



# Creating Effective Boards of Directors



This course is approved by the DBPR Council of  
Community Association Managers, for 4 hours of  
continuing education credit in the area of:

**ELECTIVE/ OTHER**

Correspondence #9626175 Classroom #9626174

Provider #000842

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**Introduction**

This course is designed to provide managers with an understanding of the legal, financial, operational, and ethical requirements that boards of directors must accomplish for them to fulfill their fiduciary responsibilities. In the course, we will explore methods designed to provide guidance to board members on how to achieve the board's objectives and effectively perform their duties as directors and officers.

This course is designed to meet the for hour elective requirement for community association managers. However, it is also suitable for board members who wish to enhance their skills and knowledge.

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5600 Hiatus Road  
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**1 Introduction**

2 As we have learned, a community association is both a community and a business. A  
3 community association is established with principles similar to government. It functions to  
4 preserve, maintain, and enhance the property, association and assets. All community  
5 associations have three basic objectives:

- 6 • Preserve, protect and enhance the value of the community and its assets
- 7 • Enhance the lifestyle of community
- 8 • Provide a harmonious community

9 The association serves as a management entity. The owners are members and shareholders of  
10 the corporation. Members elect Board of Directors to operate and govern community.<sup>1</sup> The  
11 Board has specific responsibilities and rights, as granted by Florida statutes and defined in  
12 associations governing documents. Florida has organized associations as corporations,<sup>2</sup>  
13 granting those powers normally vested in a corporation, such as:

- 14 • Budgeting for the maintenance and operation of the property, association and assets
- 15 • Collecting the necessary funds to carry out its duties
- 16 • Entering into contracts, hiring employees, & taking other measures as needed to meet its  
17 objectives

18 The Board has specific management authority. It makes collective decisions at Board meetings.  
19 No one Board member can act on behalf of the Association. The Board elects officers, who  
20 have certain authority under the documents. Generally, the officers are charged with carrying  
21 out the day-to-day operations of the association and implementing decisions of the Board. The  
22 Board may decide to obtain professional assistance by hiring a manager or management  
23 company. Under Florida law, board may delegate to a manager certain responsibilities, but may  
24 never delegate its responsibility for decision-making.

25 Often, the directors and officers of association do not have necessary expertise to carry out  
26 complex management functions. Many are not familiar with, or do not understand, community  
27 association laws, or their documents. The more knowledgeable a board, the better the  
28 decisions it will make. The Legislature has recognized the importance of having well informed  
29 boards by providing condominium directors with a choice of taking a course that includes  
30 subject such as:

- 31 • Governance: Policies defined by the documents give overall direction to the association
- 32 • Management: Board actions and decisions to ensure that accomplish its work
- 33 • Operations: Activities, services or programs of the association
- 34 • Budgets, Reserves, & Financial Reporting
- 35 • Collections
- 36 • Bids & Contracts
- 37 • Preventing Fraud
- 38 • Condominium Operations,
- 39 • Elections

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<sup>1</sup> In a Mobile Home Park, the mobile home owners (not the park owner) belong to the association.

<sup>2</sup> Prior to April 1, 1992, some associations were not created as corporations. These entities will not have Articles of Incorporation.

- 1 • Records Maintenance, including Unit owner Access to Records, and
- 2 • Negotiating with vendors
- 3 • Defusing community conflict

4 A CAM has responsibilities which vary from association to association. Generally, a full-time  
 5 manager:<sup>3</sup> Remember, the Board makes policy and determines actions, which the manager  
 6 then implements. While the board selects vendors and executes contracts, the manager often  
 7 has substantial input into which vendor(s) the board should consider. The Manager often  
 8 selects, hires, and fires staff who report directly to him, although this differs from association to  
 9 association.

10 The manager usually directs day-to-day operations. In many associations, he selects &  
 11 supervises employees and supervises vendors. A CAM often manages financial operations,  
 12 including collecting assessments and verifying and paying invoices. He often oversees  
 13 maintenance of buildings and grounds, and enforces use restrictions & rules, pursuant to board  
 14 policy.

15 Good boards give manager wide latitude in carrying out responsibilities. The Manager is most  
 16 efficient when he receives direction through one source, rather than having each board member  
 17 provide differing assignments and directives.

18 This course is designed to help managers understand the legal, financial, operational, and  
 19 ethical requirements that boards must accomplish to fulfill their fiduciary responsibilities. We will  
 20 explore methods to provide guidance to boards on how to achieve their boards and effectively  
 21 perform their duties as directors and officers.

22 **Definitions and Legal Requirements**

23 The community association is a corporation, created under Florida Statutes, with a specific set  
 24 of governing documents. The association enters into a covenant with its members. It provides  
 25 shared amenities and facilities and the members pay a fair share for upkeep and maintenance.  
 26 The association has enforcement authority over rules and regulations governing the community;  
 27 it prepares a budget for the upkeep and maintenance, and it collects fees, which, if unpaid, can  
 28 become a lien on the property. Directors make policy decisions at board members, which are  
 29 open to members, who may participate. The ultimate goal is to maintain the quality of the  
 30 property at or above the level when turned over by the developer and to maintain and enhance  
 31 the lifestyle of the community. The association should provide protection to the member's  
 32 investment and living environment.

33 Every Board has certain legislatively delegated authority to act on behalf of the owners, as  
 34 found in state statutes specific to not-for profits and each specific Association. F.S. 617, the  
 35 Not-for-Profit Act, Section 0302, gives Boards of directors certain authority. We have listed  
 36 some below.

- 37 • Sue and be sued and appear and defend in all actions Board and proceedings in its
- 38 corporate name to the same extent as a natural person
- 39 • Elect or appoint such officers and agents as its affairs shall require and allow them
- 40 reasonable compensation
- 41 • Adopt, change, amend, and repeal bylaws, not inconsistent with law or its articles of

<sup>3</sup> Part time managers usually have limited responsibilities

- 1 incorporation, for the administration of the affairs of the corporation and the exercise of its  
2 corporate powers
- 3 • Make contracts and incur liabilities, borrow money at such rates of interest as the  
4 corporation may determine, issue its notes, bonds, and other obligations, and secure any of  
5 its obligations by mortgage and pledge of all or any of its property, franchises, or income
  - 6 • Conduct its affairs, carry on its operations, and have offices and exercise the powers  
7 granted by this act in any state, territory, district, or possession of the United States or any  
8 foreign country (usually delegated to Manager)
  - 9 • Merge with other corporations both for profit and not for profit, domestic and foreign, if the  
10 surviving corporation is a corporation not for profit

11 F.S. 617 further provides Boards of directors with authority to take actions as may be necessary  
12 in emergencies. The specific statutes for each community Association narrow these broad re-  
13 sponsibilities. For instance, F.S. 718, F.S. 719, and F.S. 720<sup>4</sup> require owner concurrence for  
14 certain actions, such as amending the governing documents, and mandates that the Board  
15 meet defined obligations, such as:

- 16 • Adequately insure the community property and assets
- 17 • Present an annual budget, which considers long term maintenance funding, which owners,  
18 may, under specific circumstances override; levy & collect assessment to fund operations;  
19 invest funds, and pay taxes
- 20 • Announce & conduct meetings, with limited exclusions, permitting owner attendance &  
21 participation (usually delegated to Manager)
- 22 • Enter into contracts, employ staff and professionals, such as Managers, attorneys,  
23 accountant, engineers, etc. and provide necessary services to maintain the common  
24 property
- 25 • Enforce use restrictions, including enacting rules & regulations (rules & regulations usually  
26 included in documents; Board may pass additional rules. Change in rules may require a 14  
27 day notice to owners. Any committee levying fines must give a 14 day notice)
- 28 • Enter into litigation

29 We must also examine the standards to which directors, officers and Managers should adhere.  
30 These standards apply to all circumstances in which these individuals find themselves. Clearly,  
31 Managers, directors and officers should always conduct themselves with a high degree of  
32 integrity and with honor.

33 The Not-for-Profit Act, F.S. 617.0830, spells out general standards of conduct for directors:

- 34 • A director shall discharge his or her duties as a director, including his or her duties as a  
35 member of a committee in good faith, with the care an ordinarily prudent person in a like  
36 position would exercise under similar circumstances; and in a manner he or she reasonably  
37 believes to be in the best interests of *the corporation*.
- 38 • In discharging his or her duties, a director may rely on information, opinions, reports, or  
39 statements, including financial statements and other financial data, if prepared or presented  
40 by:
  - 41 ▪ One or more officers or employees of the corporation whom the director reasonably be-  
42 lieves to be reliable and competent in the matters presented;

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<sup>4</sup> F.S. 718 – Condominium Act; F.S. 719 – Cooperative Act; F.S. 720 – Homeowners Association Act

- 1       ▪ Legal counsel, public accountants, or other persons as to matters the director reasona-  
2       bly believes are within the persons' professional or expert competence; or
- 3       ▪ A committee of the Board of directors of which he or she is not a member if the director  
4       reasonably *believes the committee merits confidence*.
- 5       • A director is not acting in good faith if he or she has knowledge concerning the matter in  
6       question that makes reliance otherwise permitted by the sections above unwarranted.
- 7       • A director is not liable for any action taken as a director, or any failure to take any action, if  
8       he or she performed the duties of his or her office in compliance *with this section*.

9       It further defines conflicts of interest in F.S. 617.0832 and provides certain protections to officers  
10      and directors in F.S. 617.0834. Both sections speak to acts or behaviors that officers and direc-  
11      tors must avoid. F.S. 617.0832 states:

- 12      • No contract or other transaction between a corporation and one or more of its directors or  
13      any other corporation, firm, Association, or entity in which one or more of its directors are  
14      directors or officers or are financially interested shall be either void or voidable because of  
15      such relationship or interest, because such director or directors are present at the meeting  
16      of the Board of directors or a committee thereof which authorizes, approves, or ratifies such  
17      contract or transaction, or because his or her or their votes are counted for such purpose, if:
  - 18          ▪ The fact of such relationship or interest is disclosed or known to the Board of directors or  
19          committee which authorizes, approves, or ratifies the contract or transaction by a vote or  
20          consent sufficient for the purpose without counting the votes or consents of such inter-  
21          ested directors;
  - 22          ▪ The fact of such relationship or interest is disclosed or known to the members entitled to  
23          vote on such contract or transaction, if any, and they authorize, approve, or ratify it by  
24          vote or written consent; or
  - 25          ▪ The contract or transaction is fair and reasonable as to the corporation at the time it is  
26          authorized by the Board, a committee, or the members.
- 27      • Common or interested directors may be counted in determining the presence of a quorum at  
28      a meeting of the Board of directors or a committee thereof which authorizes, approves, or  
29      ratifies such contract or transaction.

