part of or as an exhibit to the deed; ~~or as~~

2. By a separate instrument recorded in the public records of the county in which the condominium is located; or

3. Pursuant to a final judgment or certificate of title issued in favor of a purchaser at a foreclosure sale.

A mortgagee or its assignee may not be deemed a bulk assignee or a developer by reason of the acquisition of condominium units and receipt of an assignment of some or all of a developer rights unless the mortgagee or its assignee exercises any of the developer rights other than those described in subsection (2).

(2) "Bulk buyer" means a person who acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707, but who does not receive an assignment of any developer rights, or receives only some or all of the following rights: ~~other than~~

(a) The right to conduct sales, leasing, and marketing activities within the condominium;

(b) The right to be exempt from the payment of working capital contributions to the condominium association arising out of, or in connection with, the bulk buyer's acquisition of the ~~a bulk number of~~ units; and

(c) The right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to a third party purchaser concerning one or more units.

Condominium: Bulk Assignee – Assumption/Assignment of Developer Rights (F.S. 718.704):

(1) A bulk assignee is deemed to have assumed ~~assumes~~ and is liable for all duties and responsibilities of the developer under the declaration and this chapter upon its acquisition of title to units and continuously thereafter, except that it is not liable for:

(a) Warranties of the developer under s. 718.203(1) or s. 718.618, except as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser, or for design, construction, development, or repair work performed by or on behalf of the ~~such~~ bulk assignee.~~;~~

(b) The obligation to:

1. Fund converter reserves under s. 718.618 for a unit that was not acquired by the bulk assignee; or

2. Provide implied ~~converter~~ warranties on any portion of the condominium property except as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser, or for ~~and pertaining to~~ any design, construction, development, or repair work performed by or on behalf of the bulk assignee.~~;~~

(c) The requirement to provide the association with a cumulative audit of the association's finances from the date of formation of the condominium association as required by s. 718.301(4)(c). However, the bulk assignee must provide an audit for the period during which the bulk assignee elects or appoints a majority of the members of the board of administration.~~;~~

(d) Any liability arising out of or in connection with actions taken by the board of administration or the developer-appointed directors before the bulk assignee elects or appoints a majority of the members of the board of administration.~~; and~~

(e) Any liability for or arising out of the developer's failure to fund previous assessments or to resolve budgetary deficits in relation to a developer's right to guarantee assessments, except as otherwise provided in subsection (2).

The bulk assignee is ~~also~~ responsible only for delivering documents and materials in accordance with s. 718.705(3). A bulk assignee may expressly assume some or all of the developer obligations ~~of the developer~~ described in paragraphs (a)-(e).

(2) A bulk assignee assigned the developer right r~~eceiving the assignment of the rights of the developer~~ to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 assumes and is liable for all obligations of the developer with respect to such guarantee upon its acquisition of title to the units and continuously thereafter, including any applicable funding of reserves to the extent required by law, for as long as the guarantee remains in effect. A bulk assignee not receiving such assignment, or a bulk buyer, does not assume and is not liable for the obligations of the developer with respect to such guarantee, but is responsible for payment of assessments due on or after acquisition of the units in the same manner as all other owners of condominium parcels or as otherwise provided in s. 718.116.

(3) A bulk buyer is liable for the duties and responsibilities of a ~~the~~ developer under the declaration and this chapter only to the extent that such ~~provided in this part, together with any other~~ duties or responsibilities are ~~of the developer~~ expressly assumed in writing by the bulk buyer.

(4) An acquirer of condominium parcels is not a bulk assignee or a bulk buyer if the transfer to such acquirer was made:

(a) Before the effective date of this part;

(b) With the intent to hinder, delay, or defraud any purchaser, unit owner, or the association~~;, or if the acquirer is~~

(c) By a person who would be considered an insider under s. 726.102(7).

(5) An assignment of developer rights to a bulk assignee may be made by a ~~the~~ developer, a previous bulk assignee, a mortgagee or assignee who has acquired title to the units and received an assignment of rights, or a court acting on behalf of the developer or the previous bulk assignee if such developer rights are held by the predecessor in title to the bulk assignee. At any particular time, there may not be ~~no~~ more than one bulk assignee within a condominium; however, ~~but~~ there may be more than one bulk buyer. If more than one acquirer of condominium parcels in the same condominium receives an assignment of developer rights in addition to those rights described in s. 718.703(2) ~~from the same person~~, the bulk assignee is the acquirer whose instrument of assignment is recorded first in the public records of the county in which the condominium is located, and any subsequent purported bulk assignee may still qualify as a bulk buyer.

Condominium: Bulk Assignee/Bulk Buyer – Control of Board (F.S. 718.705):

(1) If, at the time the bulk assignee acquires title to the units and receives an assignment of developer rights, the developer has not relinquished control of the board of administration, for purposes of determining the timing for transfer of control of the board of administration of the association ~~to unit owners other than the developer under s. 718.301(1)(a) and (b), if a bulk assignee is entitled to elect a majority of the members of the board~~, a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.

(3) If a bulk assignee relinquishes control of the board of administration as set forth in s. 718.301, the bulk assignee must deliver all of those items required by s. 718.301(4). However, the bulk assignee is not required to deliver items and documents not in the possession of the bulk assignee if some items were or should have been in existence before the bulk assignee's acquisition of the units ~~during the period during which the bulk assignee was entitled to elect at least a~~

~~majority of the members of the board of administration~~. In conjunction with the acquisition of units ~~condominium parcels~~, a bulk assignee shall undertake a good faith effort to obtain the documents and materials that must be provided to the association pursuant to s. 718.301(4). If the bulk assignee is not able to obtain ~~all of~~ such documents and materials, the bulk assignee must certify in writing to the association the names or descriptions of the documents and materials that were not obtainable by the bulk assignee. Delivery of the certificate relieves the bulk assignee of responsibility for delivering the documents and materials referenced in the certificate as otherwise required under ss. 718.112 and 718.301 and this part. The responsibility of the bulk assignee for the audit required by s. 718.301(4) commences as of the date on which the bulk assignee elected or appointed a majority of the members of the board of administration.

Condominium: Bulk Assignee/Bulk Buyer – Offering Units for Sale/Waiver of Reserves (F.S. 718.706):

(1) Before offering more than seven ~~any~~ units in a single condominium for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file the following documents with the division and provide such documents to a prospective purchaser or tenant:

(a) An updated prospectus or offering circular, or a supplement to the prospectus or offering circular, filed by the original developer prepared in accordance with s. 718.504, which must include the form of contract for sale and for lease in compliance with s. 718.503(2);

(b) An updated Frequently Asked Questions and Answers sheet;

(c) The executed escrow agreement if required under s. 718.202; and

(d) The financial information required by s. 718.111(13). However, if a financial information report did ~~does~~ not exist ~~for the fiscal year~~ before the acquisition of title by the bulk assignee or bulk buyer, and if ~~or~~ accounting records that ~~cannot be obtained in good faith by the bulk assignee or the bulk buyer which would~~ permit preparation of the required financial information report for that period cannot be obtained despite good faith efforts by the bulk assignee or the bulk buyer, the bulk assignee or bulk buyer is excused from the requirement of this paragraph. However, the bulk assignee or bulk buyer must include in the purchase contract the following statement in conspicuous type:

ALL OR A PORTION OF THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S. 718.111(13) FOR THE TIME PERIOD BEFORE THE SELLER'S ACQUISITION OF THE UNIT ~~IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION~~ IS NOT AVAILABLE OR CANNOT BE OBTAINED DESPITE THE GOOD FAITH EFFORTS OF ~~CREATED BY~~ THE SELLER ~~DUE TO THE INSUFFICIENT ACCOUNTING RECORDS OF THE ASSOCIATION~~.

(2) Before offering more than seven ~~any~~ units in a single condominium for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file with the division and provide to a prospective purchaser or tenant under a lease for a term exceeding 5 years a disclosure statement that includes, but is not limited to:

(a) A description of any ~~rights~~ of the developer rights that ~~developer which~~ have been assigned to the bulk assignee or bulk buyer;

(b) The following statement in conspicuous type:

THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE SELLER; and

(c) If the condominium is a conversion subject to part VI, the following statement in conspicuous type:

THE SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER S. 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY EXCEPT AS ~~MAY BE~~ EXPRESSLY REQUIRED OF THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE SELLER.

(3) A bulk assignee, while ~~it is~~ in control of the board of administration of the association, may not authorize, on behalf of the association:

(a) The waiver of reserves or the reduction of funding of the reserves pursuant to s. 718.112(2)(f)2., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer; or

(b) The use of reserve expenditures for other purposes pursuant to s. 718.112(2)(f)3., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer.

(4) A bulk assignee or a bulk buyer must comply with ~~all the requirements of~~ s. 718.302 regarding any contracts entered into by the association during the period the bulk assignee or bulk buyer maintains control of the board of administration. Unit owners shall be provided ~~afforded~~ all of the rights and ~~the~~ protections contained in s. 718.302 regarding agreements entered into by the association which are under the control of ~~before unit owners other than~~ the developer, bulk assignee, or bulk buyer ~~elected a majority of the board of administration~~.

(5) Notwithstanding any other provision of this part, a bulk assignee or a bulk buyer is not required to comply with the filing or disclosure requirements of subsections (1) and (2) if all of the units owned by the bulk assignee or bulk buyer are offered and conveyed to a single purchaser in a single transaction. ~~A bulk buyer must comply with the requirements contained in the declaration regarding any transfer of a unit, including sales, leases, and subleases. A bulk buyer is not entitled to any exemptions afforded a developer or successor developer under this chapter regarding the transfer of a unit, including sales, leases, or subleases.~~

Condominium: Time Limitations for Bulk Assignees/Bulk Buyers (F.S. 718.707):

A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2012. The date of such acquisition shall be determined by the date of recording ~~of~~ a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing ~~issuance of~~ a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Cooperative Rents, Liabilities, Liens & Collections (F.S. 719.108):

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

ment. The foregoing applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to chapter 687 or s. 719.303(4)~~(3).~~

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any authorized administrative late fees~~, and any reasonable costs for collection services for which the association has contracted against the unit owner of the cooperative parcel~~. If authorized by the cooperative documents, the lien also secures reasonable attorney's fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. The lien expires if a claim of lien is not filed within 1 year after the date the assessment was due, and the lien does not continue for longer than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced. Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner.

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

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

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

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

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

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

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

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

4. A tenant ~~who acts in good faith in response to a written demand from an association~~ is immune from any claim by ~~from~~ the landlord or unit owner related to the rent timely paid to the association after the association has made written demand.

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

(c)~~(b) The tenant is not liable for increases in the amount of the regular monetary obligations due unless the tenant was notified in writing of the increase at least 10 days before the date on which the rent is due.~~ The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the landlord ~~unit owner~~ in the amount of moneys paid to the association ~~under this section~~.

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

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

(f)~~(e)~~ A court may supersede the effect of this subsection by appointing a receiver.

Cooperatives: Fines & Delinquencies (F.S. 719.303)

(3) ~~If the cooperative documents so provide,~~ The association may levy reasonable fines ~~against a unit owner~~ for failure of the unit owner or the unit's occupant, ~~his or her~~ licensee~~,~~ or invitee ~~or the unit's occupant~~ to comply with any provision of the cooperative documents or reasonable rules of the association. A fine may not ~~No fine shall~~ become a lien against a unit. ~~No fine shall exceed $100 per violation. However,~~ A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. However, the fine may not exceed $100 per violation, or $1,000 ~~provided that no such fine shall i~~n the aggregate ~~exceed $1,000~~.

(a) An association may suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the cooperative documents or reasonable rules of the association.

(b) A ~~No~~ fine or suspension may not be imposed ~~levied~~ except after giving reasonable notice and opportunity for a hearing to the unit owner and, if applicable, the unit's ~~his or her~~ licensee or invitee. The hearing must ~~shall~~ be held before a committee of other unit owners. If the committee does not agree with the fine or suspension, it may ~~shall~~ not be imposed ~~levied~~. ~~This subsection does not apply to unoccupied units~~.

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

(5) An association may suspend the voting rights of a unit or member due to nonpayment of any monetary obligation due to the association which is more than 90 days delinquent. A voting interest or consent right allocated to a unit or member which has been suspended by the association may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under this chapter or pursuant to the cooperative documents, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(6) All suspensions imposed pursuant to subsection (4) or subsection (5) must be approved at a properly noticed board meeting. Upon approval, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.

Homeowners' Associations – Meetings, Member Rights & Records (F.S. 720.303)

(2) BOARD MEETINGS.—

(b) Members have the right to attend all meetings of the board ~~and to speak on any matter placed on the agenda by petition of the voting interests for at least 3 minutes~~. The right to attend such meetings includes the right to speak at such meetings with reference to all designated items. 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, meetings between the board or a committee and the association's attorney to discuss proposed or pending litigation or meetings of the board held for the purpose of discussing personnel matters are not required to be open to the members other than directors.

(5) Records not accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, a ~~any~~ record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such ~~imminent civil or criminal~~ litigation or ~~imminent adversarial administrative~~ proceedings until the conclusion of the litigation or ~~administrative~~ proceedings.

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

3. Personnel records of the association's employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel

designation, mailing address, and property address. However, an owner may consent in writing to the disclosure of protected information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Any electronic security measure that is used by the association to safeguard data, including passwords.

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

Homeowners' Associations: Fines & Delinquencies (F.S. 750.305)

(2) The association ~~If a member is delinquent for more than 90 days in paying a monetary obligation due the association, an association may suspend, until such monetary obligation is paid, 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 of up to $100 per violation~~,~~ against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing, except that the ~~a~~ fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to ~~collect its~~ reasonable attorney's fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. ~~The provisions regarding the suspension of use rights do not apply to the portion of common areas that must be used to provide access to the parcel or utility services provided to the parcel.~~

(b)~~(a)~~ A fine or suspension may not be imposed without at least 14 days' notice 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. If the association imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

(3) If a member is more than 90 days delinquent in paying a monetary obligation due to the association, the association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities until the monetary obligation is paid in full. This subsection does not apply to that portion of common areas used to provide access or utility services to the parcel.

~~(b)~~ Suspension does ~~of common-area use rights do~~ 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. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection.

(4)~~(3) If the governing documents so provide,~~ An association may suspend the voting rights of a parcel or member for the nonpayment of any monetary obligation due to the association that is more than ~~regular annual assessments that are delinquent in excess of~~ 90 days delinquent. A voting interest or consent right allocated to a parcel or member which has been suspended by the association may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under this chapter or pursuant to the governing documents. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection. The suspension ends upon full payment of all obligations currently due or overdue to the association.

(5) All suspensions imposed pursuant to subsection (3) or subsection (4) must be approved at a properly noticed board meeting. Upon approval, the association must notify the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery.

Homeowners' Association – Elections & Board Vacancies (F.S. 720.306)

(9)(a) ELECTIONS AND BOARD VACANCIES.— Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. All members of the association are 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 or, if the election process allows voting by absentee ballot, in advance of the balloting. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters.

(b) A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association for more than 90 days is not eligible for board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. The validity of any action by the board is not affected if it is later determined that a member of the board is ineligible for board membership.

(c) Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division. Such proceedings must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

Homeowners' Association – Collections & Liens (F.S. 720.3085)

(1) When authorized by the governing documents, the association has a lien on each parcel to secure the payment of assessments and other amounts provided for by this section. Except as otherwise set forth in this section, the lien is effective from and shall relate back to the date on which the original declaration of the community was recorded. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the

county in which the parcel is located. This subsection does not bestow upon any lien, mortgage, or certified judgment of record on July 1, 2008, including the lien for unpaid assessments created in this section, a priority that, by law, the lien, mortgage, or judgment did not have before July 1, 2008.

(a) To be valid, a claim of lien must state the description of the parcel, the name of the record owner, the name and address of the association, the assessment amount due, and the due date. The claim of lien secures ~~shall secure~~ all unpaid assessments that are due and that may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, as well as interest, late charges, and reasonable costs and attorney's fees incurred by the association incident to the collection process. The person making the payment is entitled to a satisfaction of the lien upon payment in full.

(2)(d) An association, or its successor or assignee, that acquires title to a parcel through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in s. 718.103(2) or s. 720.301(9), which holds a superior lien interest on the parcel. This paragraph is intended to clarify existing law.