30      F.S. 617.0834 asserts:

- 31      • An officer or director of a nonprofit organization recognized under s. 501(c)(3) or s. 501(c)(4)  
32      or s. 501(c)(6) of the Internal Revenue Code of 1986, as amended, or of an agricultural or a  
33      horticultural organization recognized under s. 501(c)(5), of the Internal Revenue Code of  
34      1986, as amended, is not personally liable for monetary damages to any person for any  
35      statement, vote, decision, or failure to take an action, regarding organizational management  
36      or policy by an officer or director, unless:
  - 37          ▪ The officer or director breached or failed to perform his or her duties as an officer or di-  
38          rector; and
  - 39          ▪ The officer's or director's breach of, or failure to perform, his or her duties constitutes:
    - 40              ♦ A violation of the criminal law, unless the officer or director had reasonable  
41              cause to believe his or her conduct was lawful or had no reasonable cause to  
42              believe his or her conduct was unlawful. A judgment or other final adjudica-  
43              tion against an officer or director in any criminal proceeding for violation of the  
44              criminal law estops that officer or director from contesting the fact that his or

- 1 her breach, or failure to perform, constitutes a violation of the criminal law,  
2 but does not estop the officer or director from establishing that he or she had  
3 reasonable cause to believe that his or her conduct was lawful or had no rea-  
4 sonable cause to believe that his or her conduct was unlawful;
- 5 ♦ A transaction from which the officer or director derived an improper personal  
6 benefit, either directly or indirectly; or
  - 7 ♦ Recklessness or an act or omission which was committed in bad faith or with  
8 malicious purpose or in a manner exhibiting wanton and willful disregard of  
9 human rights, safety, or property.
- 10 • For the purposes of this section, the term:
    - 11 ▪ "Recklessness" means the acting, or omission to act, in conscious disregard of a risk:
      - 12 ♦ Known, or so obvious that it should have been known, to the officer or direc-  
13 tor; and
      - 14 ♦ Known to the officer or director, or so obvious that it should have been  
15 known, to be so great as to make it highly probable that harm would follow  
16 from such action or omission.
    - 17 ▪ "Director" means a person who serves as a director, trustee, or member of the governing  
18 Board of an organization.
    - 19 ▪ "Officer" means a person who serves as an officer without compensation except reim-  
20 bursement for actual expenses incurred or to be incurred.

21 The Board and officers have a "fiduciary" responsibility to the unit owners. Simply put, the direc-  
22 tors and officers must place the best interests of the community above their personal interest.  
23 The courts have applied a standard called the "business judgment rule:" have the Board and of-  
24 ficers demonstrated that they have taken the reasonable care that an ordinary prudent busi-  
25 nessperson would in exercising and making decisions affecting the Association and its mem-  
26 bers? Further, an officer or director may not solicit, offer to accept, or accept anything or service  
27 of value for which consideration has not been provided for his or her own benefit or that of his or  
28 her immediate family, from any person providing or proposing to provide goods or services to  
29 the Association.<sup>5</sup>

30 The statutes and administrative rules for specific community Associations include similar lan-  
31 guage guiding directors and officers in the performance of their duties, and F.S. 468 part VIII  
32 and F.A.C. 61E-14 and F.A.C. 61-20 provide standards for Managers. We recommend that you  
33 review these periodically to ensure that you are familiar with and are following, to the best of  
34 your ability, these standards. Note that the DBPR has established penalties for failing to proper-  
35 ly adhere to meeting requirements.

### 36 Ethics

37 Hand in hand with standards for behavior are ethical responsibilities that officers, directors and  
38 the Manager have. Ethics is a way of being that influences the perception others have of us.  
39 Our ethical code shapes our choices, and our everyday life. Ethics speaks directly to our cha-  
40 racter.

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<sup>5</sup> This paragraph also applies to the Manager.

1 Ethical behavior is not necessarily the same as legal behavior. As an example, we have a *legal*  
2 *right* to convince our anorexic neighbor that she needs to try the new diet product we are mar-  
3 keting, but is certainly is *not ethical*. Ethics encompasses the sense of moral responsibility –  
4 our duty to respect and consider the rights and needs of others as well as ourselves.

5 Generally, a community develops an ethical character of its own. One hears of an Associa-  
6 tion that is “dishonest” in its collection practices. In fact, it is not the Association, but the leader-  
7 ship, from which the outside world is gauging that community’s ethical and moral behavior.

8 A Board needs to have an ethical guide (not always the President)—someone the Board and  
9 the majority of the community respect and upon whom they can rely. A good leader holds him-  
10 or herself to a higher community standard, and sets aside personal agendas for the betterment  
11 of the community. Because of his respect for others, he effectively holds space for creativity  
12 and ideas in his fellow directors and community members. Further, a leader recognizes that  
13 cooperation and compromise, without violation of principles, are important to achieving the  
14 community’s objectives. Oftentimes, the leader gives away the credit for a job well done – to  
15 employees, other Board members, and community volunteers.

## 16 **Functions & Responsibilities**

### 17 Creation of Policies, Rules, & Regulations

18 In our preclicensure classes, we learned that a community association is usually a not-for-profit  
19 corporation, legally accountable for management and maintenance of real or personal residen-  
20 tial property, owned by two or more entities, where a legally binding agreement commits the  
21 owners to share responsibility and costs for maintenance and administration of the property.

22 As corporations, the association has an organizational structure, sets goals & objectives, man-  
23 ages its assets, collects revenue and pays vendors for services rendered, recruits, hires, trains,  
24 supervises, disciplines, & fires employees, negotiates contracts, and otherwise carries out  
25 those actions necessary to achieve stated objectives.

26 Unlike most corporations, a community association must not only adhere to established laws  
27 and rules, but also certain strict rules, specific to that association, set when the community as-  
28 sociation is created. Therefore, in addition to preserving, maintaining, and enhancing the prop-  
29 erty, its value, and the association assets, the corporation must enforce governing documents  
30 designed to preserve the property and to create a peaceful, safe, and harmonious living envi-  
31 ronment for all residents.

32 Community associations thus have three basic functions:

- 33 • business – carrying out the basic operations and maintenance of the property through col-  
34 lection of assessments (taxes) and other revenues, and payment of employees and vendors
- 35 • government – enforcing rules & regulations established to create a harmonious living envi-  
36 ronment
- 37 • community – promoting communications & a sense of community among residents

38 Every action of a community association should fall under one of these categories. As we ex-  
39 amine roles of directors, officers and the manager, and discuss issues and problems that arise,  
40 let us keep in mind the basic functions and objectives of community associations.

41 As a policymaker, a director or officer must understand the documents and statutes applicable

1 to that association. All organizations require rules & procedures to operate. In large corporate  
2 settings, we often find procedures manuals, instructing us on everything – from start the coffee  
3 in the morning, to answering the phone, to locking the doors if we are the last ones out, to how  
4 often the rules & procedures are reviewed and threshold for amending them.

5 Community associations have Articles of Incorporation, Bylaws, Covenants – but rarely does the  
6 developer provide a detailed set of instructions for use restriction enforcement, or contacting, or  
7 discretionary expenditures, or hiring employees, or collecting delinquent assessments. A good  
8 board of directors will create and implement procedures in certain basic areas:

- Use restriction & rule enforcement
- Collection of Delinquent Accounts
- Discretionary & emergency expenditures
- Disaster Preparedness & Recovery
- Personnel Policies
- Meetings (Agendas, Posting, Owner participation, etc.)
- Budgeting & Accounting
- Handling of receivables & payables
- Bids & Contracts
- Insurance Claims
- Handling complaints
- Appointment of Committees

9 It will also have:

- 10 • Position descriptions for all employees and contract employees (manager, maintenance su-  
11 pervisor, etc.)
- 12 • Position descriptions for officers, defining responsibilities & authority
- 13 • Position descriptions for committees, defining responsibilities & authority
- 14 • Inspection check lists
- 15 • Contractor performance evaluations
- 16 • Association weekly walk list
- 17 • Equipment lists
- 18 • Emergency contact lists

19 For a small association, each of these products might be merely a paragraph or two. Other as-  
20 sociations may have formalized procedures manuals.

### 21 Role of Members

22 Members of the association are responsible for protecting the assets and value of the  
23 association and complying for the governing documents and laws. A member must pay is  
24 assessments (dues, maintenance fees) in a timely manner. Members have the right to  
25 participate in meetings of the board and to participate and vote in member meetings. Members  
26 are responsible for the upkeep of their homes/units.

### 27 Role of Board

28 Board members are volunteers that join an association for a limited amount of time and pledge  
29 their commitment to help manage the association. Questions that a member who wishes to  
30 serve on the board might ask include:

- 31 • What is the mission of the association; who is likely to be interested in the mission of the

- 1 association?
- 2 • What is my vision for the association; is it consistent with the vision of my neighbors & the
- 3 current board?
- 4 • What are the issues facing the association?
- 5 • Is the current board fair and objective?
- 6 • Does the current board have an understanding of its membership and what their priorities
- 7 and needs are?
- 8 • Are there demands from the membership that are disrupting the association?
- 9 • What gaps in expertise exist on the current board?
- 10 • Why are other members not participating in our association?

11 Most importantly, a member should identify the roles the board has, and evaluate its success in  
 12 fulfilling each role. He may also want to consider what he brings to each function. Some of the  
 13 specific responsibilities include:

- 14 • Identify the basic principles by which the association is guided and enforce the documents.
- 15 • Amend policies & procedures when necessary to more effectively operation association.
- 16 • Recommend amendments to the documents to members.
- 17 • Establish sound fiscal policies and maintain.
- 18 • Develop a workable budget.
- 19 • Institute reserves for future replacements
- 20 • Establish and collect assessments to pay for common expenses.
- 21 • Maintain accurate records.
- 22 • Establish, publicize, and enforce rules and penalties.
- 23 • Authorize legal action against owners who do not comply with the rules.
- 24 • Appoint committees and delegate authority to them.
- 25 • Provide adequate insurance coverage.
- 26 • Inform board members of all business items that require their vote at a board meeting.
- 27 • Permit members to participate in all meetings.
- 28 • Attend and participate at meetings.

29 Role of Officers & Manager

30 Remember: No member of association or director of board may act on behalf of association,  
 31 without having been granted the authority by the board. Three positions are key in ensuring that  
 32 meetings are effective, efficient and achieve the objectives set forth in the agenda: President,  
 33 Secretary and Manager. We will briefly discuss the role of each.

34 **President:** The President is the leader of the community and board. The Bylaws usually grant  
 35 the President all powers normally vested in the Chief Executive Officer of a corporation; they  
 36 may also grant president specific, named powers. No officer other than President may act on  
 37 behalf of Association. **The President may only take actions to the extent of the powers**

1 **granted to him by statutes, the documents, and procedural rules adopted by board.**

2 Generally, the president:

- 3     ▪ Directs day-to-day activities of association.
- 4     ▪ Assists the board and officers in setting the objectives for the association.
- 5     ▪ Motivates residents to volunteer for the association.
- 6     ▪ Sets meeting agendas and conducts meetings.
- 7     ▪ If the association has a manager, is the liaison between manager and board.
- 8     ▪ In many associations with part time managers, the president carries out some functions
- 9       normally associated with a manager (including those defined below).
- 10    ▪ Once the board has adopted a resolution, has the responsibility for ensuring it is suc-
- 11      cessfully implemented.

12 The President is the “controller” of meetings. He sets the agenda, clarifies motions and  
13 amendments to motions, resolves disputes among parties speaking (or attempting to speak) at  
14 meetings, calls for the vote on a motion, and announces whether a motion has passed or failed.  
15 The President should protect the board (or membership) from frivolous or delaying motions put  
16 forth by refusing to recognize them. He expedites business so that the agenda is carried out in  
17 a timely manner, and he declares the meeting adjourned or recessed (as appropriate).

18 The President should not initially participate in debate on an item. He typically listens to debate,  
19 and may comment on motion before vote. If he wishes to engage in the debate, he should turn  
20 chair over to vice president.

21 When the President is also a director, he votes on motions before the board. If the President (or  
22 any other officer) is not a director, he cannot vote on motions. Note that, generally the president  
23 does not make or second motions; to do so; he should turn the chair over to another member of  
24 the board, commonly vice president.

25 **Secretary:** The Secretary is the official custodian of records for association. He is responsible  
26 for ensuring board meeting agendas are posted, and minutes taken and transcribed and for fil-  
27 ing of documents and attesting to validity of certain official records. In essence, the secretary is  
28 the key to association memory and history. A good secretary is familiar not just with the actions  
29 of current board, but of past boards as well, thereby providing a perspective for current activities  
30 and motions.

31 Specific duties of the Secretary include:

- 32     • Maintaining a record of all meetings of the association.
- 33     • Maintaining all committee reports.
- 34     • Preserving association’s official membership roll.
- 35     • Calling role at meetings: directors & officers at board meetings; members at membership
- 36       meetings.
- 37     • Sending out agendas and agenda packages in advance of meetings.
- 38     • Posting agendas for meetings.
- 39     • Maintaining all records and overseeing access to such records.
- 40     • Ensuring that access to records is provided within statutory time frames.

- 1 • Applying official corporate seal to all certified copies (documents requiring seal of  
2 corporation).

3 **Although the board may delegate many of these functions to the manager, the secretary**  
4 **holds these responsibilities by statute, and should assure that the manager is properly**  
5 **carrying out these functions.**

6 It is helpful for secretary to have an audio recorder for meetings, to ensure an accurate record of  
7 meeting. However, once minutes are transcribed and approved, the association can dispose of  
8 the audio record.

9 **Treasurer:** The Treasurer is the chief financial officer of the association (custodian of assets).  
10 He is responsible for preparing the budget and issuing financial statements. He oversees the  
11 financial health and well-being of the association. He advises the board and officers if sufficient  
12 monies exist to carry out budgeted objectives and projects, and, if sufficient funds are not  
13 available, he may suggest strategies to be evaluated, should additional funds be needed.

14 Once the board sets objectives for the association, the treasurer oversees financing of those  
15 objectives. At every regular board meeting, the treasurer should present a financial report,  
16 outlining income and expenses of association, and pointing out any financial problems that the  
17 association may be facing.

18 Some boards delegate the responsibility of financial reporting to the manager. However, by law,  
19 the treasurer is ultimately responsible for the financial oversight of the association.

20 **Community Association Manager:** The Manager usually has specific responsibilities in terms  
21 of meetings. Among other things, he assists the president in setting the agenda, and prepares  
22 agenda packages of materials, and reviews agenda package with directors and prepares them  
23 for the meeting. He also contacts and prepares vendors, contractors, and experts who need to  
24 attend board meeting. Often, the manager prepares and presents manager's report, and may  
25 prepare president's report, financial report for treasurer, etc., and prepares them for  
26 presentation to the board. When the Manager meets with each board member, he has an  
27 opportunity to familiarize the director (or officer) with specific laws, rules, and procedures  
28 regarding the agenda items. The Manager should consider including an educational half hour at  
29 the beginning of each board meeting as well.

30 **Fiduciary Responsibilities & Conflicts of Interests**

31 Directors, and each officer of the association, have a fiduciary<sup>6</sup> relationship with the members of  
32 the association. The relationship imposes obligations of trust and confidence on the officers  
33 and directors, who must always act in good faith, on behalf of the association. The fact that  
34 officers or directors are unpaid in NO way relieves the fiduciary obligations. The fiduciary  
35 responsibility requires directors and officers to act in good faith and in the best interests of the  
36 members. It means that the directors and officer must exercise due care and diligence when  
37 acting for the community and it requires them to act within the scope of their authority.

38 When a member accepts a position on the board, he is presumed to know the duties and  
39 responsibilities of a board member. If an officer, director (or manager) of a **condominium**  
40 solicits or accepts anything of value, that the officer, director, or manager has not paid for, from

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<sup>6</sup> Fiduciary duty: holding in trust of something by one person for another, including holding or adminis-  
tering property owned by another.

1 any person providing or proposing to provide goods or services to the association, the officer, or  
2 director will be subject to a civil penalty. He may accept “**NOTHING OF VALUE.**” The same  
3 principles apply to cooperatives and homeowners’ associations.

4 Boards that do not properly maintain the association property are not fulfilling their fiduciary  
5 responsibility to “preserve, protect and enhance the value” of community and its assets.

6 The **Condominium Act** includes additional standards for discharge of duties. The director or  
7 officer must discharge his responsibilities in good faith, with the care an “ordinary prudent  
8 person” would exercise, in the best interests of the association. Further, the Act holds directors  
9 liable for money damages if the director commits a crime, receives improper personal benefit  
10 (directly or indirectly) or if his acts are reckless, in bad faith, with malicious purpose or in manner  
11 exhibiting wanton and willful disregard of human rights, safety or property.

12 If a member believes that director in a condominium or cooperative has violated the law, he may  
13 complain to DBPR, which may issue a warning, or fine association. If the member believes that  
14 the director has violated documents, he may be able to seek alternative dispute resolution. In  
15 an HOA, a member believing a director has violated law or documents would need to seek pre-  
16 suit mediation.

17 Most directors, officers and managers do not deliberately put themselves at risk of conflicts of  
18 interest. However, directors and officers often do not understand what a conflict of interest is, or  
19 does not interpret what he is doing as a conflict. Common conflicts of interest include:

- 20 • Kickbacks – director or officer receives remuneration from a vendor for influencing the board  
21 to select a particular vendor or contractor
- 22 • Separate interest – director or officer has an interest in a vendor the association uses. .
- 23 • Self-dealing – director or officer uses the association’s assets, or his position within the as-  
24 sociation, for personal gain.
- 25 • Secret profit – director or officer benefits from a third party with whom the association is  
26 doing business and in which he has an undeclared interest.
- 27 • Bid rigging – director or officer informs a favored vendor of other bids.
- 28 • Third party clients – director or officer represents the association and another party, who is  
29 doing business with, or has a conflict with the association.

30 **Exercise 1: Select two conflicts of interests. Write examples for each, describing what**  
31 **the conflict would look like. Discuss how you as manager would work to resolve these**  
32 **once they have happened. Also describe the policies you would recommend to avoid the**  
33 **conflicts of interest.**

34 In a condominium, cooperative or HOA, a director can only abstain from voting when a financial  
35 conflict of interest exists. A member cannot abstain for reasons of general principle. The director  
36 must explain the conflict and the explanation must be recorded in minutes of the meeting.<sup>7</sup>

37 Occasionally, a board may have a director or officer who is a stockbroker, banker, day trader, or  
38 has another type of financial expertise. Before adopting recommendations from this director or  
39 officer, the board should determine if he has an expertise in community association finances

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<sup>7</sup> Note: Condominiums directors may also abstain without cause.

1 and does not have a conflict of interest. Keep in mind that what is good for an individual or  
 2 private company is oftentimes not good for an association.

3 Strategic Planning & Visioning

4 A strategic plan lays out the blueprint for change within a community association. It takes the  
 5 association from a “pie in the sky” vision or from a “we’ve always done it this way” to specific  
 6 actions. Strategic planning can:

- 7 • Help involve members as well as directors in the planning and budgeting process.
- 8 • Create a vision for the future.
- 9 • Help directors and members see the community’s financial status and how it relates to how  
 10 the community looks.
- 11 • Help members and directors buy into some common goals and objectives.

12 More specifically, strategic planning can enable the board to be proactive by envisioning  
 13 problems of the future and anticipating financial needs for the future.

14 **Exercise 2: Create a vision statement for your association. Consider what is important**  
 15 **to your community and what values should guide the association’s activities. Assess**  
 16 **the community for:**

- 17 • **Trends and conditions**
- 18 • **Problems and barriers (weaknesses)**
- 19 • **Opportunities and assets (strengths)**
- 20 • **Root causes of problems**

21 **Your vision statement should include a statement of values and a declaration of**  
 22 **expected outcomes (precise, practical and measurable).**

23 Financial Management

24 Many directors and officers do not have experience with budgets and financial reporting. The  
 25 manager, therefore, must invest time in explaining what a budget is, how it is developed, how to  
 26 read financial reports, and so on. This part of the course provides basics that the manager can  
 27 use in discussing financial management issues with directors and officers.

28 A community association is legal entity (corporation) that maintains common property for benefit  
 29 of owners or members. Operating an association is similar to running a business. The board of  
 30 every corporation must plan its revenues and expenditures for upcoming year. The board  
 31 protects members (stockholders) by estimating how much money it must collect to properly  
 32 operate association (corporation)

33 All community associations are required to have a financial plan, which allows association to  
 34 estimate future income and expenditures. An association budget assists board by projecting  
 35 expenses for coming year, creating a benchmark by which to compare board’s stewardship of  
 36 financial assets of association, and serving as basis for determining financial obligations of its  
 37 members. The budget also serves as a financial reporting tool when comparing expected  
 38 results with actual results (i.e., budgeted monies vs. monies actually spent). Basically, the  
 39 budget is a map to guide board in its decision-making throughout the year. Since the budget is  
 40 an estimate of future revenues and expenses, it does not project costs for unexpected events,

1 such as pipe breaks, hurricanes or elevator breakdowns. Once adopted, the budget becomes  
2 basis for allocating annual assessments.<sup>8</sup>.