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(a) If the declaration or bylaws so provide, the association may also charge an administrative late fee ~~in an amount~~ not to exceed the greater of $25 or 5 percent of the amount of each installment that is paid past the due date.

(b) Any payment received by an association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine.

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

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

   Pursuant to section 720.3085(8), Florida Statutes, we demand that you make your rent payments directly to the homeowners' association and continue doing so until the association notifies you otherwise.

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

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

receiving this notice and your obligation to pay rent to the association would then begin with the next rental period.

Pursuant to section 720.3085(8), Florida Statutes, your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord.

2. A tenant ~~who acts in good faith in response to a written demand from an association~~ is immune from any claim by ~~from~~ the parcel owner related to the rent timely paid to the association after the association has made written demand.

(b)~~(a)~~ If the tenant paid ~~prepaid~~ rent to the landlord or parcel owner for a given rental period before receiving the demand from the association and provides written evidence to the association of having paid ~~paying~~ the rent to the association within 14 days after receiving the demand, the tenant shall begin making rental payments to the association for the following rental period and shall continue making ~~receive credit for the prepaid rent for the applicable period and must make any subsequent~~ rental payments to the association to be credited against the monetary obligations of the parcel owner until the association releases the tenant or the tenant discontinues tenancy in the unit ~~to the association~~. The association shall, upon request, provide the tenant with written receipts for payments made. The association shall mail written notice to the parcel owner of the association's demand that the tenant pay monetary obligations to the association.

(c)~~(b)~~ The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. ~~The tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing of the increase at least 10 days before the date on which the rent is due~~. The tenant shall be given a credit against rents due to the landlord ~~parcel owner~~ in the amount of assessments paid to the association.

Homeowners' Association – Agreements & Communication Services (F.S. 720.309)

(2) If the governing documents provide for the cost of communications services as defined in s. 202.11, information services or Internet services obtained pursuant to a bulk contract shall be deemed an operating expense of the association. If the governing documents do not provide for such services, the board may contract for the services, and the cost shall be deemed an operating expense of the association but must be allocated on a per-parcel basis rather than a percentage basis, notwithstanding that the governing documents provide for other than an equal sharing of operating expenses. Any contract entered into before July 1, 2011, in which the cost of the service is not equally divided among all parcel owners may be changed by a majority of the voting interests present at a regular or special meeting of the association in order to allocate the cost equally among all parcels.

(a) Any contract entered into by the board may be canceled by a majority of the voting interests present at the next regular or special meeting of the association, whichever occurs first. Any member may make a motion to cancel such contract, but if no motion is made or if such motion fails to obtain the required vote, the contract shall be deemed ratified for the term expressed therein.

(b) Any contract entered into by the board must provide, and shall be deemed to provide if not expressly set forth therein, that a hearing-impaired or legally blind parcel owner who does not occupy the parcel with a nonhearing-impaired or sighted person, or a parcel owner who receives supplemental security income under Title XVI of the Social Security Act or food assistance as administered by the Department of Children and Family Services pursuant to s. 414.31, may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and may not be required to pay any operating expenses charge related to such service for those parcels. If fewer than all parcel owners share the expenses of the communications

services, information services, or Internet services, the expense must be shared by all participating parcel owners. The association may use the provisions of s. 720.3085 to enforce payment by the parcel owners receiving such services.

(c) A resident of any parcel, whether a tenant or parcel owner, may not be denied access to available franchised, licensed, or certificated cable or video service providers if the resident pays the provider directly for services. A resident or a cable or video service provider may not be required to pay anything of value in order to obtain or provide such service except for the charges normally paid for like services by residents of single-family homes located outside the community but within the same franchised, licensed, or certificated area, and except for installation charges agreed to between the resident and the service provider.

CS/CS/CS/HB-883 (Chapter 2011-119, F.S. – Effective July 1, 2011)

Time Shares: Preemption of Local Law Restricting Use of Vacation Rentals, etc. (F.S. 509.032)

(2) INSPECTION OF PREMISES.—

(a) The division has responsibility and jurisdiction for all inspections required by this chapter. The division has responsibility for quality assurance. Each licensed establishment shall be inspected at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually, and shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall establish a system to determine inspection frequency. Public lodging units classified as **vacation rentals** ~~resort condominiums or resort dwellings~~ are not subject to this requirement, but shall be made available to the division upon request.

(7) PREEMPTION AUTHORITY.—

(b) A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

(c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the Department of Community Affairs pursuant to an area of critical state concern designation

Time Shares: Sanitary Regulations (F.S. 509.221)

(9) Subsections (2), (5), and (6) do not apply to any facility or unit classified as a vacation rental or ~~resort condominium,~~ nontransient apartment~~, or resort dwelling~~ as described in s. 509.242(1)(c) and, (d), and (g).

Time Shares: Public Lodging Establishments – Classifications F.S. 509.242)

(1) A public lodging establishment shall be classified as a hotel, motel, ~~resort condominium~~, nontransient apartment, transient apartment, roominghouse, bed and breakfast inn, or vacation rental ~~resort dwelling~~ if the establishment satisfies the following criteria:

(c) Vacation rental ~~Resort condominium.—~~A vacation rental ~~resort condominium~~ is any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, or four-family house or dwelling unit that is also a transient public lodging establishment ~~which is rented more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.~~

~~(g) Resort dwelling. A resort dwelling is any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit which is rented more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.~~

Timeshares: License Fees (F.S. 509.251)

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. The aggregate fee per establishment charged any public lodging establishment shall not exceed $1,000; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental ~~Resort condominium~~ units within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division shall charge a license fee as if all units in the application are in a single licensed establishment. ~~Resort dwelling units may be licensed in the same manner as condominium units.~~ The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months prior to the next such renewal period and one-half of the fee if application is made 6 months or less prior to such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.

Timeshares: Revocation or Suspension of Licenses; Fines; Procedure (F.S.509.261)

(1) Any public lodging establishment or public food service establishment that has operated or is operating in violation of this chapter or the rules of the division, operating without a license, or operating with a suspended or revoked license may be subject by the division to:

(a) Fines not to exceed $1,000 per offense;

(b) Mandatory completion ~~attendance~~, at personal expense, of a remedial ~~at an~~ educational program administered ~~sponsored by~~ a food safety training program provider approved by the division, as provided in s. 509.049 ~~the Hospitality Education Program~~; and

(c) The suspension, revocation, or refusal of a license issued pursuant to this chapter.

Timeshare: Advisory Council (F.S. 509.291)

(1) There is created a 10-member advisory council.

(a) The Secretary of Business and Professional Regulation shall appoint six seven voting members to the advisory council. Each member appointed by the secretary must be an operator of an establishment licensed under this chapter and shall represent the industries regulated by the division, except that one member appointed by the secretary must be a layperson representing the general public and one member must be a hospitality education administrator from an institution of higher education of this state. Such members of the council shall serve staggered terms of 4 years.

(b) The Florida Restaurant and Lodging Association shall designate one representative to serve as a voting member of the council. The Florida Vacation Rental Managers Association shall designate one representative to serve as a voting member of the council. The Florida Apartment Association and the Florida Association of Realtors shall each designate one representative to serve as a voting member of the council.

(c) Any member who fails to attend three consecutive council meetings without good cause may be removed from the council by the secretary.

Timeshare: Definitions of Terms (F.S. 381.008)

As used in ss. 381.008-381.00897, the following words and phrases mean:

(8) "Residential migrant housing"—A building, structure, mobile home, barracks, or dormitory, and any combination thereof on adjacent property which is under the same ownership, management, or control, and the land appertaining thereto, that is rented or reserved for occupancy by five or more seasonal or migrant farmworkers, except:

(c) A hotel~~,~~ or motel~~, or resort condominium~~, as described ~~defined~~ in chapter 509, that is furnished for transient occupancy.

Timeshares: Prohibited Handbill Distribution in a Public Lodging Establishment; Penalties (F.S. 509.144)

(1) As used in this section, the term:

(a) "Handbill" means a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs persons about a person ~~an individual~~, business, company, or food service establishment, but does shall not include employee communications permissible under the National Labor Relations Act, other communications protected by the First Amendment to the United States Constitution, or communications about public health, safety, or welfare distributed by a federal, state, or local governmental entity or a public or private utility.

(b) "Without permission" means without the expressed written ~~or oral~~ permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation in the manner provided in subsection (5) ~~(4).~~

(c) "At or in a public lodging establishment" means any property under the sole ownership or control of a public lodging establishment.

(2) Any person ~~individual~~, agent, contractor, or volunteer who is acting on behalf of a person ~~an individual~~, business, company, or food service establishment and who, without permission, delivers, distributes, or places, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who, without permission, directs another person to deliver, distribute, or place, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person sentenced under this subsection shall be ordered to pay a minimum fine of $500 in addition to any other penalty imposed by the court.

(4) In addition to any penalty imposed by the court, a person who violates subsection (2) or subsection (3):

(a) Shall pay a minimum fine of $2,000 for a second violation.

(b) Shall pay a minimum fine of $3,000 for a third or subsequent violation.

(5)~~(4)~~ For purposes of this section, a public lodging establishment that intends to prohibit advertising or solicitation, as described in this section, at or in such establishment must comply with the following requirements when posting a sign prohibiting such solicitation or advertising:

(a) There must appear prominently on any sign referred to in this subsection, in letters of not less than 2 inches in height, the terms “no advertising” or “no solicitation” or terms that indicate the same meaning.

(b) The sign must be posted conspicuously.

(c) If the main office of the public lodging establishment is immediately accessible by entering the office through a door from a street, parking lot, grounds, or other area outside such establishment, the sign must be placed on a part of the main office, such as a door or window, and the sign must face the street, parking lot, grounds, or other area outside such establishment.

(d) If the main office of the public lodging establishment is not immediately accessible by entering the office through a door from a street, parking lot, grounds, or other area outside such establishment, the sign must be placed in the immediate vicinity of the main entrance to such establishment, and the sign must face the street, parking lot, grounds, or other area outside such establishment. (6) Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person’s third or subsequent violation of this section, whether or not comprising an element of the offense, is subject to seizure and forfeiture under the Florida Contraband Forfeiture Act.

(6) Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person’s third or subsequent violation of this section, whether or not comprising an element of the offense, is subject to seizure and forfeiture under the Florida Contraband Forfeiture Act.

CS/SB– 650 (Chapter 2011-105, F.S. – Effective June 2, 2011)[5]

Mobile Home: Compliance by Mobile Home Park Owners and Mobile Home Owners (FS. 723.024)

Notwithstanding any other provision of this chapter or of any local law, ordinance, or code:

(1) If a unit of local government finds that a violation of a local code or ordinance has occurred, the unit of local government shall cite the responsible party for the violation and enforce the citation under its local code and ordinance enforcement authority.

(2) A lien, penalty, fine, or other administrative or civil proceeding may not be brought against a mobile home owner or mobile home for any duty or responsibility of the mobile home park owner under s. 723.022 or against a mobile home park owner or mobile home park property for any duty or responsibility of the mobile home owner under s. 723.023.

Mobile Home – Evictions (F.S. 723.061)

(1) A mobile home park owner may evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home only on one or more of the following grounds: ~~provided in this section.~~

(a) Nonpayment of the lot rental amount. If a mobile home owner or tenant, whichever is responsible, fails to pay the lot rental amount when due and if the default continues for 5 days after delivery of a written demand by the mobile home park owner for payment of the lot rental amount, the park owner may terminate the tenancy. However, if the mobile home owner or tenant, whichever is responsible, pays the lot rental amount due, including any late charges, court costs, and attorney’s fees, the court may, for good cause, deny the order of eviction, if provided such nonpayment has not occurred more than twice.

[5] Note: Excludes minor changes in language that do not substantially affect legislation.

(b) Conviction of a violation of a federal or state law or local ordinance, if the ~~which~~ violation is ~~may be deemed~~ detrimental to the health, safety, or welfare of other residents of the mobile home park. The mobile home owner or mobile home tenant must vacate the premises within ~~will have~~ 7 days after ~~from~~ the date the ~~that~~ notice to vacate is delivered to vacate the premises. This paragraph constitutes ~~shall~~ be grounds to deny an initial tenancy of a purchaser of a home under ~~pursuant~~ to paragraph (e) or to evict an unapproved occupant of a home.

(c) Violation of a park rule or regulation, the rental agreement, or this chapter.

1. For the first violation of any properly promulgated rule or regulation, rental agreement provision, or this chapter which is found by any court of competent ~~having~~ jurisdiction ~~thereof~~ to have been an act that ~~which~~ endangered the life, health, safety, or property of the park residents or employees or the peaceful enjoyment of the mobile home park by its residents, the mobile home park owner may terminate the rental agreement, and the mobile home owner, tenant, or occupant must vacate the premises within ~~will have~~ 7 days after ~~from the date that~~ the notice to vacate is delivered ~~to vacate the premises~~.

2. For a second violation of the same properly promulgated rule or regulation, rental agreement provision, or this chapter within 12 months, the mobile home park owner may terminate the tenancy if she or he has given the mobile home owner, tenant, or occupant written notice, within 30 days after ~~of~~ the first violation, which ~~notice~~ specified the actions of the mobile home owner, tenant, or occupant that which caused the violation and gave the mobile home owner, tenant, or occupant 7 days to correct the noncompliance. The mobile home owner, tenant, or occupant must have received written notice of the ground upon which she or he is to be evicted at least 30 days prior to the date on which she or he is required to vacate. A second violation of a properly promulgated rule or regulation, rental agreement provision, or this chapter within 12 months of the first violation is unequivocally a ground for eviction, and it is not a defense to any eviction proceeding that a violation has been cured after the second violation. Violation of a rule or regulation, rental agreement provision, or this chapter more than ~~after the passage of~~ 1 year after from the first violation of the same rule or regulation, rental agreement provision, or this chapter does not constitute a ground for eviction under this section.

A ~~No~~ properly promulgated rule or regulation may not be arbitrarily applied and used as a ground for eviction

(d) Change in use of the land comprising the mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use, if:

1. The park owner gives written notice to the homeowners' association formed and operating under ss. 723.075-723.079 of its right to purchase the mobile home park, if the land comprising the mobile home park is changing use from mobile home lot rentals to a different use, at the price and under the terms and conditions set forth in the written notice.

   a. The notice shall be delivered to the officers of the homeowners' association by United States mail. Within 45 days after the date of mailing of the notice, the homeowners' association may execute and deliver a contract to the park owner to purchase the mobile home park at the price and under the terms and conditions set forth in the notice. If the contract between the park owner and the homeowners' association is not executed and delivered to the park owner within the 45-day period, the park owner is under no further obligation to the homeowners' association except as provided in subsubparagraph b.

   b. If the park owner elects to offer or sell the mobile home park at a price lower than the price specified in her or his initial notice to the officers of the homeowners' association, the homeowners' association has an additional 10 days to meet the revised price, terms,

and conditions of the park owner by executing and delivering a revised contract to the park owner.

c. The park owner is not obligated under this subparagraph or s. 723.071 to give any other notice to, or to further negotiate with, the homeowners' association for the sale of the mobile home park to the homeowners' association after 6 months after the date of the mailing of the initial notice under sub-subparagraph a.

2. The park owner gives the affected mobile home owners and tenants ~~provided all tenants affected are given~~ at least 6 months' notice of the eviction due to the projected change in ~~of~~ use and of their need to secure other accommodations.

a. The notice of eviction due to a change in use of the land must ~~shall~~ include in a font no smaller than the body of the notice the following statement:

YOU MAY BE ENTITLED TO COMPENSATION FROM THE FLORIDA MOBILE HOME RELOCATION TRUST FUND, ADMINISTERED BY THE FLORIDA MOBILE HOME RELOCATION CORPORATION (FMHRC). FMHRC CONTACT INFORMATION IS AVAILABLE FROM THE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.

b. The park owner may not give a notice of increase in lot rental amount within 90 days before giving notice of a change in use. (e) Failure of the purchaser, prospective tenant, or occupant of a mobile home situated in the mobile home park to be qualified as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule. If a purchaser or prospective tenant of a mobile home situated in the mobile home park occupies the mobile home before such approval is granted, the mobile home owner or mobile home tenant must vacate the premises within ~~shall have~~ 7 days after ~~from~~ the date the notice of the failure to be approved for tenancy is delivered ~~to vacate the premises~~.