3 The approved budget should be signed by treasurer and one other officer and/or president and  
4 sealed with corporate seal. The board should periodically review the budget against revenues  
5 and expenses, and adjust it to reflect realities of the association's situation.

### 6 Fiscal Year

7 Associations are required to have *annual* budgets. Corporations develop budgets based upon  
8 the 12 month period best suited to their production or services. Accountants call the annual  
9 budget year a "*fiscal year*." This holds regardless of when the budget year starts. While most  
10 community associations based their budgets on the traditional *January to December* year, you  
11 may find that the association in which you work uses a different fiscal year, for instance *May to*  
12 *April*.

### 13 Financial Records

14 Financial records comprise all records that chronicle, measure, and communicate financial data  
15 and statistics, whether maintained in a computerized (electronic) system or on a spreadsheet.  
16 Some association records for budgeting and accounting include, but are not limited to:

- 17 • Approved budget
- 18 • Statement of revenues & expenditures through the last month of current fiscal year
- 19 • Past years budgets and EOY9 revenue & expenditure statements
- 20 • Accurate, itemized & detailed receipts for all expenditures
- 21 • Accurate, itemized & detailed information documenting revenues from sources other than  
22 routine & special assessments
- 23 • Up to date account for each unit, parcel, or shareholder, including:
  - unit or parcel number & name of owner/shareholder
  - due date for payment of any special assessments
  - amount paid
  - late fees
  - balances due & for what (assessments, fines, late fees, etc.)
  - due date for payment of regular assessments
  - amount of assessment(s) due
  - date paid
  - other charges
- 24 • Accounting statements & financial reports for the association, including audits or reviews,  
25 and any statements issued periodically to update the board
- 26 • Bank statements & reconciliations for all accounts. This should include copies of cancelled  
27 checks.
- 28 • Engineering reports on the status of major components
- 29 • Maintenance records on repairs & service
- 30 • Current reserve schedule, and estimates from professionals on current costs of each  
31 component or item

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<sup>8</sup> Assessments, also referred to as membership fees, maintenance fees, or some other term, are based on either a per unit charge or by percentages recorded in documents

<sup>9</sup> EOY = End of Year

- 1 • Current contracts
- 2 • Any information from contractors on changes proposed for the next contract year
- 3 • Any information from utilities companies regarding potential increases
- 4 • Any announcements regarding changes in minimum wage, tax rates, etc.
- 5 • Bids for contracts from the past year <sup>10</sup>
- 6 • Monthly or quarterly tax returns

7 Preparing the Budget

8 All community associations have three basic objectives:

- 9 • Preserve, protect and enhance the value of the community and its assets
- 10 • Enhance the lifestyle of community
- 11 • Provide a harmonious community

12 **Note that no objectives states: “Keep assessments low.”** An association that focuses on  
 13 maintaining unreasonably low assessments is probably neglecting property and, at some point,  
 14 will face special assessments to repair and replace components. Associations that do not  
 15 property maintain components and property are not fulfilling their responsibility to “preserve,  
 16 protect and enhance the value” of community and its assets. It is your job as the manager to  
 17 help the board understand what is necessary to meet it objectives.

18 Depending upon association, the board may choose to have the manager develop budget for its  
 19 review, or it may choose to have the treasurer put together a draft budget, with or without the  
 20 assistance of a budget committee. Each approach has advances and disadvantages. When  
 21 the association is undergoing significant change, or expects major repairs and projects to  
 22 appreciably increase costs, the manager may recommend to the board that it consider involving  
 23 community members. Members who are involved in budget development process will more  
 24 likely accept and understand budget and expenditures required by association. They will also  
 25 have “ownership” of proposed budget, and can assist in educating other community members  
 26 regarding increases and changes needed.

27 The manager should assure that the board and officers understand the statutory requirements  
 28 for budgeting and financial management.

29 Florida Statutes and Florida Administrative Codes provide certain requirements for budgeting  
 30 and financial management. You should review statutory & administrative code information  
 31 carefully with your board and officers. Note that statutes include definitions and other  
 32 references to budgeting and financial statutes that they may find helpful.

33 In **Condominiums**, statutes and rules to which you should refer include F.S. 718.112(2)(e), F.S.  
 34 718.112(2)(f), F.A.C. 61B-22.003 and F.A.C. 61B-22.005. In **Cooperative**: F.S. 719.106,  
 35 F.A.C. 61B-76.003, and F.A.C. 61B-76.005 provide basic requirements for budgets.

36 Associations must provide for certain expenses in proposed budget, unless item does not apply.  
 37 Note that condominium and cooperative associations must include reserves in the proposed  
 38 budget.

<sup>10</sup> Condominiums & cooperatives are required to maintain the bids from vendors not chosen to perform the work for a minimum of one (1) year.

1 The association must provide each owner with a copy of the proposed budget and reserve no  
2 less than 14 days prior to meeting at which association will consider budget. Usually, the board  
3 votes on proposed annual budget, although some associations may require a vote by owners. If  
4 the association wants to waive or partially fund reserves, it must hold a special owners meeting  
5 prior to budget meeting. If the association has not fully funded reserves, it must publish a  
6 statement with budget, alerting owners that the lack of reserves may result in future special  
7 assessments. If the association maintains limited common elements at expense of only unit  
8 owners entitled to use limited common elements, the budget must include a separate schedule  
9 for expenses pertaining to limited common elements. Multi-condominium or multi-cooperative  
10 associations must prepare a separate budget for each condominium or cooperative operated by  
11 association as well as for the master association. Minutes of the association must reflect the  
12 adoption of the budget. A copy of proposed and adopted budgets must be maintained as part of  
13 association's financial records.

14 If the board adopts a budget, which increases assessments more than 15 percent over prior  
15 year assessments, the Condominium and Cooperative Acts provide that 10 percent of voting in-  
16 terests are entitled to petition the board to call a special unit owner meeting to reconsider and  
17 enact a substitute budget, which does not exceed 15% of the prior year's assessment.

18 In Homeowners Associations, F.S. 720.306 provides basic requirements for budgets. There is  
19 no statutory definition of common expenses for mandatory homeowners' associations. It is im-  
20 portant to review the documents of a community association; they are the primary source for the  
21 definition of common expenses. The budget must reflect estimated revenues and expenses for  
22 that year and estimated surplus or deficit as of end of the current year. It Budget must also set  
23 out separately all fees or charges paid for by association for recreational amenities, whether  
24 owned by association, developer, or another person. It must give owners notice of budget meet-  
25 ing and either provide a copy of budget or advise that a copy is available without charge upon  
26 request.

27 The budget may include reserves, which must be determined, maintained, and waived by  
28 owners, as specified by statute. The budget must include reserves if included in prior year or if  
29 developer included reserves and have just turned over association to owners. If the association  
30 has not fully funded reserves in its proposed budget, it must publish a statement with the  
31 budget, alerting owners that the lack of reserves may result in future special assessments, and  
32 that owners can elect to establish a reserve by a majority vote of all owners. Minutes of the  
33 association must reflect the adoption of the budget. A copy of proposed and adopted budgets  
34 must be maintained as part of the association's financial records.

### 35 Differences between Operating & Reserve Budgets:

36 An association usually has two basic sections to its budget: Operating & Reserves. The  
37 **operating budget**: identifies categories of expenses (referred to as "line items") for day-to-day  
38 activities of association. These expenses are anticipated to occur on a regular basis – weekly,  
39 monthly, quarterly, or annually. Monies allotted to each line item are approximations of what the  
40 association anticipates spending for a particular category, during that specific budget period.  
41 The Board can adjust operating line items throughout year<sup>11</sup> to reflect changes in association's  
42 circumstances. The operating budget may be very detailed for a large association, or have only  
43 a few operating line items, for a small association.

44 The **reserve budget** consists of monies restricted for specific purposes. The DBPR defines  
45 reserves as "*any funds, operating than operating, that are restricted to deferred maintenance*

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<sup>11</sup> Budget amendments

1 *and capital expenditures*” and any other funds restricted as to use by the association or its  
2 documents. A reserve may include funds only for projects anticipated to occur less often than  
3 annually – that is, it is a multi-year plan for specified items. It may also include monies for  
4 unexpected expenses – such as hurricane clean-up, or insurance deductibles. The  
5 Condominium and Cooperative Acts require that associations include in their proposed budget  
6 reserves for painting, pavement resurfacing, roof replacement, and any deferred or capital  
7 maintenance item anticipated to cost more than \$10,000. This may include items such as  
8 concrete restoration, pool refurbishment, etc. As opposed to operating accounts, an association  
9 may use reserves only for items in accounts identified, unless otherwise determined by unit  
10 owners.<sup>12</sup>

#### 11 How Do I Compute the Assessments?

12 Before the association calculates the assessments, it needs three pieces of data:

- 13 • How assessments are allocated among units/parcels
- 14 • Number of units or parcels in association
- 15 • How often assessments are to be collected
- 16 • Number of units or parcels should be clearly stated in documents

17 Occasionally you may find an association where the actual number of units is inconsistent with  
18 documents. In such cases, the association attorney should verify the legal basis for the number  
19 of units and the assessments.

20 How assessments are allocated among units is found in documents – usually the Bylaws. Most  
21 condominiums or cooperatives either assess by square footage of the unit versus total unit  
22 square footage, or equally. The association documents should state the frequency that  
23 assessment collected. In condominium and cooperatives, if the documents silent, the  
24 association must collect assessments no less often than quarterly. In HOAs, assessments must  
25 be collected at least annually.

#### 26 Special Assessments:

27 Special assessments are levied for expenses over those anticipated in the annual budget. Spe-  
28 cial assessments may be adopted by the board unless the governing documents provide other-  
29 wise. The Board must identify specific purpose of special assessment. This means that asso-  
30 ciation must clearly identify items on which it will expend funds and estimated amount of each.  
31 Some attorneys have taken the position that special assessments may not be increased at the  
32 special assessment meeting. If the special assessment is to be increased, they opine that as-  
33 sociation must re-notice it, with detail of new and/or amended items.

34 To approve the special assessment, the association must mail or deliver notice to condominium,  
35 cooperative and HOA members at least 14 days in advance of special assessment meeting.  
36 The notice must be posted in a conspicuous place on the property at least 14 days prior to  
37 meeting at which special assessment will be considered.

#### 38 Common Surplus & Deficit:

39 Common surplus or net income of a community association means excess of all receipts of as-  
40 sociation over common expenses. Members have an undivided share in common surplus (or  
41 deficit) of association. The common surplus is for the use of association and not for any individ-

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<sup>12</sup> That is, a vote of the owners is required to change use of reserve funds

1 ual member. When a member sells his unit/parcel, he loses any rights to the common surplus  
2 and is no longer responsible for any deficit in the budget.

3 Surplus income in the operating budget may be used to:

- 4 • Reduce the following year's budget (offset assessments)
- 5 • Allocate to a reserve account in any combination of allocation decided by board of directors

6 Surplus income from a special assessment may be:

- 7 • Refunded to the unit owners
- 8 • Used to offset future expenses in operating budget
- 9 • Allocated to a reserve account in any combination of allocation decided by board of directors
- 10 • Rolled over to proposed special assessment not yet enacted

11 There may be income tax ramifications for a surplus allocation, and the association should  
12 check with its accountant.

### 13 Control, Collections & Disbursement of Funds:

14 The board is responsible for control and disbursement of association funds. The board should  
15 review periodic financial statements to determine whether they are over or under budget in cer-  
16 tain categories and make adjustments accordingly. Condominium and cooperative associations  
17 can commingle reserve and operating accounts for investment purposes only. Multi condomi-  
18 nium or cooperative associations may commingle operating funds of separate condominiums or  
19 reserve funds of separate condominiums and for investment purposes only. A manager or  
20 management company an agent, employee, officer, or director of an association, must not  
21 commingle personal funds with any association funds.

22 Assessments (dues, maintenance) provide for the majority of an association's operating funds.  
23 All associations should develop written collection policies and distribute them to membership  
24 Components of a collections policy should include:

- 25 • Assessments & charges that members will routinely pay
- 26 • Frequency & due date for assessments
- 27 • How partial payments will be treated
- 28 • Date after which the association considers charges late
- 29 • Consequences for late payments
- 30 • Suspended privileges and amenities: if permitted in the documents, an HOA or  
31 condominium may suspend voting rights and right of a member to use common areas, for a  
32 reasonable time, if owner is more than 90 days delinquent in any monetary amount and has  
33 been given opportunity to appeal the decision.

34 Any communications related to collection of delinquent assessments may be subject to re-  
35 quirements of Federal Fair Debt Collections Practices Act and Chapter 559.72 of Florida Sta-  
36 tutes – it will be necessary to consult a licensed attorney to make that determination. The asso-  
37 ciation must treat all members same in collection of assessments.

38 Many board members, officers and members assume any monies paid when a member is de-  
39 linquent is paid first toward the assessment. Not so. When a member is in arrears, any monies

1 he pays goes first toward any interest charged, second to any late fees or administrative  
 2 charges, third to attorney’s fees and court costs, and last to the assessment.

3 If a unit/parcel is occupied by tenant, and the member is delinquent in payment of any monetary  
 4 obligation, the association may demand that tenant pay to the association “future monetary obli-  
 5 gations” related to the unit/parcel. The association must mail a written notice to owner of asso-  
 6 ciation’s demand to tenant to make payments. Tenant liability may not exceed the amount due  
 7 from the tenant to the tenant’s landlord. A tenant who acts in good faith in response to a written  
 8 demand from an association is immune from any claim from owner. If the tenant prepaid rent to  
 9 the parcel owner before receiving the demand from the association and provides written evi-  
 10 dence of paying the rent to the association within 14 days after receiving the demand, the tenant  
 11 shall receive credit for the prepaid rent for the applicable period and must make any subsequent  
 12 rental payments to the association to be credited against the monetary obligations of the parcel  
 13 owner to the association.

14 The Association may issue notices under F.S. 83.56 and may sue for eviction under F.S. 83.59-  
 15 83.625 as if the association were a landlord under part II of F.S. 83 if a tenant fails to make a  
 16 required payment. The association is not otherwise considered landlord under F.S. 83 and spe-  
 17 cifically has no duties under F.S. 83.51.

18 The tenant does not, by virtue of payment of monetary obligations, have any of rights of the  
 19 member to vote in any election or to examine books and records of association.

20 A member’s unit or parcel serves as collateral for assessments due association. An association  
 21 may place a lien on a unit for all unpaid assessments.<sup>13</sup> In condominiums and cooperatives, the  
 22 association must provide 30 days’ notice before placing a lien. In an HOA, the association must  
 23 provide 45 days’ notice, sent by certified or registered mail, return receipt, as well as first class.  
 24 If the member resides outside of United States, HOA may use first class mail only.

25 The lien is evidenced by recording a claim of lien with clerk of circuit court. In condominiums,  
 26 cooperatives and HOAs, a claim of lien is effective from time of recording for **one year** unless  
 27 an action to enforce lien is taken. A recorded claim of lien secures all unpaid assessments that  
 28 are due and those that become due plus interest, costs, and attorney fees until entry of a final  
 29 judgment of foreclosure.

30 The board of directors may bring an action to foreclose a claim of lien for unpaid assessments.  
 31 The action must be processed in the county court unless the unpaid assessments total **more**  
 32 **than \$15,000**, in which case, the lien would be foreclosed in **circuit court**. In condominiums  
 33 and cooperatives, the board must give at **least 30 days** written notice of its intention to  
 34 foreclose a claim of lien or association waives its rights to attorney’s fees and costs. An HOA  
 35 must provide 45 days written notice of its intent to foreclose. At a foreclosure, if the association  
 36 has adhered to all procedures, the association may collect reasonable attorney’s fees and court  
 37 costs. By statute, an HOA may purchase lot or home at foreclosure. If permitted in documents,  
 38 condominium and cooperatives may purchase a unit at foreclosure.

39 Investments:

40 While Florida Statutes and the Florida Administrative Code relating to various types of common

<sup>13</sup> Note: HOA may place lien for fine of \$1,000 or more. Fine may only exceed \$1,000 if provided in governing document.

1 associations do not restrict types of investments that associations may use to generate a return  
 2 on their operating or reserve funds, boards of directors, in determining investment policy and  
 3 strategies for their associations, must be guided by both Chapter 518 F.S., titled “**Investment of**  
 4 **Fiduciary Funds,**” and their own governing documents. A **fiduciary**, is one who acts in, in a  
 5 legal role, in the best interest of others. The board of directors:

- 6 • Is entrusted with management of association property;
- 7 • Given the power to act on behalf of and for benefit of association members; and
- 8 • Has a special relationship of trust, confidence, and responsibility towards said members

9 Associations should maintain operating accounts that are liquid and in sufficient amounts to pay  
 10 routine monthly invoices and potential emergencies. The Condominium and Cooperative Acts  
 11 prohibit commingling reserve funds with operating funds except for investment purposes.

#### 12 Financial Reporting:

13 Condominiums, cooperatives and HOAs must prepare an annual financial report **within a spe-**  
 14 **cific period** after close of association fiscal year. In an HOA, if 20 percent of parcel owners pe-  
 15 tition board for a more comprehensive financial report, the association must give notice and hold  
 16 a meeting of members within 30 days of receipt of petition. In a condominium, cooperative or  
 17 HOA, if approved by a majority of voting interests present at a duly called meeting of the asso-  
 18 ciation, an association may prepare or cause to be prepared a lower level report. **Note: Con-**  
 19 **dominium owners may not waiver required financial reports for more than 3 consecutive**  
 20 **years.** Financial statements must include separate accounting records for any ancillary opera-  
 21 tions of an association. Financial statements must be prepared on accrual. Fund accounting is  
 22 used when association has more than one fund. Financial reporting requirements:

23	≥ 50 units or ≥ \$100,000 (Coop/HOA)	Cash Basis	Any qualified person
24	≥ 75 units (Condominium)		
25	\$100,000.01 - \$200,000	Compilation	CPA
26	\$200,000.01 - \$400,000	Review	CPA
27	≥ \$400,000	Audit	CPA

28 Condominiums, cooperatives and homeowners’ associations must maintain accounting records  
 29 for a period of seven years. Separate records must be maintained for each condominium in a  
 30 multicondominium. Every association, whether for profit or not-for-profit, is required to file an  
 31 annual income tax return. In a homeowners’ associations having common properties or  
 32 common areas, the association pays the taxes. It may be possible for association to eliminate  
 33 real estate tax obligations and have tax included in the individual member’s tax bills by  
 34 application to county property appraiser’s office. All corporations, including every community  
 35 association, must file an annual report with Florida Department of State by May 1<sup>st</sup> of each year.

#### 36 Bids & Contracts:

37 Typically contractors and vendors seeking to do business with community associations submit  
 38 contracts or purchase agreements that protect sellers’ interest but not the association’s. Man-  
 39 agement must coordinate with the association attorney to ensure that all contracts over a certain  
 40 minimum amount must contain legal language which protects the association interest. Man-  
 41 agement must ensure that terms of an agreement include language that accurately reflects the  
 42 service or item it is receiving. If such service or item is of highly technical nature and/or has had

1 bid specifications developed by a professional engineer, architect, or consultant, management  
2 must ensure that the contract be reviewed and approved by respective professional prior to  
3 submission to board for final approval.

4 Many boards have retired professionals who believe that they have the qualifications to review  
5 these very technical contracts. In some cases this is true; however, the board must keep in  
6 mind that it does not have insurance against an error in judgment – as would a professional in  
7 the field. It is often wise to seek an outside expert for an opinion. The advantage of the retired  
8 professional is that he can understand the technical terms and have a better understanding of  
9 what is necessary.

10 The association should require contractors and vendors seeking business with association to  
11 submit copies of business licenses and proof of insurance coverage. Once a contract agreed  
12 upon but prior to its final execution, an insurance certificate naming association as co-insured or  
13 certificate holder must be received from contractor or vendor insurance agent.

14 Management should develop a chart that lists all existing contracts, describe service, and identi-  
15 fy vendor or contractor, amount, frequency of payment, dates of inception and expiration, and  
16 terms of renewal and of termination. The association can use chart to analyze invoices for ac-  
17 curacy, evaluate provider performance, determine when contracts can be resubmitted for com-  
18 petitive bidding, and prevent automatic renewal of contracts which limit termination to specific  
19 periods of time

20 Condominium and cooperatives with 100 units or more must obtain competitive bids if the pro-  
21 posed contract exceeds 5 percent of association's total annual budget, including reserves.  
22 There is no requirement to accept the lowest bid. No written contract is enforceable unless it  
23 discloses any financial interest or ownership of the manager, officers and /or directors. Con-  
24 tracts that are not subject to competitive bidding requirements:

- Employees
- Accountants
- Community association managers
- Landscape architecture services
- Attorneys
- Architects
- Engineering

25 If a contract was awarded under competitive bid procedures, the renewal of the contract is not  
26 subject to competitive bid requirements if the contract allows cancellation with 30 days' notice.  
27 If there is an emergency or if there is only one source of supply within the county where the  
28 association is located, then bidding procedures do not apply.