(2) In the event of eviction for a change in ~~of~~ use, homeowners must object to the change in use by petitioning for administrative or judicial remedies within 90 days after ~~of~~ the date of the notice or they will be barred from taking any subsequent action to contest the change in use. This subsection does ~~provision shall~~ not ~~be construed to~~ prevent any homeowner from objecting to a zoning change at any time.

~~(3) The provisions of s. 723.083 shall not be applicable to any park where the provisions of this subsection apply.~~

(3)~~(4)~~ A mobile home park owner applying for the removal of a mobile home owner, tenant, or occupant, or a mobile home shall file, in the county court in the county where the mobile home lot is situated, a complaint describing the lot and stating the facts that authorize the removal of the mobile home owner, tenant, or occupant, or the mobile home. The park owner is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on the calendar.

(4)~~(5)~~ Except for the notice to the officers of the homeowners' association under subparagraph (1)(d)1., any notice required by this section must be in writing, and must be posted on the premises and sent to the mobile home owner and tenant or occupant, as appropriate, by certified or registered mail, return receipt requested, addressed to the mobile home owner and tenant or occupant, as appropriate, at her or his last known address. Delivery of the mailed notice shall be deemed given 5 days after the date of postmark.

CS/CS/CS/SB-408 (Chapter 2011-39, Effective May 17, 2011)

Insurance: Limitations other than for the Recovery of Real Property (F.S. 95.11)

Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument, except for an action to enforce a claim against a payment bond, which shall be governed by the applicable provisions of ss. 255.05(10) and 713.23(1)(e).

(e) Notwithstanding paragraph (b), an action for breach of a property insurance contract, with the period running from the date of loss

Insurance: Florida Hurricane Catastrophe Fund (F.S. 215.555)[6]

(2) DEFINITIONS.—As used in this section:

(d) "Losses" means all ~~direct~~ incurred losses under covered policies, including ~~which shall include~~ losses for additional living expenses not to exceed 40 percent of the insured value of a residential structure or its contents and amounts paid as fees on behalf of or inuring to the benefit of a policyholder ~~shall exclude loss adjustment expenses~~. The term ~~"Losses"~~ does not include:

1. Losses for fair rental value, loss of rent or rental income, or business interruption losses;
2. Losses under liability coverages;
3. Property losses that are proximately caused by any peril other than a covered event, including, but not limited to, fire, theft, flood or rising water, or windstorm that does not constitute a covered event;
4. Amounts paid as the result of a voluntary expansion of coverage by the insurer, including, but not limited to, a waiver of an applicable deductible;
5. Amounts paid to reimburse a policyholder for condominium association or homeowners' association loss assessments or under similar coverages for contractual liabilities;
6. Amounts paid as bad faith awards, punitive damage awards, or other court-imposed fines, sanctions, or penalties;
7. Amounts in excess of the coverage limits under the covered policy; or
8. Allocated or unallocated loss adjustment expenses.

Insurance: Capital Build-Up Incentive Program (F.S.215.5595)

(12) The insurer may request that the board renegotiate the terms of any surplus note issued under this section before January 1, 2011. The request must be submitted to the board by January 1, 2012. If the insurer agrees to accelerate the payment period of the note by at least 5 years, the board must agree to exempt the insurer from the premium-to-surplus ratios required under paragraph (2)(d). If the insurer agrees to an acceleration of the payment period for less than 5 years, the board may, after consultation with the Office of Insurance Regulation, agree to an appropriate revision of the premium-to-surplus ratios required under paragraph (2)(d) for the remaining term of the note if the revised ratios are not lower than a minimum writing ratio of net premium to surplus of at least 1 to 1 and, alternatively, a minimum writing ratio of gross premium to surplus of at least 3 to 1.

[6] Effective June 1, 2011

Insurance: "Public Adjuster" Defined; Prohibitions Part 1 (F.S. 626.854)[7]

(5) A public adjuster may not directly or indirectly through any other person or entity solicit an insured or claimant by any means except on Monday through Saturday of each week and only between the hours of 8 a.m. and 8 p.m. on those days.

(6) A public adjuster may not directly or indirectly through any other person or entity initiate contact or engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.

(7) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 3 business days after the date on which the contract is executed or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, by phone or in writing, whichever is later. The public adjuster's contract shall disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing which provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for a period of 1 year after the date of loss, the insured or claimant shall have 5 business days after the date on which the contract is executed to cancel a public adjuster's contract.

(8) It is an unfair and deceptive insurance trade practice pursuant to s.626.9541 for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading.

(9) A public adjuster, a public adjuster apprentice, or any person or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give a monetary loan or advance to a client or prospective client.

(10) A public adjuster, public adjuster apprentice, or any individual or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give, directly or indirectly, any article of merchandise having a value in excess of $25 to any individual for the purpose of advertising or as an inducement to entering into a contract with a public adjuster

(11)(a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or to file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or other thing of value may be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. The contracts described in this paragraph are not subject to the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This

[7] Effective June 1, 2011

provision applies to claims made during the period of 1 year after the declaration of emergency. After that 1-year period, 20 percent of the amount of insurance claim payments made by the insurer.

2. Twenty percent of the amount of ~~all other~~ insurance claim payments made by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

(12) Each public adjuster shall provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds. The public adjuster shall retain such written estimate for at least 5 years and shall make such estimate available to the claimant or insured and the department upon request.

(13) A public adjuster, public adjuster apprentice, or any person acting on behalf of a public adjuster or apprentice may not accept referrals of business from any person with whom the public adjuster conducts business if there is any form or manner of agreement to compensate the person, whether directly or indirectly, for referring business to the public adjuster. A public adjuster may not compensate any person, except for another public adjuster, whether directly or indirectly, for the principal purpose of referring business to the public adjuster.

The provisions of subsections (5)-(13) apply only to residential property insurance policies and condominium unit owner ~~association~~ policies as defined in s. 718.111(11).

Insurance: "Public adjuster" Defined; Prohibitions Part 2 (F.S. 626.854)[8]

The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(1) A "public adjuster" is any person, except a duly licensed attorney at law as exempted under ~~hereinafter in~~ s. 626.860 provided, who, for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts ~~or aids in any manner~~ on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term, ~~and~~ also includes any person who, for money, commission, or any other thing of value, solicits, investigates, or adjusts such claims on behalf of a ~~any such~~ public adjuster.

(3) A public adjuster may not give legal advice or~~. A public adjuster may not~~ act on behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death, or noneconomic damages.

(4) For purposes of this section, the term "insured" includes only the policyholder and any beneficiaries named or similarly identified in the policy.

(5) A public adjuster may not directly or indirectly through any other person or entity solicit an insured or claimant by any means except on Monday through Saturday of each week and only between the hours of 8 a.m. and 8 p.m. on those days.

(6) A public adjuster may not directly or indirectly through any other person or entity initiate contact or engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.

[8] Effective January 1, 2012

(7) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 3 business days after the date on which the contract is executed or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, by phone or in writing, whichever is later. The public adjuster's contract must ~~shall~~ disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that ~~which~~ provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for ~~a period of~~ 1 year after the date of loss, the insured or claimant has ~~shall have~~ 5 business days after the date on which the contract is executed to cancel a public adjuster's contract.

(8) It is an unfair and deceptive insurance trade practice pursuant to s. 626.9541 for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading. (14) A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.

(a) The following statements, made in any public adjuster's advertisement or solicitation, are considered deceptive or misleading:

1. A statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have covered damage to insured property.

2. A statement or representation that invites an insured policyholder to submit a claim by offering monetary or other valuable inducement.

3. A statement or representation that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim.

4. A statement or representation, or use of a logo or shield, that implies or could mistakenly be construed to imply that the solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.

(b) For purposes of this paragraph, the term "written advertisement" includes only newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not required to be printed on standard size business cards, must be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by a public adjuster:

"THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT."

(12) Each public adjuster must ~~shall~~ provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds. The public adjuster shall retain such written estimate for at least 5 years and shall make the ~~such~~ estimate available to the claimant or insured, the insurer, and the department upon request.

(13) A public adjuster, public adjuster apprentice, or any person acting on behalf of a public adjuster or apprentice may not accept referrals of business from any person with whom the public adjuster conducts business if there is any form or manner of agreement to compensate the person, ~~whether~~ directly or indirectly, for referring business to the public adjuster. A public adjuster may not compensate any person, except for another public adjuster, ~~whether~~ directly or indirectly, for the principal purpose of referring business to the public adjuster.

(14) A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not

(15) A public adjuster must ensure prompt notice of property loss claims submitted to an insurer by or through a public adjuster or on which a public adjuster represents the insured at the time the claim or notice of loss is submitted to the insurer. The public adjuster must ensure that notice is given to the insurer, the public adjuster's contract is provided to the insurer, the property is available for inspection of the loss or damage by the insurer, and the insurer is given an opportunity to interview the insured directly about the loss and claim. The insurer must be allowed to obtain necessary information to investigate and respond to the claim.

(a) The insurer may not exclude the public adjuster from its in-person meetings with the insured. The insurer shall meet or communicate with the public adjuster in an effort to reach agreement as to the scope of the covered loss under the insurance policy. This section does not impair the terms and conditions of the insurance policy in effect at the time the claim is filed.

(b) A public adjuster may not restrict or prevent an insurer, company employee adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to an insured or claimant or to the insured property that is the subject of a claim.

(c) A public adjuster may not act or fail to reasonably act in any manner that obstructs or prevents an insurer or insurer's adjuster from timely conducting an inspection of any part of the insured property for which there is a claim for loss or damage. The public adjuster representing the insured may be present for the insurer's inspection, but if the unavailability of the public adjuster otherwise delays the insurer's timely inspection of the property, the public adjuster or the insured must allow the insurer to have access to the property without the participation or presence of the public adjuster or insured in order to facilitate the insurer's prompt inspection of the loss or damage.

(16) A licensed contractor under part I of chapter 489, or a subcontractor, may not adjust a claim on behalf of an insured unless licensed and compliant as a public adjuster under this chapter. However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

(17) The provisions of subsections (5)-(16) (5)-(13) apply only to residential property insurance policies and condominium unit owner policies as defined in s. 718.111(11).

Insurance: Public Adjuster Contracts; Fraud Statement (F.S. 626.8796)[9]

(2) A public adjuster contract relating to a property and casualty claim must contain the full name, permanent business address, and license number of the public adjuster; the full name of the public adjusting firm; and the insured's full name and street address, together with a brief description of the loss. The contract must state the percentage of compensation for the public adjuster's services; the type of claim, including an emergency claim, nonemergency claim, or supplemental claim; the signatures of the public adjuster and all named insureds; and the signature date. If all of the named insureds signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds. An unaltered copy of the executed contract must be remitted to the insurer within 30 days after execution.

Insurance: Notice of Windstorm or Hurricane Claim (F.S. 626.70132)[10]

A claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as defined in s. 624.604, for loss or damage caused by the peril of windstorm or hurricane is barred unless notice of the claim, supplemental claim, or reopened claim was given to the insurer in accordance with the terms of the policy within 3 years after the hurricane first made landfall or the windstorm caused the covered damage. For purposes of this section, the term "supplemental claim" or "reopened claim" means any additional claim for recovery from the insurer for losses from the same hurricane or windstorm which the insurer has previously adjusted pursuant to the initial claim. This section does not affect any applicable limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

Insurance: Rate Standards (F.S. 627.062)

(1) The rates for all classes of insurance to which the provisions of this part are applicable may ~~shall~~ not be excessive, inadequate, or unfairly discriminatory.

(2) As to all such classes of insurance:

(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals that ~~to~~ allow the insurer a reasonable rate of return on the ~~such~~ classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, must ~~shall~~ be filed with the office under one of the following procedures ~~except as provided in subparagraph 3~~.:

1. If the filing is made at least 90 days before the proposed effective date and ~~the filing~~ is not implemented during the office's review of the filing and any proceeding and judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file and use" filing. In such case, the office shall finalize its review by issuance of a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. The notice of intent to approve and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings does ~~shall~~ not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing.

2. If the filing is not made in accordance with ~~the provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as soon as practicable, but within ~~no later than~~ 30 days after the effective date, and is ~~shall be~~ considered a "use and file" filing. An insurer making a "use and file"

[9] Effective January 1, 2012
[10] Effective June 1, 2011

filing is potentially subject to an order by the office to return to policyholders those portions of rates found to be excessive, as provided in paragraph (h).

3. For all property insurance filings made or submitted after January 25, 2007, but before May 1, 2012 ~~December 31, 2010~~, an insurer seeking a rate that is greater than the rate most recently approved by the office shall make a "file and use" filing. For purposes of this subparagraph, motor vehicle collision and comprehensive coverages are not considered ~~to be~~ property coverages.

(i) Except as otherwise specifically provided in this chapter, for property and casualty insurance the office may ~~shall~~ not directly or indirectly:

1. Prohibit any insurer, including any residual market plan or joint underwriting association, from paying acquisition costs based on the full amount of premium, as defined in s. 627.403, applicable to any policy, or prohibit any such insurer from including the full amount of acquisition costs in a rate filing; or.

2. Impede, abridge, or otherwise compromise an insurer's right to acquire policyholders, advertise, or appoint agents, including the calculation, manner, or amount of such agent commissions, if any.

(k)1. A residential property ~~An~~ insurer may make a separate filing limited solely to an adjustment of its rates for reinsurance, the cost of financing products used as a replacement for reinsurance, ~~or~~ financing costs incurred in the purchase of reinsurance, or financing products to replace ~~or finance the payment of the amount covered by the Temporary Increase in Coverage Limits (TICL) portion of the Florida Hurricane Catastrophe Fund including replacement reinsurance for the TICL reductions made pursuant to s. 215.555(17)(e); the actual cost paid due to the application of the TICL premium factor pursuant to s. 215.555(17)(f);~~ and the actual cost paid due to the application of the cash build-up factor pursuant to s. 215.555(5)(b) if the insurer:

a. Elects to purchase financing products such as a liquidity instrument or line of credit, in which case the cost included in ~~the~~ filing for the liquidity instrument or line of credit may not result in a premium increase exceeding 3 percent for any individual policyholder. All costs contained in the filing may not result in an overall premium increase of more than 15 ~~10~~ percent for any individual policyholder.

b. Includes in the filing a copy of all of its reinsurance, liquidity instrument, or line of credit contracts; proof of the billing or payment for the contracts; and the calculation upon which the proposed rate change is based demonstrating ~~demonstrates~~ that the costs meet the criteria of this section ~~and are not loaded for expenses or profit for the insurer making the filing~~.

~~c. Includes no other changes to its rates in the filing.~~

~~d. Has not implemented a rate increase within the 6 months immediately preceding the filing.~~

~~e. Does not file for a rate increase under any other paragraph within 6 months after making a filing under this paragraph.~~

2.~~f.~~ An insurer that purchases reinsurance or financing products from an affiliated company may make a separate filing ~~in compliance with this paragraph does so~~ only if the costs for such reinsurance or financing products are charged at or below charges made for comparable coverage by nonaffiliated reinsurers or financial entities making such coverage or financing products available in this state.

(4) The establishment of any rate, rating classification, rating plan or schedule, or variation thereof in violation of part IX of chapter 626 is also in violation of this section. ~~In order to enhance the~~

~~ability of consumers to compare premiums and to increase the accuracy and usefulness of rate comparison information provided by the office to the public, the office shall develop a proposed standard rating territory plan to be used by all authorized property and casualty insurers for residential property insurance. In adopting the proposed plan, the office may consider geographical characteristics relevant to risk, county lines, major roadways, existing rating territories used by a significant segment of the market, and other relevant factors. Such plan shall be submitted to the President of the Senate and the Speaker of the House of Representatives by January 15, 2006. The plan may not be implemented unless authorized by further act of the Legislature.~~

(8)~~(9)~~ (d) The certification made pursuant to paragraph (a) is not rendered false if, after making the subject rate filing, the insurer provides the office with additional or supplementary information pursuant to a formal or informal request from the office. However, the actuary who is primarily responsible for preparing and submitting such information must certify the information in accordance with the certification required under paragraph (a) and the penalties in paragraph (b), except that the chief executive officer, chief financial officer, or chief actuary need not certify the additional or supplementary information.