29 All condominium and cooperative association contracts for purchase, lease, or rental of  
30 materials for more than one year, and all contracts for services must be in writing. Any  
31 maintenance or management contract must specifically identify services, obligations, and  
32 responsibilities of manager or management contractor. Specifically, the agreement

- 33 • Must specify cost of each service, frequency of performance, and the number of persons  
34 who will be employed to perform the service.
- 35 • Must disclose any relationship that manager or contractor has with developer
- 36 • Is not legally enforceable if these requirements are not met.

37 In Condominiums only, if a director or officer has financial interest in a contract or firm doing

1 business with the association, he must make certain disclosures pursuant to F.S. 617.0832,  
2 which must be entered into minutes. The contract must be approved by 2/3s vote of directors  
3 present. At the next regular or special meeting of members, the contract must be disclosed,  
4 and those members may cancel by majority vote of those present. If cancelled by the members,  
5 the association is only liable for goods & services provided to the time of cancellation, with no  
6 termination fee, liquidated damages, or other penalty.

7 In Homeowners' Associations, all contracts that will be performed within 1 year after execution  
8 of such contract for purchase, lease, or renting of materials or equipment must be in writing. If a  
9 contract for purchase, lease, or renting of materials or equipment, or services requires payment  
10 by association that exceeds 10 percent of total annual budget of association, including reserve  
11 schedules (versus 5% for condominiums and cooperatives), association must obtain competitive  
12 bid. There is no requirement to accept lowest bid. A contract with a manager, if made by a  
13 competitive bid, may be made for up to 3 years. Following are exempt from competitive bid  
14 process:

- Employees
- Accountants
- Community association managers
- Materials, equipment, or services provided to association under local government franchise agreement by a franchise holder
- Attorneys
- Architects and landscape architects
- Engineering services

15 A contract executed prior to October 1, 2004, and any renewal thereof, is not subject to  
16 competitive bid requirements. If a contract was awarded under competitive bid process, then  
17 any renewal of that contract is not subject to such competitive bid requirements if the contract  
18 contains a provision that allows board to cancel the contract with 30 days' notice.

19 An association may enter into agreements to acquire leaseholds, memberships, and other  
20 possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf  
21 courses, marinas, submerged land, parking areas, conservation areas, and other recreational  
22 facilities, regardless of whether lands or facilities are contiguous to lands of community or  
23 whether such lands or facilities are intended to provide enjoyment, recreation, or other use or  
24 benefit to owners. Subsequent to recording declaration, agreements acquiring leaseholds,  
25 memberships, or other possessory or use interests not entered into within 12 months after  
26 recording declaration may be entered into only if authorized by the declaration as a material  
27 alteration or substantial addition to the common areas or association property. If the declaration  
28 is silent, any such transaction requires approval of 75 percent of total voting interests of the  
29 association. The declaration may provide that rental, membership fees, operations,  
30 replacements, or other expenses are common expenses; impose covenants and restrictions  
31 concerning their use; and contain other provisions not inconsistent with statute. An association  
32 exercising its rights under this subsection may join with other associations that are part of the  
33 same development or with a master association responsible for the enforcement of shared  
34 covenants, conditions, and restrictions in acquisitions.

### 35 Election and Removal of Directors & Officers:

#### 36 Directors:

37 As we discussed, every association has a board of directors. After the developer turns the  
38 association over to the owners, members of the association elect the board, or, w vacancy  
39 occurs on board, remaining board members may fill vacancy by affirmative vote of a majority of  
40 remaining directors, even if remaining directors constitute less than quorum, or by sole

1 remaining director, or by procedures outlined by statute and/or documents for holding an  
 2 election. Unless otherwise provided in bylaws, board member appointed or elected under this  
 3 section will fill the vacancy for the un-expired term of the seat being filled.

4 Florida law states that for a person to be eligible for board membership, he must:

- 5 • Be a natural person
- 6 • Be 18 years of age or older
- 7 • Not be a convicted felon whose right to vote has not been restored in the jurisdiction of his  
 8 or her residence<sup>14</sup>
- 9 • Currently, HOA and cooperatives cannot prohibit members who are delinquent in  
 10 assessments, unless the documents provide for this.
- 11 • If the property is jointly owned, each of the owners is qualified to serve on the board,  
 12 regardless of which has the membership right to vote (Exceptions: see Special  
 13 condominium requirements for directors)

14 If property is owned by artificial entity, (i.e., a corporation, trust, partnership) determining who  
 15 should be eligible to represent property presents a dilemma. If governing documents permit, a  
 16 representative of the corporation may be eligible for board.

**Special condominium requirements for directors:**

- 18 • **Persons suspended by DBPR are not eligible.**
- 19 • **If a member is 90 days delinquent in any monies (assessments, special assessments,  
 20 or fines) owed to association, the member cannot be seated if he wins election. He is  
 21 presumed to have abandoned position if he becomes 90 days delinquent while  
 22 serving on board of directors**
- 23 • **Co-owners in condominiums greater than 10-units may run, but (assuming both  
 24 receive sufficient vote to sit on board), only the highest vote getter may serve.  
 25 Exception: there are not enough candidates to fill the vacancies or the co-owners  
 26 own more than one unit.<sup>15</sup>**
- 27 • **Newly appointed or elected directors must:**
  - 28 ▪ **certify in writing, within 90 days after elected, that he has read association  
 29 declaration of condominium, AOC, bylaws, and written policy, will work to uphold  
 30 such documents and will faithfully discharge his fiduciary duty, or**
  - 31 ▪ **submit certificate of completion of educational curriculum administrated by DBPR  
 32 approved educational provider**
- 33 • **Failure to comply results in suspension until requirement met**

34 The association documents may have additional eligibility requirements. For example, statutes  
 35 do not require individual directors to be members of the association, but many association  
 36 bylaws do impose a membership requirement for eligibility.

<sup>14</sup> **Condominium only: If a convicted felon, rights must have been restored for a minimum of 5 years**

<sup>15</sup> Effective July 1, 2010

1 Unless provided for in the documents, directors serve for terms of one year. The term expires  
2 with election of successor at next annual meeting. The Bylaws may provide for terms longer  
3 than one year. Some associations have staggered terms for directors. In this case, certain  
4 “seats” are up for election in a specific year. The directors in the remaining “seats” continue to  
5 serve until their “seats” are due for election. Exception: (Condominiums only) staggered terms  
6 are limited to 2 years, and require a majority of total voting interest (TVI) affirmed staggered  
7 terms by a vote of the members after 10/1/2008. In condominium, if no one files to become a  
8 director, previous directors are eligible for appointment to continue on the board in the next  
9 year.

10 A condominium or cooperative board member’s term of office begins *immediately* after election  
11 has been completed and results have been announced. In a HOA, if a member has not  
12 previously agreed to serve, the term will begin when the “director elect” is notified and agrees to  
13 serve.

14 The number of directors on a board is usually fixed in the bylaws or in AOC.<sup>16</sup> Unless provided  
15 for otherwise in the document, condominiums and cooperatives must have no less than 5  
16 directors, unless condominium or cooperative has 5 or fewer units, in which case there must be  
17 at least 3 directors, and HOAs must have a minimum of 3 directors.

18 Some associations permit size of board to vary. DBPR has ruled that, unless a condominium or  
19 cooperative documents spell out a procedure to determine number of directors, the association  
20 must adhere to number set by statute. If the documents call for a greater than minimum number  
21 as beginning of range (e.g., 7-9 directors), the association can default to minimum number.<sup>17</sup>

22 A director may be removed from board

- 23 • By voluntary resignation
- 24 • By automatic removal due to failing to meet eligibility requirements
- 25 • By recall.

26 A recall may be of less than or more than majority of directors. It requires that board call  
27 meeting to certify (approve) or not certify (disapprove) removal of recalled directors. If not  
28 certified, the board must send to DBPR for arbitration:

- 29 • Condominium/cooperative – arbitration on-binding
- 30 • HOA – Arbitration binding

### 31 Condominium & Cooperative Election Procedures:

32 F.S. 718 and F.S. 719 spell out very detailed procedures for electing individuals to the board of  
33 directors. DBPR investigates any complaints of elections very carefully and will mandate that  
34 an election be re-conducted. It is particularly important that board members understand  
35 elections procedures.

36

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<sup>16</sup> AOC = Articles of Incorporation

<sup>17</sup> Note: Many attorneys will permit Board to vary number of director if so stated in documents. Check with attorney before changing number of directors

- 1 *Condominium/Cooperative:*
- 2 • Postmarked or hand-delivered not less than 60 days (excluding the date of election) prior to
- 3 election/annual meeting, association must deliver to each unit owner first notice of election.
- 4 • Any qualified person desiring to run for the board must give written notice to association not
- 5 less than 40 days (excluding the date of election) prior to date of the election.
- 6     ▪ No less than 5 days after receipt of notice of candidacy, association must provide a
- 7     receipt stating that the individual is eligible, or ineligible
- 8     ▪ If the association states that the individual is ineligible, it must provide the sections of the
- 9     statute or documents that make the individual ineligible
- 10 • No less than 35 days (excluding the date of election) prior to the election, candidate may
- 11 provide to the association an information sheet (8.5 x 11) about him/herself.
- 12     ▪ Currently, no requirement to validate information provided on candidate information
- 13     sheet
- 14     ▪ Information sheet may talk about any subject candidate wishes
- 15     ▪ Candidate may endorse other candidates
- 16     ▪ Candidate may make statements about other candidates. If candidate makes false
- 17     statement, he may be sued and held liable for those statements.
- 18 • No less than 14 days and no more than 30 days (excluding the date of election) prior to
- 19 annual meeting/election, association must send second notice of election and annual
- 20 meeting package. If number of candidates is less than or equals the number of available
- 21 positions, no election need to be held, and association will announce new directors at
- 22 annual meeting. If no one runs for a condominium board, prior year directors are
- 23 automatically eligible for reappointment in a condominium. Package otherwise must
- 24 include:
- 25     ▪ Notice of annual meeting & election, including detailed agenda
- 26     ▪ Candidate information sheets, if any, submitted by candidates.
- 27     ▪ A ballot listing all eligible candidates, last name first, in alphabetical order
- 28     ▪ Instructions for completing the ballot
- 29     ▪ An “inner envelope,” on which nothing may appear other than words “Ballot” or “Ballot
- 30     Only”
- 31     ▪ An outer envelope containing a space for:
- 32     ▪ unit number
- 33     ▪ unit owner’s name and signature
- 34     ▪ addressed to person authorized to receive ballots
- 35 • Statutory Ballot Requirement:
- 36     ▪ List, in alphabetical order by last name, each and every person who has declared his/her
- 37     candidacy
- 38     ▪ Be uniform in appearance and color
- 39     ▪ Be completed by unit owner
- 40     ▪ Be placed in inner envelope and inner envelope in outer envelope