Insurance: Public Hurricane Loss Projection Model; Reporting of Data by Insurers (F.S. 627.06281)

(3) (b) The fees charged for private sector access and use of the model shall be the reasonable costs associated with the operation and maintenance of the model by the office. Such fees do not apply to access and use of the model by the office. ~~By January 1, 2009, The office shall establish by rule a fee schedule for access to and the use of the model. The fee schedule must be reasonably calculated to cover only the actual costs of providing access to and the use of the model.~~

Insurance: Residential Property Insurance; Rate Filings (F.S. 627.0629)

(1)~~(a)~~ It is the intent of the Legislature that insurers ~~must~~ provide savings to consumers who install or implement windstorm damage mitigation techniques, alterations, or solutions to their properties to prevent windstorm losses. A rate filing for residential property insurance must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The fixtures or construction techniques must ~~shall~~ include, but are not ~~be~~ limited to, fixtures or construction techniques that ~~which~~ enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength. Credits, discounts, or other rate differentials, or appropriate reductions in deductibles, for fixtures and construction techniques that ~~which~~ meet the minimum requirements of the Florida Building Code must be included in the rate filing. ~~All insurance companies must make a rate filing which includes the credits, discounts, or other rate differentials or reductions in deductibles by February 28, 2003. By July 1, 2007, the office shall reevaluate the discounts, credits, other rate differentials, and appropriate reductions in deductibles for fixtures and construction techniques that meet the minimum requirements of the Florida Building Code, based upon actual experience or any other loss relativity studies available to the office.~~ The office shall determine the discounts, credits, other rate differentials, and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation, which may be used by insurers in rate filings.

~~(b) By February 1, 2011, the Office of Insurance Regulation, in consultation with the Department of Financial Services and the Department of Community Affairs, shall develop and make publicly available a proposed method for insurers to establish discounts, credits, or other rate differentials for hurricane mitigation measures which directly correlate to the numerical rating assigned to a structure pursuant to the uniform home grading scale adopted by the Financial Services Commission pursuant to s. 215.55865,including any proposed changes to the uniform home~~

~~grading scale. By October 1, 2011, the commission shall adopt rules requiring insurers to make rate filings for residential property insurance which revise insurers' discounts, credits, or other rate differentials for hurricane mitigation measures so that such rate differentials correlate directly to the uniform home grading scale. The rules may include such changes to the uniform home grading scale as the commission determines are necessary, and may specify the minimum required discounts, credits, or other rate differentials. Such rate differentials must be consistent with generally accepted actuarial principles and wind-loss mitigation studies. The rules shall allow a period of at least 2 years after the effective date of the revised mitigation discounts, credits, or other rate differentials for a property owner to obtain an inspection or otherwise qualify for the revised credit, during which time the insurer shall continue to apply the mitigation credit that was applied immediately prior to the effective date of the revised credit. Discounts, credits, and other rate differentials established for rate filings under this paragraph shall supersede, after adoption, the discounts, credits, and other rate differentials included in rate filings under paragraph (a).~~

(5) In order to provide an appropriate transition period, an insurer may~~, in its sole discretion,~~ implement an approved rate filing for residential property insurance over a period of years. Such ~~An~~ insurer ~~electing to phase in its rate filing~~ must provide an informational notice to the office setting out its schedule for implementation of the phased-in rate filing. The ~~An~~ insurer may include in its rate the actual cost of private market reinsurance that corresponds to available coverage of the Temporary Increase in Coverage Limits, TICL, from the Florida Hurricane Catastrophe Fund. The insurer may also include the cost of reinsurance to replace the TICL reduction implemented pursuant to s. 215.555(17)(d)9. However, this cost for reinsurance may not include any expense or profit load or result in a total annual base rate increase in excess of 10 percent.

Insurance Risk Apportionment Plans (F.S. 627.351)[11]

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a)~~1~~. ~~It is~~ The public purpose of this subsection is to ensure that there is ~~the existence~~ of an orderly market for property insurance for residents ~~Floridians~~ and ~~Florida~~ businesses of this state.

6. For any claim filed under any policy of the corporation, a public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value greater than 10 percent of the additional amount actually paid over the amount that was originally offered by the corporation for any one claim.

(b)2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows

(I) A personal lines account for personal residential policies issued by the corporation, or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation, which provides ~~that provide~~ comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by ~~in~~ the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for ~~such~~ policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential and commercial nonresidential policies issued by the corporation, or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation, which provides ~~that provide~~ coverage for basic property perils on risks that are not located in areas eligible for

[11] Only includes pertinent changes; does not include minor changes in language that does not substantially change legislative intent.

coverage by in the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for ~~such~~ policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A coastal ~~high-risk~~ account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation, or transferred to the corporation, which provides ~~that provide~~ coverage for the peril of wind on risks that are located in areas eligible for coverage by ~~in~~ the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and the corporation shall continue to offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal ~~high-risk~~ account. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there ~~would~~ be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who ~~then~~ obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal ~~high-risk~~ account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal ~~high-risk~~ account, the personal lines account, or the commercial lines account. The coastal ~~high-risk~~ account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal ~~high-risk~~ account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

3. With respect to a deficit in an account:

a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph h. ~~i.~~, if ~~when~~ the remaining projected deficit incurred in a particular calendar year:

(I) Is not greater than 6 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II)~~b~~. ~~After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., when the remaining projected deficit incurred in a particular calendar year~~ Exceeds 6 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 6 percent of the deficit or 6 percent of the aggregate statewide direct written premium for the subject lines of business for

the prior calendar year. Any remaining deficit shall be recovered through emergency assessments under sub-subparagraph c. ~~d.~~

h.~~i.~~ If a deficit is incurred in any account in 2008 or thereafter, the board of governors shall levy a Citizens policyholder surcharge against all policyholders of the corporation~~. for a 12-month period, which~~

(I) The surcharge shall be levied ~~collected at the time of issuance or renewal of a policy,~~ as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-sub-paragraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.

(IV) The surcharge is ~~Citizens policyholder surcharges under this subsubparagraph are~~ not considered premium and is ~~are~~ not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge ~~such surcharges~~ shall be treated as failure to pay premium.

(c) The corporation's plan of operation ~~of the corporation~~:

3.b. To ensure that the corporation is operating in an efficient and economic manner while providing quality service to policyholders, applicants, and agents, the board shall commission an independent third-party consultant having expertise in insurance company management or insurance company management consulting to prepare a report and make recommendations on the relative costs and benefits of outsourcing various policy issuance and service functions to private servicing carriers or entities performing similar functions in the private market for a fee, rather than performing such functions in house. In making such recommendations, the consultant shall consider how other residual markets, both in this state and around the country, outsource appropriate functions or use servicing carriers to better match expenses with revenues that fluctuate based on a widely varying policy count. The report must be completed by July 1, 2012. Upon receiving the report, the board shall develop a plan to implement the report and submit the plan for review, modification, and approval to the Financial Services Commission. Upon the commission's approval of the plan, the board shall begin implementing the plan by January 1, 2013.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must ~~shall~~ be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same

limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal ~~high-risk~~ account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must ~~shall~~ be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a break-down of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must ~~shall~~ be available to defray deficits in that account as to future years and shall be used for that purpose before ~~prior to~~ assessing assessable insurers and assessable insureds as to any calendar year.

13. Must provide that, with respect to the coastal ~~high-risk~~ account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal ~~high-risk~~ account ~~in 2006 or thereafter~~ may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds pursuant to s. 627.3512, but the regular assessment must be paid in full within 12 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must ~~shall~~ provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, ~~there shall be no limitation or deferment of~~ an emergency assessment to be collected from policyholders under subsubparagraph (b)3.d. may not be limited or deferred.

19. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

20. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgement signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE

AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.
2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.
3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgement and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgement form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(d)3. Senior managers and members of the board of governors are subject to ~~the provisions of~~ part III of chapter 112, including, but not limited to, the code of ethics and public disclosure and reporting of financial interests, pursuant to s. 112.3145. Notwithstanding s. 112.3143(2), a board member may not vote on any measure that would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the assembly the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. Senior managers and board members are also required to file such disclosures with the Commission on Ethics and the Office of Insurance Regulation. The executive director of the corporation or his or her designee shall notify each existing and newly appointed ~~and existing appointed~~ member of the board of governors and senior managers of their duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her de- signee shall submit to the Commission on Ethics a list of names of the senior managers and members of the board of governors who are subject to the public disclosure requirements under s. 112.3145.

(n) 6. Beginning on or after January 1, 2010, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase ~~each year~~ which, ex-

cept for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges.

(y) It is the intent of the Legislature that the amendments to this subsection enacted in 2002 should, over time, reduce the probable maximum windstorm losses in the residual markets and ~~should reduce~~ the potential assessments to be levied on property insurers and policyholders statewide. ~~In furtherance of this intent:~~

1. ~~the board shall, on or before February 1 of each year, provide a report to the President of the Senate and the Speaker of the House of Representatives showing the reduction or increase in the 100-year probable maximum loss attributable to wind-only coverages and the quota share program under this subsection combined, as compared to the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association. For purposes of this paragraph, the benchmark 100-year probable maximum loss of the Florida Windstorm Underwriting Association shall be the calculation dated February 2001 and based on November 30, 2000, exposures. In order to ensure comparability of data, the board shall use the same methods for calculating its probable maximum loss as were used to calculate the benchmark probable maximum loss.~~

2. ~~Beginning December 1, 2010, if the report under subparagraph 1. For any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and the quota share program combined does not reflect a reduction of at least 25 percent from the benchmark, the board shall reduce the boundaries of the high-risk area eligible for wind-only coverages under this subsection in a manner calculated to reduce such probable maximum loss to an amount at least 25 percent below the benchmark.~~

3. ~~Beginning February 1, 2015, if the report under subparagraph 1. For any year indicates that the 100-year probable maximum loss attributable to wind-only coverages and the quota share program combined does not reflect a reduction of at least 50 percent from the benchmark, the boundaries of the high-risk area eligible for wind-only coverages under this subsection shall be reduced by the elimination of any area that is not seaward of a line 1,000 feet inland from the Intracoastal Waterway.~~

Insurance: Notice of Cancellation, Nonrenewal, or Renewal Premium (F.S. 627.4133)

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the named insured written notice of nonrenewal, cancellation, or termination at least 100 days before ~~prior to~~ the effective date of the nonrenewal, cancellation, or termination. However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30. The notice must include the reason or reasons for the nonrenewal, cancellation, or termination, except that:

1. The insurer shall give the named insured written notice of nonrenewal, cancellation, or termination at least 120 ~~180~~ days prior to the effective date of the nonrenewal, cancellation, or termination for a named insured whose residential structure has been insured by that insurer or an affiliated written notice.

2. If ~~When~~ cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must ~~shall~~ be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term ~~"Nonpayment of premium"~~ also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are ~~shall be~~ void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full.

3. If ~~When~~ such cancellation or termination occurs during the first 90 days ~~during which~~ the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must ~~shall~~ be given unless ~~except where~~ there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

4. The requirement for providing written notice ~~of nonrenewal~~ by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before ~~prior to~~ the effective date of nonrenewal:

   a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.706~~, as amended by s. 30, chapter 2007-1, Laws of Florida~~.

   b. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement ~~or renewal~~ coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

      After the policy has been in effect for 90 days, the policy may ~~shall~~ not be canceled by the insurer unless ~~except~~ when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after ~~of~~ the date of effectuation of coverage, or a substantial change in the risk covered by the policy or if ~~when~~ the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks having a policy term of less than 90 days.

5. Notwithstanding any other provision of law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurri-

cane risk, or other relevant factors. The office may condition its finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

6. A policy covering both a home and motor vehicle may be nonrenewed for any reason applicable to either the property or motor vehicle insurance after providing 90 days' notice

Insurance: Notice of Change in Policy Terms (F.S. 627.43141)

627.43141 Notice of Change in policy terms ---

(1) As used in this section, the term:

(a) "Change in policy terms" means the modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy. The correction of typographical or scrivener's errors or the application of mandated legislative changes is not a change in policy terms.

(b) "Policy" means a written contract of property and casualty insurance or written agreement for such insurance, by whatever name called, and includes all clauses, riders, endorsements, and papers that are a part of such policy. The term does not include a binder as defined in s. 627.420 unless the duration of the binder period exceeds 60 days.

(c) "Renewal" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term. Any policy that has a policy period or term of less than 6 months or that does not have a fixed expiration date shall, for purposes of this section, be considered as written for successive policy periods or terms of 6 months.

(2) A renewal policy may contain a change in policy terms. If a renewal policy does contain such change, the insurer must give the named insured written notice of the change, which must be enclosed along with the written notice of renewal premium required by ss. 627.4133 and 627.728. Such notice shall be entitled "Notice of Change in Policy Terms."

(3) Although not required, proof of mailing or registered mailing through the United States Postal Service of the Notice of Change in Policy Terms to the named insured at the address shown in the policy is sufficient proof of notice.

(4) Receipt of the premium payment for the renewal policy by the insurer is deemed to be acceptance of the new policy terms by the named insured.

(5) If an insurer fails to provide the notice required in subsection (2), the original policy terms remain in effect until the next renewal and the proper service of the notice, or until the effective date of replacement coverage obtained by the named insured, whichever occurs first.

(6) The intent of this section is to:

(a) Allow an insurer to make a change in policy terms without nonrenewing those policyholders that the insurer wishes to continue insuring.

(b) Alleviate concern and confusion to the policyholder caused by the required policy nonrenewal for the limited issue if an insurer intends to renew the insurance policy, but the new policy contains a change in policy terms.

(c) Encourage policyholders to discuss their coverages with their insurance agents.

Insurance: Homeowners' Policies; Offer of Replacement Cost Coverage & Law & Ordinance Coverage (F.S. 627.7011)

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs:

(a) For a dwelling, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

(b) For personal property:

1. The insurer must offer coverage under which the insurer is obligated to pay the replacement cost without reservation or holdback for any depreciation in value, whether or not the insured replaces the property.

2. The insurer may also offer coverage under which the insurer may limit the initial payment to the actual cash value of the personal property to be replaced, require the insured to provide receipts for the purchase of the property financed by the initial payment, use such receipts to make the next payment requested by the insured for the replacement of insured property, and continue this process until the insured remits all receipts up to the policy limits for replacement costs. The insurer must provide clear notice of this process before the policy is bound. A policyholder must be provided an actuarially reasonable premium credit or discount for this coverage. The insurer may not require the policyholder to advance payment for the replaced property~~, the insurer shall pay the replacement cost without reservation or holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property~~.

(4) A ~~Any~~ homeowner's insurance policy ~~issued or renewed on or after October 1, 2005~~, must include in bold type no smaller than 18 points the following statement:

"LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."

The intent of this subsection is to encourage policyholders to purchase sufficient coverage to protect them in case events excluded from the standard homeowners policy, such as law and ordinance enforcement and flood, combine with covered events to produce damage or loss to the insured property. The intent is also to encourage policyholders to discuss these issues with their insurance agent.

(5) ~~Nothing in~~ This section does not: ~~shall be construed to~~

(a) Apply to policies not considered to be "homeowners' policies," as that term is commonly understood in the insurance industry. ~~This section specifically does not~~

(b) Apply to mobile home policies. ~~Nothing in this section~~

(c) Limit ~~shall be construed as limiting~~ the ability of an ~~any~~ insurer to reject or nonrenew any insured or applicant on the grounds that the structure does not meet underwriting criteria applicable to replacement cost or law and ordinance policies or for other lawful reasons.

(d)~~(6) This section does not~~ Prohibit an insurer from limiting its liability under a policy or endorsement providing that loss will be adjusted on the basis of replacement costs to the lesser of:

1. ~~(a)~~ The limit of liability shown on the policy declarations page;

2. ~~(b)~~ The reasonable and necessary cost to repair the damaged, destroyed, or stolen covered property; or

3. ~~(c)~~ The reasonable and necessary cost to replace the damaged, destroyed, or stolen covered property.