- 1       ▪ Mailed or delivered to address pre-printed on outer envelope
- 2       ▪ One ballot (inside inner envelope) per unit voting interest
- 3       ▪ No ballot may indicate which candidates are incumbents; have write-in candidates, or
- 4       provide a space for a signature or other identifying mark
- 5       • After the ballot has been received by association, ballot may not be rescinded or changed.
- 6       That is, if owner wishes to withdraw and replace ballot submitted, he cannot do so
- 7       • Statutory Tabulation Requirements:
- 8       ▪ Association may appoint a committee to verify that only owners of record have
- 9       completed and turned in ballots. If so, association must post a notice, stating date, time
- 10      & place of “verification” committee.
- 11      ▪ At annual meeting, Chair will appoint individuals other than candidates for board (also
- 12      excludes household members, or relatives) to count the ballots.
- 13      ▪ These individuals will open and count all ballots in the presence of unit owners according
- 14      to Florida Administrative Rules.
- 15      ▪ Ballots must be disqualified if:
- 16          ♦ outer envelope is not signed by owner(s)/voting representative of unit
- 17          ♦ there is no inner envelope containing ballot
- 18          ♦ more than the proper numbers of candidates have been voted for
- 19          ♦ tally cannot be determined for whom the votes (s) are being cast
- 20          ♦ more than one ballot is contained in same inner envelope
- 21      ▪ Other documents may be placed in the inner envelope with a single ballot, as long as
- 22      there is not more than one ballot the vote will be valid<sup>18</sup>
- 23      ▪ If an owner signs his/her ballot, valid as long as no space requiring a signature
- 24      • Once first outer envelope is opened, association cannot accept any additional ballots
- 25      • An individual owning more than one unit may submit one outer envelope, containing an
- 26      inner envelope with ballot for each unit owned. All units owned must be listed on the outer
- 27      envelope
- 28      • Unless otherwise provided in documents, directors are elected by a plurality of votes cast.

29

Condominium/Cooperative Election Exception - Opt Out:

30 A cooperative of 100 or less units or a condominium of 10 or less units may “opt out” of these  
31 procedures if:  
32

- 33       ▪ An alternative procedure is clearly delineated in an amendment to association documents
- 34       ▪ A majority TVI votes for this procedure
- 35       ▪ Association need only opt out once; it need not revote on the “opt out” each year

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<sup>18</sup> **Note:** We recommend no other documents be included, but statute does not prohibit other documents being placed in either inner or outer envelopes

- 1     ▪ An association that has opted out may adopt any fair and equitable procedure as long as all
- 2       members are provided with an opportunity to serve and to vote. This could include having a
- 3       nominating committee, voting by general or limited proxy, or voting by voice vote.

4     Homeowners' Associations Election Procedures

5     Homeowners' Associations elections must be conducted according to the procedures found in

6     the governing documents. **NOTE:** The association must provide a minimum 14 day notice of the

7     election. Homeowners associations are permitted to elect members to the board by voting in

8     person or by proxy, unless otherwise stated in the documents.

9     If the governing documents permit voting by secret ballot by members not in attendance at

10    meeting:

- 11    • Requires 2 envelopes
- 12    • Owner must place election ballot in inner envelope, with no identifying markings, and place
- 13    inner envelope in outer envelope, providing name, lot or unit number, and signature of
- 14    owner
- 15    • Outer envelope to be mailed to association
- 16    • If eligibility of member to vote is confirmed & no other ballot submitted for that parcel or unit,
- 17    association will remove inner envelope, place with ballots personally cast
- 18    • All ballots opened at once
- 19    • If more than one ballot submitted for parcel or unit, all ballots disqualified
- 20    • Any vote received after close of balloting not considered

21    Any member may serve as a director and may nominate himself as a candidate before the

22    meeting or from the floor at the meeting, unless otherwise stated in the documents. A member

23    does not need to be present at the meeting to be nominated or elected. However, the member

24    cannot take office until he officially accepts directorship. Unless otherwise provided in the

25    documents, directors are elected by a plurality of the votes cast.

26    Officers:

27    Each association must have the officers specified in its articles of incorporation bylaws. If

28    documents have no such provision, required officers in each association, pursuant to F.S. 607

29    and F.S. 617, are:

- 30    ▪ President
- 31    ▪ Secretary<sup>19</sup>
- 32    ▪ Treasurer

33    The board may appoint one or more vice presidents, but they are not required by statute (they

34    may be required by association documents).

35    Unless the bylaws state otherwise, anyone may be an officer of the association including:

- 36    • a member of the association,
- 37    • a member of the board,

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<sup>19</sup> **Note:** Must have Secretary to conduct meetings. Secretary must be present at all meetings. A meeting cannot be held if Secretary does not attend.

- 1 • a property owner
- 2 • an employee of the association.

3 Traditionally, the president, secretary, and treasurer are members of both the board and the  
4 association, although membership is not required by law, and may not be required in  
5 documents. Individuals may hold more than one office in the association at one time. President  
6 and secretary are usually two different people because the secretary may be required to certify  
7 the president's signature on legal documents.

8 A quorum of the board of directors is required for election of officers. Officers are elected or  
9 appointed by the board of directors; they are not elected by membership unless documents  
10 provide for a membership vote. Unless otherwise stated in documents, officers are elected by  
11 the directors at a board meeting. The association must notice the meeting of the new board.  
12 Even if board remains unchanged from prior years, officers do not continue after the annual  
13 meeting. The board may choose to reelect same officers, or new officers, at first board meeting.  
14 Until it does so, there are no officers.<sup>20</sup> This is only time directors are permitted to vote by  
15 secret ballot

16 Each new board should meet immediately following annual meeting to elect or appoint officers,  
17 get files and records from outgoing board members and officers, and to conduct other urgent  
18 business such as signatures on signature cards for all bank accounts, set new board meeting  
19 dates, set up committees, etc.

20 Officers serve at the discretion of the board. They may be removed at any time without cause,  
21 unless governing documents provide otherwise. Officers of a not-for-profit corporation are not  
22 entitled to compensation unless the bylaws specifically permit the compensation. Officers may  
23 be reimbursed for out-of-pocket expenses paid on behalf of the association, and they may be  
24 paid for services performed for the association that are not in connection with their position as  
25 an officer.

### 26 **Meetings:**

27 Did you have a class in high school or college, teaching you, along with reading writing, and  
28 'rithmetic, running meetings? Few of us did. Yet meetings are the lifeblood of the association.  
29 It is during meetings that the board makes important policy decisions. It is during meetings that  
30 some owners speak out on issues of concern to them. It is during meetings that the board  
31 elects the officers who will guide the association for the coming year, approves critical projects,  
32 considers and enacts a budget, discusses and authorizes contracts, interviews and hires the  
33 manager. It is in meetings that the members elect a board of directors, amend documents,  
34 waive reserves, and impose fines on their neighbors.

35 Effectively planning, scheduling, preparing for, and participating in meetings are vital skills for a  
36 director or officer. We often critique others on their handling of meetings, but, until we have sat  
37 in the presidential hot seat, we probably do not understand the nature of running a meeting.

38 Association documents often prescribe times and/or places for annual meetings; agendas for  
39 annual and special member meetings and organizational Board meetings, etc. You need to

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<sup>20</sup> **NOTE:** If an officer is not also a director on the Board, he/she may not vote on items presented to the Board.

1 check your documents – especially the Bylaws – to ascertain if there are any provisions that limit meetings. Some that we have typically seen include:

- 3     ▪ Prohibition against meetings on major or federal holidays
- 4     ▪ Longer notification times before Board or member meetings
- 5     ▪ Specific location for member meetings
- 6     ▪ Specific days & times for member meetings
- 7     ▪ Specific agendas for annual and budget meetings
- 8     ▪ Specific language for noticing meetings

9 Where documents provide requirements less than statute or Administrative Rule, the Association must follow statute or Administrative Rule. However, where the standard is more stringent, the Association usually must adhere to its documents.

12 Some Association attorneys advise that certain of the requirements – such as specific agenda items – can be omitted when they do not apply to the Association. For instance, many documents require Committee reports at annual meetings. If the Association has no Committees, it need not include that as an item on the agenda.

16 However, other requirements – such as notice requirements – must be met. If the documents require that directors be given 5 days advance notice of Board meetings, then the Manager must advise the directors five days prior to the meeting that it is being scheduled. Note there is a difference between noticing members and noticing the directors. Furthermore, the requirement that directors be advised of a meeting five days in advance does not necessarily mean that the agenda must be set and package sent out at the same time. The Manager must verify and adhere to the specific noticing requirements.

23 We recommend that Managers review the documents carefully to assure that they have met or exceeded the requirements as stated. When necessary, the Manager should consult with the Association attorney to assure he is not contradicting the statutes.

26 *Member Meetings:*

27 A key to scheduling a member meeting is its purpose. For instance, condominium and cooperative annual meetings are required, for the primary purpose of electing new directors. The election process is separate from the meeting. Often there is little, if anything, on the agenda for the annual meeting. Therefore, the key in scheduling an annual meeting in a condominium or cooperative is assuring members have sufficient time to receive, complete and return ballots, so that a valid election can be held. In practical terms, achieving a quorum of members at the annual meeting is not essential to achieve the primary objective of the annual meeting.

34 This does not hold true for homeowners associations. At the annual meeting for an HOA, candidates for the Board may be nominated, and members vote, usually by secret ballot given out at the meeting. While members can give a proxy to another member to vote, the HOA must achieve a quorum of members, as it cannot hold the annual meeting without it.

38 In both cases, although the statutes only require a 14 day advance notice, the Association may want to provide more notice to assure that it achieves a response sufficient to hold an annual election. Note that, when we state that 14 days advance notice is required, this commonly means that the Association must:

1     ▪ mail (postmarked) or deliver to every member a letter at least 14 days in advance of the  
2       meeting

3     ▪ post the notice conspicuously on the property at least 14 days in advance of the meeting

4     We recommend that the Association include the date mailed/delivered and posted on the bot-  
5     tom of the notice.

6     For all member meetings, the Association should prepare an affidavit of mailing that states the  
7     date the notice was mailed/delivered and posted, and attaches the list of members with the ad-  
8     dress to which mailed/delivered, and the actual package contents. This protects the Associa-  
9     tion, should it receive an inquiry as to what was sent, or to which address the package was sent.