(e)~~(7) This section does~~ not Prohibit an insurer from exercising its right to repair damaged property in compliance with its policy and s. 627.702(7).

Insurance: Sinkhole Related

Section 21. The Legislature finds and declares:

(1) There is a compelling state interest in maintaining a viable and orderly private-sector market for property insurance in this state. The lack of a viable and orderly property market reduces the availability of property insurance coverage to state residents, increases the cost of property insurance, and increases the state's reliance on a residual property insurance market and its potential for imposing assessments on policyholders throughout the state.

(2) In 2005, the Legislature revised ss. 627.706–627.7074, Florida Statutes, to adopt certain geological or technical terms; to increase reliance on objective, scientific testing requirements; and generally to reduce the number of sinkhole claims and related disputes arising under prior law. The Legislature determined that since the enactment of these statutory revisions, both private-sector insurers and Citizens Property Insurance Corporation have, nevertheless, continued to experience high claims frequency and severity for sinkhole insurance claims. In addition, many properties remain unrepaired even after loss payments, which reduces the local property tax base and adversely affects the real estate market. Therefore, the Legislature finds that losses associated with sinkhole claims adversely affect the public health, safety, and welfare of this state and its citizens.

(3) Pursuant to sections 22 through 27 of this act, technical or scientific definitions adopted in the 2005 legislation are clarified to implement and advance the Legislature's intended reduction of sinkhole claims and disputes. Certain other revisions to ss. 627.706–627.7074, Florida Statutes, are enacted to advance legislative intent to rely on scientific or technical determinations relating to sinkholes and sinkhole claims, reduce the number and cost of disputes relating to sinkhole claims, and ensure that repairs are made commensurate with the scientific and technical determinations and insurance claims payments.

Insurance: Sinkhole Insurance; Catastrophic Ground Cover Collapse; Definitions (F.S. 627.706)

(1)(a) Every insurer authorized to transact property insurance in this state must ~~shall~~ provide coverage for a catastrophic ground cover collapse.

(b) The insurer ~~and~~ shall make available, for an appropriate additional premium, coverage for sinkhole losses on any structure, including the contents of personal property contained therein, to the extent provided in the form to which the coverage attaches. The insurer may require an inspection of the property before issuance of sinkhole loss coverage. A policy for residential property insurance may include a deductible amount applicable to sinkhole losses equal to 1 percent, 2 percent, 5 percent, or 10 percent of the policy dwelling limits, with appropriate premium discounts offered with each deductible amount.

(c) The insurer may restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building, as defined in the applicable policy.

(2) As used in ss. 627.706-627.7074, and as used in connection with any policy providing coverage for a catastrophic ground cover collapse or for sinkhole losses, the term:

(a) "Catastrophic ground cover collapse" means geological activity that results in all the following:

1. The abrupt collapse of the ground cover;

2. A depression in the ground cover clearly visible to the naked eye;

3. Structural damage to the covered building, including the foundation; and

4. The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.

Contents coverage applies if there is a loss resulting from a catastrophic ground cover collapse. ~~Structural~~ Damage consisting merely of the settling or cracking of a foundation, structure, or building does not constitute a loss resulting from a catastrophic ground cover collapse.

(b) "Neutral evaluation" means the alternative dispute resolution provided in s. 627.7074.

(c) "Neutral evaluator" means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process and who is determined by the department to be fair and impartial.

(h)~~(b)~~ "Sinkhole" means a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. A sinkhole forms ~~may form~~ by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved.

(j)~~(c)~~ "Sinkhole loss" means structural damage to the covered building, including the foundation, caused by sinkhole activity. Contents coverage and additional living expenses ~~shall~~ apply only if there is structural damage to the covered building caused by sinkhole activity.

(i)~~(d)~~ "Sinkhole activity" means settlement or systematic weakening of the earth supporting the covered building ~~such property~~ only if the ~~when such~~ settlement or systematic weakening results from contemporaneous movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect of water on a limestone or similar rock formation.

(f)~~(e)~~ "Professional engineer" means a person, as defined in s. 471.005, who has a bachelor's degree or higher in engineering ~~with a specialty in the geotechnical engineering field~~. A professional engineer must also have ~~geotechnical~~ experience and expertise in the identification of sinkhole activity as well as other potential causes of structural damage ~~to the structure.~~

(g)~~(f)~~ "Professional geologist" means a person, as defined in ~~by~~ s. 492.102, who has a bachelor's degree or higher in geology or related earth science and ~~with expertise in the geology of Florida. A professional geologist must have geological~~ experience and expertise in the identification of sinkhole activity as well as other potential geologic causes of structural damage ~~to the structure~~.

(k) "Structural damage" means a covered building, regardless of the date of its construction, has experienced the following:

1. Interior floor displacement or deflection in excess of acceptable variances as defined in ACI 117-90 or the Florida Building Code, which results in settlement related damage to the interior such that the interior building structure or members become unfit for service or represents a safety hazard as defined within the Florida Building Code;

2. Foundation displacement or deflection in excess of acceptable variances as defined in ACI 318-95 or the Florida Building Code, which results in settlement related damage to the primary structural members or primary structural systems that prevents those members or systems from supporting the loads and forces they were designed to support to the extent that stresses in those primary structural members or primary structural systems exceeds one

and one-third the nominal strength allowed under the Florida Building Code for new buildings of similar structure, purpose, or location;

3. Damage that results in listing, leaning, or buckling of the exterior load bearing walls or other vertical primary structural members to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base as defined within the Florida Building Code;

4. Damage that results in the building, or any portion of the building containing primary structural members or primary structural systems, being significantly likely to imminently collapse because of the movement or instability of the ground within the influence zone of the supporting ground within the sheer plane necessary for the purpose of supporting such building as defined within the Florida Building Code; or

5. Damage occurring on or after October 15, 2005, that qualifies as "substantial structural damage" as defined in the Florida Building Code.

(d) "Primary structural member" means a structural element designed to provide support and stability for the vertical or lateral loads of the overall structure.

(e) "Primary structural system" means an assemblage of primary structural members.

~~(3) On or before June 1, 2007, Every insurer authorized to transact property insurance in this state shall make a proper filing with the office for the purpose of extending the appropriate forms of property insurance to include coverage for catastrophic ground cover collapse or for sinkhole losses. coverage for catastrophic ground cover collapse may not go into effect until the effective date provided for in the filing approved by the office.~~

(3)~~(4)~~ Insurers offering policies that exclude coverage for sinkhole losses must ~~shall~~ inform policyholders in bold type of not less than 14 points as follows: "YOUR POLICY PROVIDES COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE, YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. YOU MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN ADDITIONAL PREMIUM."

(4)~~(5)~~ An insurer offering sinkhole coverage to policyholders before or after the adoption of s. 30, chapter 2007-1, Laws of Florida, may nonrenew the policies of policyholders maintaining sinkhole coverage ~~in Pasco County or Hernando County,~~ at the option of the insurer, and provide an offer of coverage that ~~to such policyholders which~~ includes catastrophic ground cover collapse and excludes sinkhole coverage. Insurers acting in accordance with this subsection are subject to the following requirements:

(a) Policyholders must be notified that a nonrenewal is for purposes of removing sinkhole coverage, and that the policyholder is ~~still~~ being offered a policy that provides coverage for catastrophic ground cover collapse.

(b) Policyholders must be provided an actuarially reasonable premium credit or discount for the removal of sinkhole coverage and provision of only catastrophic ground cover collapse.

(c) Subject to the provisions of this subsection and the insurer's approved underwriting or insurability guidelines, the insurer shall provide each policyholder with the opportunity to purchase an endorsement to his or her policy providing sinkhole coverage and may require an inspection of the property before issuance of a sinkhole coverage endorsement.

(d) Section 624.4305 does not apply to nonrenewal notices issued pursuant to this subsection.

(5) Any claim, including, but not limited to, initial, supplemental, and reopened claims under an insurance policy that provides sinkhole coverage is barred unless notice of the claim was given to

the insurer in accordance with the terms of the policy within 2 years after the policyholder knew or reasonably should have known about the sinkhole loss.

Insurance: Sinkhole Claims (F.S. 627.707)

627.707 ~~Standards for~~ Investigation of sinkhole claims ~~by insurers~~; insurer payment; nonrenewals.—Upon receipt of a claim for a sinkhole loss to a covered building, an insurer must meet the following standards in investigating a claim:

(1) The insurer must inspect ~~make an inspection of~~ the policyholder's ~~insured's~~ premises to determine if there is structural ~~has been physical~~ damage that ~~to the structure~~ which may be the result of sinkhole activity.

(2) If the insurer confirms that structural damage exists but is unable to identify a valid cause of such damage or discovers that such damage is consistent with sinkhole loss ~~Following the insurer's initial inspection~~, the insurer shall engage a professional engineer or a professional geologist to conduct testing as provided in s. 627.7072 to determine the cause of the loss within a reasonable professional probability and issue a report as provided in s. 627.7073, only if sinkhole loss is covered under the policy. Except as provided in subsections (4) and (6), the fees and costs of the professional engineer or professional geologist shall be paid by the insurer.~~:~~

~~(a) The insurer is unable to identify a valid cause of the damage or discovers damage to the structure which is consistent with sinkhole loss; or~~

~~(b) The policyholder demands testing in accordance with this section or s. 627.7072.~~

(3) Following the initial inspection of the policyholder's ~~insured~~ premises, the insurer shall provide written notice to the policyholder disclosing the following information:

(a) What the insurer has determined to be the cause of damage, if the insurer has made such a determination.

(b) A statement of the circumstances under which the insurer is required to engage a professional engineer or a professional geologist to verify or eliminate sinkhole loss and to engage a professional engineer to make recommendations regarding land and building stabilization and foundation repair.

(c) A statement regarding the right of the policyholder to request testing by a professional engineer or a professional geologist, and the circumstances under which the policyholder may demand certain testing, and the circumstances under which the policyholder may incur costs associated with testing.

(4)(a) If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.

(b) If coverage for sinkhole loss is available and If the insurer denies the claim, without performing testing under s. 627.7072, the policyholder may demand testing by the insurer under s. 627.7072.

1. The policyholder's demand for testing must be communicated to the insurer in writing within 60 days after the policyholder's receipt of the insurer's denial of the claim.

2. The policyholder shall pay 50 percent of the actual costs of the analyses and services provided under ss. 627.7072 and 627.7073 or $2,500, whichever is less.

3. The insurer shall reimburse the policyholder for the costs if the insurer's engineer or geologist provides written certification pursuant to s.627.7073 that there is sinkhole loss.

(5)(a) ~~Subject to paragraph (b),~~ If a sinkhole loss is verified, the insurer shall pay to stabilize the land and building and repair the foundation in accordance with the recommendations of the pro-

fessional engineer retained pursuant to subsection (2), ~~as provided under s. 627.7073, and in consultation~~ with notice to the policyholder, subject to the coverage and terms of the policy. The insurer shall pay for other repairs to the structure and contents in accordance with the terms of the policy. If a covered building suffers a sinkhole loss or a catastrophic ground cover collapse, the insured must repair such damage or loss in accordance with the insurer's professional engineer's recommended repairs. However, if the insurer's professional engineer determines that the repair cannot be completed within policy limits, the insurer must pay to complete the repairs recommended by the insurer's professional engineer or tender the policy limits to the policyholder.

(a) ~~(b)~~ The insurer may limit its total claims payment to the actual cash value of the sinkhole loss, which does not include ~~including~~ underpinning or grouting or any other repair technique performed below the existing foundation of the building, until the policyholder enters into a contract for the performance of building stabilization or foundation repairs in accordance with the recommendations set forth in the insurer's report issued pursuant to s. 627.7073.

(b) In order to prevent additional damage to the building or structure, the policyholder must enter into a contract for the performance of building stabilization and foundation repairs within 90 days after the insurance company confirms coverage for the sinkhole loss and notifies the policyholder of such confirmation. This time period is tolled if either party invokes the neutral evaluation process, and begins again 10 days after the conclusion of the neutral evaluation process.

(c) After the policyholder enters into the contract for the performance of building stabilization and foundation repairs, the insurer shall pay the amounts necessary to begin and perform such repairs as the work is performed and the expenses are incurred. The insurer may not require the policyholder to advance payment for such repairs. If repair covered by a personal lines residential property insurance policy has begun and the professional engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits, the insurer must ~~either~~ complete the professional engineer's recommended repair or tender the policy limits to the policyholder without a reduction for the repair expenses incurred.

(d) The stabilization and all other repairs to the structure and contents must be completed within 12 months after entering into the contract for repairs described in paragraph (b) unless:

1. There is a mutual agreement between the insurer and the policyholder;

2. The claim is involved with the neutral evaluation process;

3. The claim is in litigation; or

4. The claim is under appraisal or mediation.

(e) ~~(c)~~ Upon the insurer's obtaining the written approval of the policyholder and any lienholder, the insurer may make payment directly to the persons selected by the policyholder to perform the land and building stabilization and foundation repairs. The decision by the insurer to make payment to such persons does not hold the insurer liable for the work performed. The policyholder may not accept a rebate from any person performing the repairs specified in this section. If a policyholder does receive a rebate, coverage is void and the policyholder must refund the amount of the rebate to the insurer. Any person making the repairs specified in this section who offers a rebate commits insurance fraud punishable as a third degree felony as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(6) Except as provided in subsection (7), the fees and costs of the professional engineer or the professional geologist shall be paid by the insurer.~~

(6) ~~(7)~~ If the insurer obtains, pursuant to s. 627.7073, written certification that there is no sinkhole loss or that the cause of the damage was not sinkhole activity, and if the policyholder has sub-

mitted the sinkhole claim without good faith grounds for submitting such claim, the policyholder shall reimburse the insurer for 50 percent of the actual costs of the analyses and services provided under ss. 627.7072 and 627.7073; however, a policyholder is not required to reimburse an insurer more than $2,500 with respect to any claim. A policyholder is required to pay reimbursement under this subsection only if the policyholder requested the analysis and services provided under ss. 627.7072 and 627.7073 and the insurer, before ~~prior to~~ ordering the analysis under s. 627.7072, informs the policyholder in writing of the policyholder's potential liability for reimbursement and gives the policyholder the opportunity to withdraw the claim.

(7)~~(8)~~ An ~~No~~ insurer may not ~~shall~~ nonrenew any policy of property insurance on the basis of filing of claims for sinkhole ~~partial~~ loss if caused ~~by sinkhole damage or clay shrinkage as long as~~ the total of such payments does not equal or exceed the ~~current~~ policy limits of coverage for the policy in effect on the date of loss, for property damage to the covered building, as set forth on the declarations page, or if ~~and provided~~ the policyholder ~~insured has~~ repaired the structure in accordance with the engineering recommendations made pursuant to subsection (2) upon which any payment or policy proceeds were based. If the insurer pays such limits, it may nonrenew the policy.

(8)~~(9)~~ The insurer may engage a professional structural engineer to make recommendations as to the repair of the structure.

Insurance: Sinkhole Reports (F.S. 627.7073)

(1) Upon completion of testing as provided in s. 627.7072, the professional engineer or professional geologist shall issue a report and certification to the insurer and the policyholder as provided in this section.

(a) Sinkhole loss is verified if, based upon tests performed in accordance with s. 627.7072, a professional engineer or a professional geologist issues a written report and certification stating:

1. That structural damage to the covered building has been identified within a reasonable professional probability.

2.~~1.~~ That the cause of the ~~actual physical and~~ structural damage is sinkhole activity within a reasonable professional probability.

3.~~2.~~ That the analyses conducted were of sufficient scope to identify sinkhole activity as the cause of damage within a reasonable professional probability.

4.~~3.~~ A description of the tests performed.

5.~~4.~~ A recommendation by the professional engineer of methods for stabilizing the land and building and for making repairs to the foundation.

(b) If there is no structural damage or if sinkhole activity is eliminated as the cause of such damage to the covered building ~~structure~~, the professional engineer or professional geologist shall issue a written report and certification to the policyholder and the insurer stating:

1. That there is no structural damage or the cause of such ~~the~~ damage is not sinkhole activity within a reasonable professional probability.

2. That the analyses and tests conducted were of sufficient scope to eliminate sinkhole activity as the cause of the structural damage within a reasonable professional probability.

3. A statement of the cause of the structural damage within a reasonable professional probability.

4. A description of the tests performed.

(c) The respective findings, opinions, and recommendations of the insurer's professional engineer or professional geologist as to the cause of distress to the property and the findings, opinions, and recommendations of the insurer's professional engineer as to land and building stabilization and foundation repair set forth by s. 627.7072 shall be presumed correct.

(2)~~(a)~~ An ~~Any~~ insurer that has paid a claim for a sinkhole loss shall file a copy of the report and certification, prepared pursuant to subsection (1), including the legal description of the real property and the name of the property owner, the neutral evaluator's report, if any, which indicates that sinkhole activity caused the damage claimed, a copy of the certification indicating that stabilization has been completed, if applicable, and the amount of the payment, with the county clerk of court, who shall record the report and certification. The insurer shall bear the cost of filing and recording one or more reports and certifications ~~the report and certification~~. There shall be no cause of action or liability against an insurer for compliance with this section.

(a) The recording of the report and certification does not:

1. Constitute a lien, encumbrance, or restriction on the title to the real property or constitute a defect in the title to the real property;

2. Create any cause of action or liability against any grantor of the real property for breach of any warranty of good title or warranty against encumbrances; or

3. Create any cause of action or liability against any title insurer that insures the title to the real property.

(b) As a precondition to accepting payment for a sinkhole loss, the policyholder must file a copy of any sinkhole report regarding the insured property which was prepared on behalf or at the request of the policyholder. The policyholder shall bear the cost of filing and recording the sinkhole report. The recording of the report does not:

1. Constitute a lien, encumbrance, or restriction on the title to the real property or constitute a defect in the title to the real property;

2. Create any cause of action or liability against any grantor of the real property for breach of any warranty of good title or warranty against encumbrances; or

3. Create any cause of action or liability against a title insurer that insures the title to the real property.

(c)~~(b)~~ The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must ~~shall~~ disclose to the buyer of such property, before the closing, that a claim has been paid and whether or not the full amount of the proceeds were used to repair the sinkhole damage.

(3) Upon completion of any building stabilization or foundation repairs for a verified sinkhole loss, the professional engineer responsible for monitoring the repairs shall issue a report to the property owner which specifies what repairs have been performed and certifies within a reasonable degree of professional probability that such repairs have been properly performed. The professional engineer issuing the report shall file a copy of the report and certification, which includes a legal description of the real property and the name of the property owner, with the county clerk of the court, who shall record the report and certification. This subsection does not create liability for an insurer based on any representation or certification by a professional engineer related to the stabilization or foundation repairs for the verified sinkhole loss.

Insurance: Alternative Procedure for Resolution of Disputed Sinkhole Insurance Claims (F.S. 627.7074)

~~(1) As used in this section, the term:~~

~~(a) "Neutral evaluation" means the alternative dispute resolution provided for in this section.~~

~~(b) "Neutral evaluator" means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process, who is determined to be fair and impartial~~

(1) (~~2~~)(~~a~~) The department shall:

(a) Certify and maintain a list of persons who are neutral evaluators.

(b) ~~The department shall~~ Prepare a consumer information pamphlet for distribution by insurers to policyholders which clearly describes the neutral evaluation process and includes information ~~and forms~~ necessary for the policyholder to request a neutral evaluation.

(2) Neutral evaluation is available to either party if a sinkhole report has been issued pursuant to s. 627.7073. At a minimum, neutral evaluation must determine:

(a) Causation;

(b) All methods of stabilization and repair both above and below ground;

(c) The costs for stabilization and all repairs; and

(d) Information necessary to carry out subsection (12).

(3) Following the receipt of the report provided under s. 627.7073 or the denial of a claim for a sinkhole loss, the insurer shall notify the policyholder of his or her right to participate in the neutral evaluation program under this section. Neutral evaluation supersedes the alternative dispute resolution process under s. 627.7015, but does not invalidate the appraisal clause of the insurance policy. The insurer shall provide to the policyholder the consumer information pamphlet prepared by the department pursuant to subsection (1) electronically or by United States mail paragraph (2)(b).

(4) Neutral evaluation is nonbinding, but mandatory if requested by either party. A request for neutral evaluation may be filed with the department by the policyholder or the insurer on a form approved by the department. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request. Filing a request for neutral evaluation tolls the applicable time requirements for filing suit ~~for a period of~~ 60 days following the conclusion of the neutral evaluation process or the time prescribed in s. 95.11, whichever is later.

(5) Neutral evaluation shall be conducted as an informal process in which formal rules of evidence and procedure need not be observed. A party to neutral evaluation is not required to attend neutral evaluation if a representative of the party attends and has the authority to make a binding decision on behalf of the party. All parties shall participate in the evaluation in good faith. The neutral evaluator must be allowed reasonable access to the interior and exterior of insured structures to be evaluated or for which a claim has been made. Any reports initiated by the policyholder, or an agent of the policyholder, confirming a sinkhole loss or disputing another sinkhole report regarding insured structures must be provided to the neutral evaluator before the evaluator's physical inspection of the insured property.

(6) The insurer shall pay reasonable the costs associated with the neutral evaluation. However, if a party chooses to hire a court reporter or stenographer to contemporaneously record and document the neutral evaluation, that party must bear such costs.

(7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. ~~The parties shall mutually select a neutral evaluator from the list and promptly inform the department. If the parties cannot agree to a neutral evaluator within 10~~

~~business days,~~ The department shall allow the parties to submit requests to disqualify evaluators on the list for cause.

(a) The department shall disqualify neutral evaluators for cause based only on any of the following grounds:

1. A familial relationship exists between the neutral evaluator and either party or a representative of either party within the third degree.

2. The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party, in the same or a substantially related matter.

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.

4. The proposed neutral evaluator has, within the preceding 5 years, worked as an employer or employee of any party to the case.

(b) The parties shall appoint a neutral evaluator from the department list and promptly inform the department. If the parties cannot agree to a neutral evaluator within 14 business days, the department shall appoint a neutral evaluator from the list of certified neutral evaluators. The department shall allow each party to disqualify two neutral evaluators without cause. Upon selection or appointment, the department shall promptly refer the request to the neutral evaluator.

(c) Within 14 ~~5~~ business days after the referral, the neutral evaluator shall notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference. The conference may be held by telephone, if feasible and desirable. The neutral evaluator shall make reasonable efforts to hold the ~~neutral evaluation~~ conference ~~shall be held~~ within 90 ~~45~~ days after the receipt of the request by the department. Failure of the neutral evaluator to hold the conference within 90 days does not invalidate either party's right to neutral evaluation or to a neutral evaluation conference held outside this timeframe.

~~(8) The department shall adopt rules of procedure for the neutral evaluation process.~~

(8)~~(9)~~ For policyholders not represented by an attorney, a consumer affairs specialist of the department or an employee designated as the primary contact for consumers on issues relating to sinkholes under s. 20.121 shall be available for consultation to the extent that he or she may lawfully do so.

(9)~~(10)~~ Evidence of an offer to settle a claim during the neutral evaluation process, as well as any relevant conduct or statements made in negotiations concerning the offer to settle a claim, is inadmissible to prove liability or absence of liability for the claim or its value, except as provided in subsection (14) ~~(13)~~.

(10)~~(11)~~ Regardless of when noticed, any court proceeding related to the subject matter of the neutral evaluation shall be stayed pending completion of the neutral evaluation and for 5 days after the filing of the neutral evaluator's report with the court.

(11) If, based upon his or her professional training and credentials, a neutral evaluator is qualified to determine only disputes relating to causation or method of repair, the department shall allow the neutral evaluator to enlist the assistance of another professional from the neutral evaluators list not previously stricken, who, based upon his or her professional training and credentials, is able to provide an opinion as to other disputed issues. A professional who would be disqualified for any reason listed in subsection (7) must be disqualified. The neutral evaluator may also use the services of professional engineers and professional geologists who are not certified as neutral

evaluators, as well as licensed building contractors, in order to ensure that all items in dispute are addressed and the neutral evaluation can be completed. Any professional engineer, professional geologist, or licensed building contractor retained may be disqualified for any of the reasons listed in subsection (7). The neutral evaluator may request the entity that performed the investigation pursuant to s. 627.7072 perform such additional and reasonable testing as deemed necessary in the professional opinion of the neutral evaluator.

(12) At ~~For matters that are not resolved by the parties at~~ the conclusion of the neutral evaluation, the neutral evaluator shall prepare a report describing all matters that are the subject of the neutral evaluation, including whether, ~~stating that~~ in his or her opinion, the sinkhole loss has been verified or eliminated within a reasonable degree of professional probability and, if verified, whether the sinkhole activity caused structural damage to the covered building, and if so, the need for and estimated costs of stabilizing the land and any covered ~~structures or~~ buildings and other appropriate remediation or necessary building ~~structural~~ repairs due to the sinkhole loss. The evaluator's report shall be sent to all parties ~~in attendance at the neutral evaluation~~ and to the department, within 14 days after completing the neutral evaluation conference.

(13) The recommendation of the neutral evaluator is not binding on any party, and the parties retain access to the court. The neutral evaluator's written recommendation, oral testimony, and full report shall be admitted ~~is admissible~~ in any ~~subsequent~~ action, litigation, or proceeding relating to the claim or to the cause of action giving rise to the claim.

(14) If the neutral evaluator ~~first~~ verifies the existence of a sinkhole that caused structural damage and~~, second,~~ recommends the need for and estimates costs of stabilizing the land and any covered ~~structures or~~ buildings and other appropriate remediation or building ~~structural~~ repairs~~,~~ which ~~costs~~ exceed the amount that the insurer has offered to pay the policyholder, the insurer is liable to the policyholder for up to $2,500 in attorney's fees for the attorney's participation in the neutral evaluation process. For purposes of this subsection, the term "offer to pay" means a written offer signed by the insurer or its legal representative and delivered to the policyholder within 10 days after the insurer receives notice that a request for neutral evaluation has been made under this section.

(15) If the insurer timely agrees in writing to comply and timely complies with the recommendation of the neutral evaluator, but the policyholder declines to resolve the matter in accordance with the recommendation of the neutral evaluator pursuant to this section:

(a) The insurer is not liable for extracontractual damages related to a claim for a sinkhole loss but only as related to the issues determined by the neutral evaluation process. This section does not affect or impair claims for extracontractual damages unrelated to the issues determined by the neutral evaluation process contained in this section; and

(b) The actions of the insurer are not a confession of judgment or admission of liability, and the insurer is not liable for attorney's fees under s. 627.428 or other provisions of the insurance code unless the policyholder obtains a judgment that is more favorable than the recommendation of the neutral evaluator.

(16) If the insurer agrees to comply with the neutral evaluator's report, payments shall be made in accordance with the terms and conditions of the applicable insurance policy pursuant to s. 627.707(5).

(17) Neutral evaluators are deemed to be agents of the department and have immunity from suit as provided in s. 44.107.

(18) The department shall adopt rules of procedure for the neutral evaluation process.

Insurance: Definitions (Sinkhole Limitations) (F.S. 631.54)

(3) "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which this part applies, issued by an insurer, if such insurer becomes an insolvent insurer and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. For entities other than individuals, the residence of a claimant, insured, or policyholder is the state in which the entity's principal place of business is located at the time of the insured event. The term does ~~"Covered claim" shall~~ not include:

(a) Any amount due any reinsurer, insurer, insurance pool, or underwriting association, sought directly or indirectly through a third party, as subrogation, contribution, indemnification, or otherwise; ~~or~~

(b) Any claim that would otherwise be a covered claim under this part that has been rejected by any other state guaranty fund on the grounds that an insured's net worth is greater than that allowed under that state's guaranty law. Member insurers shall have no right of subrogation, contribution, indemnification, or otherwise, sought directly or indirectly through a third party, against the insured of any insolvent member; or

(c) Any amount payable for a sinkhole loss other than testing deemed appropriate by the association or payable for the actual repair of the loss, except that the association may not pay for attorney's fees or public adjuster's fees in connection with a sinkhole loss or pay the policyholder. The association may pay for actual repairs to the property, but is not liable for amounts in excess of policy limits.

CS/CS/CS/HB-849 (Chapter 2011-222, F.S., Effective July 1, 2011)[12]

Elevators: Vertical Accessibility (F.S. 553.509)

(1) This part and the Americans with Disabilities Act Standards for Accessible Design do not ~~Nothing in ss. 553.501-553.513 or the guidelines shall be construed~~ to relieve the owner of any building, structure, or facility governed by this part ~~those sections~~ from the duty to provide vertical accessibility to all levels above and below the occupiable grade level, regardless of whether the standards ~~guidelines~~ require an elevator to be installed in such building, structure, or facility, except for:

(a) Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, and automobile lubrication and maintenance pits and platforms.~~;~~

(b) Unoccupiable spaces, such as rooms, enclosed spaces, and storage spaces that are not designed for human occupancy, for public accommodations, or for work areas.~~; and~~

(c) Occupiable spaces and rooms that are not open to the public and that house no more than five persons, including, but not limited to, equipment control rooms and projection booths.

(d) Theaters, concert halls, and stadiums, or other large assembly areas that have stadium-style seating or tiered seating if ss. 221 and 802 of the standards are met.

(e) All play and recreation areas if the requirements of chapter 10 of the standards are met.

(f) All employee areas as exempted in s. 203.9 of the standards.

(g) Facilities, sites, and spaces exempted by s. 203 of the standards.

[12] Unless different effective date provided for specific section of legislation.

~~(2)(a) Any person, firm, or corporation that owns, manages, or operates a residential multifamily dwelling, including a condominium, that is at least 75 feet high and contains a public elevator, as described in s. 399.035(2) and (3) and rules adopted by the Florida Building Commission, shall have at least one public elevator that is capable of operating on an alternate power source for emergency purposes. Alternate power shall be available for the purpose of allowing all residents access for a specified number of hours each day over a 5-day period following a natural disaster, manmade disaster, emergency, or other civil disturbance that disrupts the normal supply of electricity. The alternate power source that controls elevator operations must also be capable of powering any connected fire alarm system in the building.~~

~~(b) At a minimum, the elevator must be appropriately prewired and prepared to accept an alternate power source and must have a connection on the line side of the main disconnect, pursuant to National Electric Code Handbook, Article 700. In addition to the required power source for the elevator and connected fire alarm system in the building, the alternate power supply must be sufficient to provide emergency lighting to the interior lobbies, hallways, and other portions of the building used by the public. Residential multifamily dwellings must have an available generator and fuel source on the property or have proof of a current contract posted in the elevator machine room or other place conspicuous to the elevator inspector affirming a current guaranteed service contract for such equipment and fuel source to operate the elevator on an on-call basis within 24 hours after a request. By December 31, 2006, any person, firm or corporation that owns, manages, or operates a residential multifamily dwelling as defined in paragraph (a) must provide to the local building inspection agency verification of engineering plans for residential multifamily dwellings that provide for the capability to generate power by alternate means. Compliance with installation requirements and operational capability requirements must be verified by local building inspectors and reported to the county emergency management agency by December 31, 2007.~~

~~(c) Each newly constructed residential multifamily dwelling, including a condominium, that is at least 75 feet high and contains a public elevator, as described in s. 399.035(2) and (3) and rules adopted by the Florida Building Commission, must have at least one public elevator that is capable of operating on an alternate power source for the purpose of allowing all residents access for a specified number of hours each day over a 5-day period following a natural disaster, manmade disaster, emergency, or other civil disturbance that disrupts the normal supply of electricity. The alternate power source that controls elevator operations must be capable of powering any connected fire alarm system in the building. In addition to the required power source for the elevator and connected fire alarm system, the alternate power supply must be sufficient to provide emergency lighting to the interior lobbies, hallways, and other portions of the building used by the public. Engineering plans and verification of operational capability must be provided by the local building inspector to the county emergency management agency before occupancy of the newly constructed building.~~

~~(d) Each person, firm, or corporation that is required to maintain an alternate power source under this subsection shall maintain a written emergency operations plan that details the sequence of operations before, during, and after a natural or manmade disaster or other emergency situation. The plan must include, at a minimum, a lifesafety plan for evacuation, maintenance of the electrical and lighting supply, and provisions for the health, safety, and welfare of the residents. In addition, the owner, manager, or operator of the residential multifamily dwelling must keep written records of any contracts for alternative power generation equipment. Also, quarterly inspection records of lifesafety equipment and alternate power generation equipment must be posted in the elevator machine room or other place conspicuous to the elevator inspector, which confirm that such equipment is properly maintained and in good working condition, and copies of contracts for alternate power generation equipment shall be maintained on site for verifica-~~

~~tion. The written emergency operations plan and inspection records shall also be open for periodic inspection by local and state government agencies as deemed necessary. The owner or operator must keep a generator key in a lockbox posted at or near any installed generator unit.~~

~~(e) Multistory affordable residential dwellings for persons age 62 and older that are financed or insured by the United States Department of Housing and Urban Development must make every effort to obtain grant funding from the Federal Government or the Florida Housing Finance Corporation to comply with this subsection. If an owner of such a residential dwelling cannot comply with the requirements of this subsection, the owner must develop a plan with the local emergency management agency to ensure that residents are evacuated to a place of safety in the event of a power outage resulting from a natural or manmade disaster or other emergency situation that disrupts the normal supply of electricity for an extended period of time. A place of safety may include, but is not limited to, relocation to an alternative site within the building or evacuation to a local shelter.~~

~~(f) As a part of the annual elevator inspection required under s. 399.061, certified elevator inspectors shall confirm that all installed generators required by this chapter are in working order, have current inspection records posted in the elevator machine room or other place conspicuous to the elevator inspector, and that the required generator key is present in the lockbox posted at or near the installed generator. If a building does not have an installed generator, the inspector shall confirm that the appropriate prewiring and switching capabilities are present and that a statement is posted in the elevator machine room or other place conspicuous to the elevator inspector affirming a current guaranteed contract exists for contingent services for alternate power is current for the operating period.~~

(2) However, buildings, structures, and facilities must, as a minimum, comply with ~~the requirements in~~ the Americans with Disabilities Act Standards for Accessible Design ~~Accessibility Guidelines.~~

ADA Standards for Accessible Design

Section 29. Consistent with the federal implementation of the 2010 Americans with Disabilities Act Standards for Accessible Design, buildings and facilities in this state may be designed in conformity with the 2010 standards if the design also complies with Florida-specific requirements provided in part II of chapter 553, Florida Statutes, until the Florida Accessibility Code for Building Construction is updated to implement the changes to part II of chapter 553, Florida Statutes, as provided by this Act.

Building Code: Product Evaluation & Approval (F.S. 553.842)

(5) Statewide approval of products, methods, or systems of construction may be achieved by one of the following methods. One of these methods must be used by the commission to approve the following categories of products: panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components as established by the commission by rule. A product may not be advertised, sold, offered, provided, distributed, or marketed as hurricane, windstorm, or impact protection from wind-borne debris from a hurricane or windstorm unless it is approved pursuant to s. 553.842 or s. 553.8425. Any person who advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from windborne debris without such approval is subject to the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501 brought by the enforcing authority as defined in s. 501.203.

Swimming Pools: Energy Efficiency (F.S. 553.909)

(3) Commercial or residential swimming pool ~~pumps or water~~ heaters manufactured and sold on or after December 31, 2011, for installation in this state must ~~July 1, 2011, shall~~ comply with the requirements of the Florida Energy Efficiency Code for Building Construction ~~this subsection~~.

~~(a) Natural gas pool heaters shall not be equipped with constantly burning pilots.~~

~~(b) Heat pump pool heaters shall have a coefficient of performance at low temperature of not less than 4.0.~~

~~(c) The thermal efficiency of gas-fired pool heaters and oil-fired pool heaters shall not be less than 78 percent.~~

~~(d) All pool heaters shall have a readily accessible on-off switch that is mounted outside the heater and that allows shutting off the heater without adjusting the thermostat setting.~~

(4)~~(a)~~ Residential swimming pool filtration pumps and pump motors manufactured and sold on or after December 31, 2011, for installation in this state ~~July 1, 2011~~, must comply with the requirements of the Florida Energy Efficiency Code for Building Construction in ~~this subsection.~~

~~(b) Residential filtration pool pump motors shall not be split-phase, shaded-pole, or capacitor start-induction run types.~~

~~(c) Residential filtration pool pumps and pool pump motors with a total horsepower of 1 HP or more shall have the capability of operating at two or more speeds with a low speed having a rotation rate that is no more than one half of the motor's maximum rotation rate.~~

~~(d) Residential filtration pool pump motor controls shall have the capability of operating the pool pump at a minimum of two speeds. The default circulation speed shall be the residential filtration speed, with a higher speed override capability being for a temporary period not to exceed one normal cycle or 24 hours, whichever is less; except that circulation speed for solar pool heating systems shall be permitted to run at higher speeds during periods of usable solar heat gain.~~

(5) Portable electric spas manufactured and sold on or after December 31, 2011, for installation in this state must comply with the requirements of the Florida Energy Efficiency Code for Building Construction ~~spa standby power shall not be greater than 5(V2/3) watts where V = the total volume, in gallons, when spas are measured in accordance with the spa industry test protocol.~~

Swimming Pools: Required Safety Standards (F.S. 514.0315)

514.0315 Required safety features for public swimming pools and spas.

(1) A public swimming pool or spa must be equipped with an antientrapment system or device that complies with American Society of Mechanical Engineers/American National Standards Institute standard A112.19.8, or any successor standard.

(2) A public swimming pool or spa built before January 1, 1993, with a single main drain other than an unblockable drain must be equipped with at least one of the following features that complies with any American Society of Mechanical Engineers, American National Standards Institute, American Standard for Testing and Materials, or other applicable consumer product safety standard for such system or device and protects against evisceration and body-and-limb suction entrapment:

(a) A safety vacuum release system that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected and that has been tested by an independent third party and found to conform to American Society of Mechanical Engineers/American National Standards Institute standard A112.19.17, American Standard for Testing and Materials standard 26 F2387, or any successor standard.

(b) A suction-limiting vent system with a tamper-resistant atmospheric opening.

(c) A gravity drainage system that uses a collector tank.

(d) An automatic pump shut-off system.

(e) A device or system that disables the drain.

(3) The determination and selection of a feature under subsection (2) for a public swimming pool or spa constructed before January 1, 1993, is at the sole discretion of the owner or operator of the public swimming pool or spa. A licensed contractor described in s. 489.105(3)(j), (k), or (l) must install the feature

SB – 2156 (Chapter 2011-142, F.S., Effective date July 1, 2011)

Hurricane Loss Mitigation Program (F.S. 215.559)

(1) ~~There is created~~ A Hurricane Loss Mitigation Program is established in the Division of Emergency Management.

(1) The Legislature shall annually appropriate $10 million of the moneys authorized for appropriation under s. 215.555(7)(c) from the Florida Hurricane Catastrophe Fund to the division ~~Department of Community Affairs~~ for the purposes set forth in this section. Of the amount:

~~(2)~~(a) Seven million dollars in funds ~~provided in subsection (1)~~ shall be used for programs to improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance; educating persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government; and other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster.

(b) Three million dollars in funds ~~provided in subsection (1)~~ shall be used to retrofit existing facilities used as public hurricane shelters. Each year the division shall ~~department must~~ prioritize the use of these funds for projects included in the annual report of the ~~September 1, 2000, version of the~~ Shelter Retrofit Report prepared in accordance with s. 252.385(3)~~, and each annual report thereafter~~. The division ~~department~~ must give funding priority to projects in regional planning council regions that have shelter deficits and to projects that maximize the use of state funds.

(2)~~(3)~~(a) Forty percent of the total appropriation in paragraph (1)(a)~~(2)(a)~~ shall be used to inspect and improve tie-downs for mobile homes.

(b)1. ~~There is created~~ The Manufactured Housing and Mobile Home Mitigation and Enhancement Program is established. The program shall require the mitigation of damage to or the enhancement of homes for the areas of concern raised by the Department of Highway Safety and Motor Vehicles in the 2004-2005 Hurricane Reports on the effects of the 2004 and 2005 hurricanes on manufactured and mobile homes in this state. The mitigation or enhancement must include, but need not be limited to, problems associated with weakened trusses, studs, and other structural components caused by wood rot or termite damage; site-built additions; or tie-down systems and may also address any other issues deemed appropriate by Tallahassee Community College, the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The program shall include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of participation.

2. The program shall be a grant program that ensures that entire manufactured home communities and mobile home parks may be improved wherever practicable. The moneys appropriated for this program shall be distributed directly to Tallahassee Community College for the uses set forth under this subsection.

3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro rata basis, actuarially reasonable discounts, credits, or other rate differ-

entials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The discount on the premium must be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation must reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after Hurricane Andrew. Rates resulting from the completion of the Manufactured Housing and Mobile Home Mitigation and Enhancement Program are not considered competitive rates for the purposes of s. 627.351(6)(d)1. and 2.

4. On or before January 1 of each year, Tallahassee Community College shall provide a report of activities under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must set forth the number of homes that have taken advantage of the program, the types of enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in availability of insurance products to owners of manufactured or mobile homes. Tallahassee Community College shall develop the programs set forth in this subsection in consultation with the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The moneys appropriated for the programs set forth in this subsection shall be distributed directly to Tallahassee Community College to be used as set forth in this subsection.

(3)~~(4)~~ Of moneys provided to the division ~~Department of Community Affairs~~ in paragraph (1)(a) ~~(2)(a)~~, 10 percent shall be allocated to the Florida International University center dedicated to hurricane research. The center shall develop a preliminary work plan approved by the advisory council set forth in subsection (4)~~(5)~~ to eliminate the state and local barriers to upgrading existing mobile homes and communities, research and develop a program for the recycling of existing older mobile homes, and support programs of research and development relating to hurricane loss reduction devices and techniques for site-built residences. The State University System also shall consult with the division ~~Department of Community Affairs~~ and assist the division ~~department~~ with the report required under subsection (6)(7).

(4)~~(5)~~ Except for the programs set forth in subsection (3)~~(4)~~, the division ~~Department of Community Affairs~~ shall develop the programs set forth in this section in consultation with an advisory council consisting of a representative designated by the Chief Financial Officer, a representative designated by the Florida Home Builders Association, a representative designated by the Florida Insurance Council, a representative designated by the Federation of Manufactured Home Owners, a representative designated by the Florida Association of Counties, ~~and~~ a representative designated by the Florida Manufactured Housing Association, and a representative designated by the Florida Building Commission.

(5)~~(6)~~ Moneys provided to the division ~~Department of Community Affairs~~ under this section are intended to supplement, not supplant, the division's other funding sources ~~of the Department of Community Affairs and may not supplant other funding sources of the Department of Community Affairs~~.

(6)~~(7)~~ On January 1st of each year, the division ~~Department of Community Affairs~~ shall provide a full report and accounting of activities under this section and an evaluation of such activities to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate. Upon completion of the report, the division ~~Department of Community Affairs~~ shall deliver the report to the Office of Insurance Regulation. The Office of Insurance Regulation shall review the report and shall make

such recommendations available to the insurance industry as the Office of Insurance Regulation deems appropriate. These recommendations may be used by insurers for potential discounts or rebates pursuant to s. 627.0629. The Office of Insurance Regulation shall make such the recommendations within 1 year after receiving the report.

~~(8)(a) Notwithstanding any other provision of this section and for the 2010-2011 fiscal year only, the $3 million appropriation provided for in paragraph (2)(b) may be used for hurricane shelters as identified in the General Appropriations Act.~~

~~(b) This subsection expires June 30, 2011.~~

(7)~~(9)~~ This section is repealed June 30, 2021 ~~2011~~

Arbitration[13]

Arbitration Defined

Arbitration is a formal process in which the arbitrator has the authority to decide the dispute in accordance with the law. Unlike mediation, the resolution of a dispute arbitrator's decision is not based on the voluntary acceptance of the parties; instead, the arbitrator has the authority to render a decision based on the facts involved in the parties' dispute. The arbitrator's decision is final and binding on the parties if the parties agree in advance to be bound by the arbitrator's decision, or if the matter is not filed in court for a new trial within 30 days of the arbitrator's decision.

Who May File for Arbitration and When May He/They File?

A condominium, or cooperative association or the owner in a condominium or shareholder ion a cooperative may file for arbitration when there is a dispute over:

- Requirements for any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.
- An alteration or addition to a common area or element (or a proposed alteration or addition, or refusal to make or consider an alteration or addition)
- The failure of the board, when required by statute or an association document, to:
  - Properly conduct elections
  - Give adequate notice of meetings or other actions
  - Properly conduct meetings
  - Allow inspection of books and records
- A dispute over a recall or attempted recall of the board

A homeowners' association or owner in an HOA may file for arbitration when there is a dispute over elections or recalls only.

Parties and Appearances in an Arbitration Proceeding?

The party who files a petition for arbitration is the petitioner; the respondent is the party who files an answer to the petition for arbitration. The only persons entitled to be parties in an arbitration proceeding are unit owners and associations. If the dispute involves a tenant and the relief sought does not request the eviction of a tenant or occupant, the party respondents shall be the unit owner and tenant.

[13] Some of information extracted from DBPR website.

The rules governing arbitration allow for a party to be represented by an attorney or a qualified representative who has been approved by the arbitrator. An attorney or qualified representative for any party shall remain attorney or representative of record until the arbitrator receives a notice of withdrawal of counsel or representative. The correct mailing address for the client should be included in the notice.

Pre-Arbitration Requirements and Filing Tip

Section 718.1255(4), Florida Statutes, requires that the petitioner provide proof that it provided each named respondent with advance written notice of the specific nature of the dispute. The notice must contain a demand for relief, and notice of intent to file an arbitration petition or other legal action in the absence of a resolution of the dispute. The petitioner must also provide a reasonable opportunity for the respondent to comply or to provide the relief sought. Failure to meet the conditions of this provision requires dismissal of the arbitration petition without prejudice.

Before filing your petition, it is a good idea to verify that the named respondent has not complied with the written demand or provided the relief you are seeking. For example, if an association is considering filing a petition for arbitration seeking entry of a final order requiring the owner to install hurricane shutters, the association should check immediately that the owner has not installed the required shutters or entered into a contract for the installation of shutters.

How to Petition for Arbitration

Under section 718.1255(4), Florida Statutes, a petition for arbitration must include supporting proof that each of the named respondents received advance written notice of intent to file an arbitration petition or other legal action in the absence of a resolution of the dispute prior to the filing of the petition. Failure to meet the conditions of this provision requires dismissal of the arbitration petition without prejudice.

Section 718.1255, Florida Statutes define disputes eligible for arbitration as any disagreement between two or more parties and the authority of the board of directors or the association's governing document. An eligible dispute for arbitration requires any owner to take or not to take any action involving that owner's unit or the appurtenances thereto, or involving the alteration or addition to a common area or element of the condominium property.

Also required to be arbitrated before filing an action in court are disputes involving the failure of a governing body, when required by law or an association's document to properly conduct elections, give adequate notice of meetings or other actions, properly conduct meetings, and allow inspection of books and records.

Condominium and Cooperative disputes not eligible for arbitration include any disagreement that primarily involves:

- title to any unit or common element;
- the interpretation or enforcement of any warranty;
- the levy of a fee or assessment;
- the collection of an assessment levied against a party;
- the eviction or other removal of a tenant from a unit;
- alleged breaches of fiduciary duty by one or more directors;
- claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

Arbitration Cases

Casa Sevilla Condominium Association, Inc., v. David J. Pirola and Scott Michaels,

Case No. 2007-05-6668 (Campbell / Summary Final Order / January 28, 2008)

Requirement of board authorization for sale or transfer of unit authorized by statutes and declaration of condominium. Board approved sale from one unit owner to two named buyers. Once board has approved sale, it cannot control the form or procedure by which they acquire record legal title. Approved unit owners cannot be required to request additional approval because transaction from previous owner deeded to only one person, who then deeded the unit to the two approved persons.

Cypress Palms Condo. Ass'n, Inc. v. Wyndham Vacation Resorts, Inc.,

Case No. 2008-02-6258 (Earl / Final Order of Dismissal / July 25, 2008)

Case dismissed where the association attempted to challenge the manner in which it conducted its own election.

Gary Griffith v. Punta Rassa Condominium Association, Inc.,

Case No. 2007-02-9651 (Campbell / Summary Final Order, September 26, 2007)

Association ordered to pay Petitioner $500, as minimum damages pursuant to s. 718.111(12)(c), F.S. Association failed to make available records, including statutorily required financial reports, for more than a month after written request. No evidence to rebut statute's presumption that such failure was willful. Arbitration not improper where the petitioner had filed complaints with compliance section of DBPR and in small claims court. Compliance is a separate independent mechanism. Small claims action, abated to require arbitration, is sufficient written pre-arbitration notice.

Hillsboro Mile Tower, Inc. v. Wine,

Case No. 2007-02-6548 (Lang / Order on Respondent's Motion to Dismiss, Requiring Supplemental Information, and Denying Petitioner's Emergency Motion for Injunctive Relief / Oct. 22, 2007)

Petitioner sought emergency injunction requiring respondent to remove a floating dock allegedly attached to the common element seawall due an accident or incidents involving individuals accessing the dock. In order to obtain emergency relief under the rule, the moving party must establish all four of the required elements. Injunction must be denied if any one of the elements is not established.

Island Club Two, Inc., v. James Magnanti,

Case No. 2007-06-8211 (Campbell / Summary Final Order / May 13, 2008)

Unit owner could not reasonably rely on letter from office manager relating a purported discussion of the directors which stated a policy that unit owners could make whatever improvement and use whatever colors the owners wanted on exterior balconies and windows. Where statute and condominium declaration require 75% of owner votes for material alteration of common elements, board of directors could not adopt such a policy. Additionally, since informal representation from employee of association cannot represent board's position.

Defense of selective enforcement must show that application to unit owner is unfair or discriminatory. Selective enforcement as to color of shutters was not shown by isolated photograph appearing to show a violation at another unit where association proved it had sent let-

ters to several other unit owners requiring shutter color to conform to the rule and the other owners had come into compliance.

John Tinney and Nick Lazzara v. The Grand Bellagio at Baywatch Association, Inc.

Case No. 2006-04-0900 (Chavis / Final Order / January 23, 2008)

Both parties agreed that the voting certificate requirement had not been enforced prior to the challenged voting event. In prior cases, the association's failure to enforce voting certificates has estopped it from doing so because each failure was detrimentally relied upon by the owners or the association was deemed to have waived the right to enforce the requirement. In the case at hand, it has not been demonstrated that the unit owners have waived or should otherwise be estopped from raising an objection to the lack of voting certificates.

MacArthur Beach & Racquet Club, Inc. v. McGowe,

Case No. 2007-05-1445 (Golen / Summary Final Order / October 23, 2007)

Where association alleged it needed access to the unit to make plumbing repairs, the unit owner was required to provide association a key to her unit; however, association was required to give respond 24 hours' notice of its intention to access the unit so that the respondent may monitor access.

Majestic Gardens Condominium G Association, Inc., v. Motley,

Case No. 2007-05-1873 (Golen / Summary Final Order / October 25, 2007)

Respondent, though being bound by association's governing documents as a unit owner, failed to submit an application and an application fee for association's approval of the tenant prior to association's initiation of arbitration proceeding. Therefore, respondent was in violation of the association's governing documents. However, the arbitration has no jurisdiction to order the removal of any tenant/occupant in respondent's unit.

Mediterreanea on Hillsboro Mile Condominium Assn. v. Verdino,

Case No. 2006-06-1482 (Lang / Summary Final Order / Jan. 17, 2008)

Respondents alleged they lived with their dog at the unit since it was purchased in January 2002. Petition was filed in November 2006. Respondents asserted applicable statute of limitations was one year for specific performance. Held that five-year statute of limitations for action on a contract was applicable because where there is reasonable question as to which limitation period applies, resolution should be in favor of longer limitation period.

Respondents alleged their dog was a service animal. Respondents must produce evidence in support of the assertion that their dog is a service animal and thereby entitled to exemption from the weight restriction in the condominium documents. Respondents asserted that they had health issues that would be exacerbated if the dog no longer resided with them because the dog provides relief for their condition. Dog found not to be a service animal because respondents did not allege or show that respondents have a condition for which a service animal is a medical necessity.

Pine Ridge at Ft. Myers Village I Condo. Ass'n, Inc. v. McCullough,

Case No. 2008-02-0218 (Earl / Final Order of Dismissal / April 15, 2008)

Dispute not eligible for arbitration where the association sought an order compelling respondent to remove underage occupants from his unit.

Ronan v. Imperial Apartments Ass'n, Inc.,

Case No. 2007-00-4239 (Earl / Final Order / December 12, 2007)

Unit owners' attorney sent a written request for access to association's official records to association's attorney whose representation was limited to the collection of an assessment. Since association's attorney forwarded the request to association's property manager and copy was also provided by mail to the association's registered agent, association was deemed to have been properly served with the request and required to respond to it.

Where unit owners requested that association provide proof of insurance, association's argument that the request sought information, not access to records, was rejected since a reasonable person would interpret the request as seeking a document.

Typically, an association does not have duty to mail or otherwise deliver copies of requested to records to its members. However, where the prior conduct of the parties demonstrated that it was routine for the association, through its management company, to respond to requests for records by providing copies and where the association had responded to the prior verbal requests of the unit owners by providing them copies via facsimile, if the association intended to establish a different, more formal policy for requesting access to records, it needed to do so by notifying the members of the change in policy or by informing unit owners of the new policy in response to requests for records and stating that the request was being rejected for failure to comply with the new policy.

Smith v. Water Bridge 2 Ass'n, Inc.

Case No. 2008-03-7428, (Grubbs / Summary Final Order / September 19, 2008)

Allegation that petitioner, while president of the board, fired the accountant and management company, which resulted in certain records not being prepared in a timely manner, cannot excuse the failure of association to produce the records it did have in a timely manner and explain, in a timely manner, that the financial records for 2007 had not yet been prepared.

Stern v. Playa Del Mar Ass'n, Inc.,

Case No. 2007-06-6957, (Earl / Order / May 5, 2008)

The trustee of the trust that owns a unit is eligible to serve on the Association's board of directors.

The Treasury Condominium Association, Inc., v. Murolas,

Case No. 2007-03-9149 (Campbell / Summary Final Order / October 29, 2007)

Photographs of dogs outside respondent's unit and of respondent's relatives with dogs on common elements; along with testimony of six witnesses that they saw the dogs walked twice a day; plus complaint of dog noise from neighbor below respondent's unit provides sufficient evidence respondent kept dog in unit in violation of declaration of condominium. Burden of proof on respondent as to weight of dog to qualify for exception to rule, where photographs and estimates of witnesses based on experience with dogs indicate dogs weigh over 25 pounds.

Wanda Dipaola Stephen Rinko General Partnership v. Beach Terrace Ass'n, Inc.,

Case No. 2007-02-2785 (Chavis / Final Order / February 20, 2008)

The general rule is that a unit owner has access to the official records of the association within five working days from the board's receipt of the owner's request, subject to reasonable rules adopted by the association, with three exceptions: attorney client privilege, unit transfer information, and medical records.

Nothing in section 718.111(12), F.S., prohibits a unit owner or his authorized representative from making repeated requests for access to records. Although the statute does authorize the association to adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying of official records, such restrictions cannot unreasonably deny reasonable access to such records. Whether a particular rule is reasonable or unreasonable depends on the facts and circumstances of each individual case.

Association adopted a records inspection and copying policy which limited the number of record requests to not more than two in a six month period. While the statute allows the association to adopt reasonable rules governing unit owners' access to records, it does not authorize an association to adopt rules that substantially erode or eliminate a unit owner's right of access.

In the case at hand, association's counsel was clearly able to protect the "confidentiality" of records protected by attorney-client privilege through redaction and a delay of some five to seven months in providing the unit owner redacted copies was clearly unreasonable.

APPENDIX A – QUESTIONS

1. Grounds for which the DBPR may initial disciplinary actions do not include:
    a. Being convicted of or pleading nolo contendere to a felony in any court in the United States
    b. Obtaining a license or certification or any other order, ruling, or authorization and neglecting to inform the DBPR within 60 days of receipt of said licensure, certification or other order, ruling or authorization
    c. Committing acts of gross misconduct or gross negligence in connection with the profession
    d. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed

2. When the DBPR any community association manager or firm guilty of any of the grounds set forth in statute or rule, it may enter an order imposing one or more of the following penalties except the following:
    a. Denial of an application for licensure in any profession governed by the DBPR
    b. Revocation or suspension of a license.
    c. Imposition of an administrative fine not to exceed $5,000 for each count or separate offense.
    d. Restriction of the authorized scope of practice by the community association manager.

3. If A licensee or registrant denies access to association records to any owner, and the owner files a complaint, the DBPR may impose the following maximum for a second offence:
    a. $1000 fine; costs
    b. $500 fine; costs
    c. $2500 fine; one year; suspension; one year probation; costs
    d. One year suspension; two years probation; $5000 fine; costs

4. A condominium, cooperative, or multifamily residential building that is less than _____ stories in height and has an exterior corridor providing a means of egress is exempt from installing a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in the Florida Fire Prevention Code.
    a. Five stories
    b. Seven stories
    c. Four stories
    d. One story

5. Any unit owner desiring to be a candidate for board membership must be eligible to serve on the board of directors:
    a. At the deadline for submitting candidate information sheets
    b. At the time of the first notice of annual meeting
    c. As of the date of the annual meeting
    d. At the time of the deadline for submitting a notice of intent to run

6. "Bulk assignee" means a person who is not a bulk buyer and who:
    a. Acquires a minimum of fifteen condominium parcels in a single condominium
    b. Acquires more than seven condominium parcels in a single condominium
    c. Acquires more than nine condominium parcels in a single condominium
    d. Acquires more than thirteen condominium parcels in a single condominium

7. A cooperative association may suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for any of the following except:
    a. If a unit owner is more than 60 days delinquent in paying a monetary obligation due to the association
    b. Failure to comply with any provision of the cooperative documents
    c. Failure to comply with any reasonable rule of the association
    d. If a unit owner is more than 90 days delinquent in paying a monetary obligation due to the association

8. In an HOA, suspension of use of common elements does not impair the right of an owner or tenant of a parcel to:
    a. Use recreational facilities, such as pool or tennis courts
    b. Exclusively reserve common facilities for a private event, which all fees for use of the facility are paid in full prior to the event
    c. Access of vehicle through resident gate using association issued fog or gate card
    d. Access of vehicle through the guest gate, by showing identification or other proof of residency

9. Del Boca Bleu Homeowners' Association acquires a parcel through foreclosure on December 1, 2011. It now finds that the parcel also has unpaid assessments, late fees and attorneys' fees to Del Boca Master, totaling $14,560 as of November 30, 2011.

    a. Del Boca Bleu must pay 1% of the original mortgage amount or 6 months' assessments to Del Boca Master, whichever is greater.

    b. Del Boca Bleu is not liable for any monies due to Del Boca Master prior to the foreclosure on December 1, 2011

    c. Del Boca Bleu must pay 1% of the original mortgage amount or 12 months' assessments to Del Boca Master, whichever is lesser.

    d. Del Boca Bleu is not liable for the late fees or attorneys' fees, but must pay the unpaid assessments in full.

10. A vacation rental is:

    a. any unit or group of units in a condominium, cooperative, or timeshare plan which is rented more than three times in a calendar year for periods of less than 30 days

    b. any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, or four-family house or dwelling unit that is also a transient public lodging establishment which is advertised or held out to the public as a place regularly rented for periods of at least 7 days

    c. any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, or four-family house or dwelling unit that is also a transient public lodging establishment

    d. any individually or collectively owned single-family, two-family, or four-family house or dwelling unit that is also a transient public lodging establishment which is rented more than three times in a calendar year for periods of less than 30 days

11. When a mobile home park owner proposes to change use of the land comprising a mobile home park, mobile homes will therein be evicted for some or all of the lots:

    a. The park owner must give written notice to the mobile home of its right to purchase the mobile home park by U.S. mail. The association will have 390 days to execute a contact to purchase the park at the proffered price.

    b. The park owner must give written notice to the mobile home of its right to purchase the mobile home park by U.S. mail. The association will have 90 days to execute a contact to purchase the park at the proffered price.

    c. The park owner must give written notice to the mobile home of its right to purchase the mobile home park by U.S. mail. The association will have 60 days to execute a contact to purchase the park at the proffered price

    d. The park owner must give written notice to the mobile home of its right to purchase the mobile home park by U.S. mail. The association will have 45 days to execute a contact to purchase the park at the proffered price

12. The following, made in any public adjuster's advertisement or solicitation, are considered deceptive or misleading except:

    a. A statement, that, the public adjustor, for a fee, can assist the insured policyholder in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract

    b. A statement or representation that invites an insured policyholder to submit a claim by offering monetary or other valuable inducement

    c. A statement or representation that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim

    d. A statement or representation, or use of a logo or shield, that implies or could mistakenly be construed to imply that the solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency

13. A claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as defined in s. 624.604, for loss or damage caused by the peril of windstorm or hurricane is barred unless notice of the claim, supplemental claim, or reopened claim was given to the insurer in accordance with the terms of the policy within ____ after the hurricane first made landfall or the windstorm caused the covered damage.

    a. 5 years

    b. 7 years

    c. 4 years

    d. 3 years

14. To ensure that the Citizens Property Insurance corporation is operating in an efficient and economic manner while providing quality service to policyholders, applicants, and agents, the board shall commission an independent third-party consultant to prepare a report and make recommendations on the relative costs and benefits of:

    a. Outsourcing various policy issuance and service than performing such functions in house.

    b. Offering other insurance products, such as life or health

    c. Discontinuing windstorm policies to certain sectors of the population

    d. Discontinuing commercial windstorm insurance

15. Structural damage" means a covered building, regardless of the date of its construction, has experienced the following:

    a. Foundation displacement or deflection in excess of acceptable variances as defined in ACI 318-95 or the Florida Building Code, which results in settlement related damage to the primary structural members or primary structural systems that does not prevent those members or systems from supporting the loads and forces they were designed to support

    b. Systems exceeds two and one-third the nominal strength allowed under the Florida Building Code for new buildings of similar structure, purpose, or location

    c. Damage that results in listing, leaning, or buckling of the interior walls to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base as defined within the Florida Building Code;

    d. Interior floor displacement or deflection in excess of acceptable variances as defined in ACI 117-90 or the Florida Building Code, which results in settlement related damage to the interior such that the interior building structure or members become unfit for service or represents a safety hazard as defined within the Florida Building Code;

16. In order to prevent additional damage to the building or structure from the sinkhole, the policyholder must enter into a contract for the performance of building stabilization and foundation repairs within __ days after the insurance company confirms coverage for the sinkhole loss and notifies the policyholder of such confirmation.

    a. 120

    b. 90

    c. 60

    d. 30

17. A product may not be advertised, sold, offered, provided, distributed, or marketed as hurricane, windstorm, or impact protection from wind-borne debris from a hurricane or windstorm unless it is approved pursuant to _____.

    a. s. 553.482

    b. s. 553.8542 or s. 553.248

    c. s. 553.842 or s. 553.8425

    d. s. 553.244

18. A public swimming pool or spa built before January 1, 1993, with a single main drain other than an unblockable drain must be equipped with at least one of the following features that complies with any American Society of Mechanical Engineers, American National Standards Institute, American Standard for Testing and Materials, or other applicable consumer product safety standard for such system or device and protects against evisceration and body-and-limb suction entrapment:
    a. A suction-limiting vent system with a tamper-resistant atmospheric opening
    b. A gravity drainage system that does not use a collector tank
    c. (d) A manual pump shut-off system
    d. (e) A device or system that prohibits disabling the drain

19. A condominium, or cooperative association or the owner in a condominium or shareholder ion a cooperative may file for arbitration when there is a dispute over all of the items below except:
    a. Requirements for any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto
    b. The failure of the board to properly levy a fee or assessment, in accordance with the association documents
    c. The failure of the board to properly conduct elections
    d. The failure of the board give adequate notice of meetings or other actions

20. A homeowners' association or owner in an HOA may file for arbitration:
    a. for failure of the board to properly conduct elections
    b. for failure of the board give adequate notice of meetings or other actions
    c. when there is a dispute over elections or recalls only
    d. for failure of the board to properly levy a fee or assessment, in accordance with the association documents