10    This holds true for other member meetings. The Association may wish to give a longer notice to  
11    assure that it can achieve a quorum of members (in person or by proxy) to consider the busi-  
12    ness of the meeting. Among other things, special meetings of members are generally required  
13    to:

14    ▪ Amend the documents

15    ▪ Waive the reserves

16    ▪ Add reserves to the budget where none exist (HOA)

17    ▪ Materially alter a common element (condominium/cooperative)

18    ▪ Waive fire safety requirements in certain common elements (condominium/cooperative)

19    Managers should check the documents and the statutes when planning a member meeting.

20    When noticing the meeting, the association must include the date, time & place for the meeting.  
21    In condominiums & cooperatives, the association must also include a detailed agenda. We ad-  
22    vise that the association include an agenda regardless of the type Association, as it helps mem-  
23    bers understand the purpose and importance of the meeting.

#### 24    Board Meetings:

25    As we discussed early, the primary place where Association policy and decision making occurs  
26    is at Board meetings. Generally, all Board meetings require 48 hours' notice by statute. That  
27    means the notice must be posted conspicuously on the property for 48 hours. So, if the meeting  
28    is planned for 6:30 PM Thursday night, it must be posted no later than 6:30 PM Tuesday night.

29    The statutes have differing requirements for certain Board meetings. For instance, Associations  
30    must give a 14 day advance notice for meeting which:

31    ▪ Pass a budget or budget revision (condominium, cooperative; in an HOA, if the assessment  
32       will change, then the Board must give 14 days' notice)

33    ▪ Propose a special assessment (condominium, cooperative, homeowners associations)

34    ▪ Amend document condominiums & cooperatives)

35    ▪ Amend documents or rules governing use of units or parcels (condominium, cooperative,  
36       homeowners associations)

37    ▪ Address an item for which 20% of the members have petitioned that the Board hear (HOA)

1 There may be other instances when the Association must provide more than 48 hours' notice;  
 2 Managers should check their documents and the statutes.

3 Note that the Condominium Act permits 20 % of the members to petition the Board to address  
 4 an item of business, and it must do so at its next regular meeting or at a special Board meeting,  
 5 but no later than 60 days after it receives the petition. The Statutes, however, do not require a  
 6 14 day advance notice.

7 If there is no place to post a notice of meeting on the property, condominiums & cooperative  
 8 must provide 14 days advance notice to all unit owners, and homeowners associations must  
 9 provide 7 days' notice.

10 For Associations that have broadcast systems, the Association may conspicuously post and re-  
 11 peatedly broadcast the notice and the agenda on a closed-circuit cable television system serv-  
 12 ing the association. When broadcast notice is provided, the notice and agenda must be broad-  
 13 cast in a manner and for a sufficient continuous length of time so as to allow an average reader  
 14 to observe the notice and read and comprehend the entire content of the notice and the agenda.  
 15 Furthermore, the notice must be broadcast no less than 4 times an hour for every hour that the  
 16 system is on.

17 In condominiums & cooperatives, all meeting notices must include detailed agendas. In HOAs,  
 18 while a notice of meeting suffices, we recommend that the subjects of discussion be included.  
 19 The more information that is provided in the agenda, the more control the Board (and Manager)  
 20 have over the meeting.

21 *Committee Meetings:*

22 Generally, committees must follow the same rules of procedure and notice as does the Board.  
 23 With the exception of any committee which will be enforcing fines or penalties, most committees  
 24 need give only 48 hours' notice of meetings.

25 The HOA Act requires any committee that imposes fines to be composed of no less than 33  
 26 members, none of which may be Board members, employees, the Manager, or spouses of  
 27 these individuals. The Condominium [Act does not specify a number for the Committee, but  
 28 does not permit directors, officers or any member of their household to serve on the committee.  
 29 The Cooperative Act is silent on who may serve, as well as the number of committee members.

30 *Parliamentary Procedure & Roberts Rules:*

31 All meetings a generally run under parliamentary procedure. Meetings not run under parliamen-  
 32 tary procedure tend to be disorganized and often do not accomplish the objectives set out in the  
 33 agenda. It is therefore important that the Association adopt a set of rules it will use in conduct-  
 34 ing meetings. Most Association documents state that the Board and members must employ Ro-  
 35 berts Rules of Order in their meetings.

36 Generally defined, parliamentary procedure is a convention adopted over many years for ac-  
 37 complishing objectives and carrying out business through meetings and public assemblies. It  
 38 can be traced back to early English government assemblies (Parliament). Immigrants to the  
 39 United States, accustomed to the orderly nature of English meetings, adopted similar proce-  
 40 dures to assure their meetings were run in a like manner.

1 In 1876, Henry M. Robert put together a manual on parliamentary procedure, now referred to as  
2 “Robert’s Rules of Order.” Over the years, these have been revised to reflect improvements in  
3 meeting procedure & noticing. We are currently on the 10<sup>th</sup> edition of Robert’s Rules. We rec-  
4 ommend that every manager obtain a copy of Robert’s Rules, and become familiar with them.  
5 There are abbreviated texts of Robert’s Rules, such as “Robert’s Rules in Plain English,” by Do-  
6 ris P. Zimmerman. You may find that using one of these versions is more useful for you in  
7 putting together and conducting meetings. Note that it is not necessary to adhere rigidly to Ro-  
8 bert’s Rules. However, we do recommend certain basics in conducting your meetings, which  
9 we discuss in this section.

10 Parliamentary procedure allows a meeting to be conducted so that decisions can be made in a  
11 logical manner, giving everyone in the assembly a fair opportunity to be heard – at an appropri-  
12 ate time.

### 13 Predetermined agenda:

14 Parliamentary procedure (and Robert’s Rules) calls for a predetermined agenda. This gives the  
15 directors and members a clear picture of what will be discussed, and when. Furthermore, it  
16 permits the Chair to have better control over the meeting, because he or she knows the topics  
17 to be covered.

18 We recommend that specific topics be named under Old and New Business. Otherwise, any-  
19 one can bring up any topic they choose – and it will need to be discussed. The more narrowly  
20 defined the meeting, the more orderly the meeting.

### 21 Discussions:

22 Generally, there are two types of items on agendas:

- 23 ▪ Reports: Do not require any action. For instance, the treasurer reports on the finances,  
24 explaining accounts payable and receivable. Nothing further is necessary. Of course,  
25 directors and members may comment on the report. This should occur in an orderly  
26 manner, as we talk about below.
- 27 ▪ Action Items: Require action. Action occurs through motions, and debate upon the motion.  
28 Without a motion, second and vote, the Board (or membership) cannot move forward with  
29 the action. It is usually through this formal process that the assembly can enact proposals.  
30 We discuss motions below.

31 To move an action item forward, a member of the assembly (director at Board meeting; member  
32 at member meeting) makes a motion:

33 *I move that the painting contract be awarded to Paint Pretty Corporation.*

34 Another member of the assembly must second the motion:

35 *I second the motion.*

36 If there is no second, the motion cannot be considered. Only a member of the assembly can  
37 make and second motions. So, if the Board is meeting, only directors may make and second  
38 motions. At a member meeting, only members may second motions.

39 We recommend that motion be kept simple. A complicated motion is not only difficult to follow,  
40 it is often impossible to for participants to understand what they are discussing and upon what

1 they are voting. Sometimes, it is better to propose a series of motions to accomplish a specific  
2 purpose.

3 After the motion is made, the President repeats the motion. Generally, the maker of the motion  
4 speaks first, explaining the basis for the motion. One should keep his/her explanations concise  
5 and fact based. Under no circumstances should motions delve into personalities or individual  
6 attacks. Remember, the purpose of the meeting is to carry out the business of the Association,  
7 not to seek personal vendettas.

8 Following this is discussion. Usually, in a Board meeting, the directors will give their thoughts  
9 and opinions. Once they have completed doing so, the President must open up the floor to the  
10 membership. The President should open discussion to the membership by asking who wishes  
11 to speak, and asking each person to limit his/her remarks to the item on the floor. Comments  
12 such as “You are making this motion because the painter is going to paint your apartment”  
13 would be followed by the President stating “That is out of order. Do you have anything relevant  
14 to the motion on the floor?” If the President does not control debate and discussion, the meet-  
15 ing will turn into a free-for-all, and no business can get accomplished. The President must  
16 maintain control over the debate.

17 Additionally, the President should permit no back and forth discussion. Each person should be  
18 permitted to have his/her say. The President need merely say: “Thank you for your input,” and  
19 continue to the next speaker. Generally, no opinions are right or wrong. However, personaliza-  
20 tions and personal attacks should never be permitted. If a person becomes out of control, the  
21 meeting should be temporarily recessed. If, when the meeting is reconvened (usually 5 or 10  
22 minutes later), the personal attacks continue, the attacker should be asked to leave. If he or  
23 she does not, then:

- 24 ▪ Security should be called and the person removed
- 25 ▪ The Police called and the person removed, or
- 26 ▪ The meeting adjourned

27 Always keep in mind that the purpose of the meeting is to conduct business. If the Board (or  
28 membership) cannot conduct business, then there is no point to a meeting.

29 Pursuant to Roberts Rules, members are permitted to speak up to 10 minutes on any agenda  
30 item. Pursuant to Florida statutes and Administrative Rules, members may speak a minimum of  
31 3 minutes on any agenda item. We have included in Addendum 6 a recommended procedure  
32 for Member Comment during Meetings. Unless the Board adopts this, or another procedure,  
33 the members may speak up to 10 minutes on any item.

34 After everyone has spoken on the motion, the maker of the motion is permitted to speak again.  
35 This should close discussion. That is, no one should be permitted to speak after the maker has  
36 closed discussion.

37 Once discussion is completed, the President calls for a vote. Customarily, the President will  
38 restate the motion to assure that it is recorded correctly and everyone has the same under-  
39 standing. At Board meetings, only directors vote. That means, if the Secretary is not also a di-  
40 rector, she may not vote. At member meetings, all members vote. Keep in mind there must be  
41 a quorum at the meeting in order for business to be transacted. At Board meetings, a director

1 may attend by teleconference as well as in person. While a member may give a proxy for a  
2 member meeting, a director may not give a proxy for a Board meeting.

3 For a Board meeting, the vote of each director must be recorded and reflected in the minutes.  
4 Generally, directors may only abstain if they have a financial conflict of interest (that is, they  
5 could financially benefit from the action taken). However, the Condominium Act allows directors  
6 to abstain for any reason. An abstention does not count as a yes or no vote. The Board must,  
7 however, achieve a majority of all directors present (including those abstaining) in order to pass  
8 a motion. So, in recording the motion, it might look like:

9	John Henry – Yes	Juanita Lopez - No
10	Helena Smith – No	Diana Candina - Yes
11	Masie Garcia – Yes	

12 In this case, the motion passes, and the President would announce: “The motion passes, by a  
13 vote of 3 to 2.” Remember, the President, if a director votes, usually last.

14 Note that motions can be postponed by “tabling” the motion. Motion may be tabled to a time  
15 certain, or indefinitely.

#### 16 Types of Motions:

17 There are generally five types of motions:

- 18 ▪ Main Motions: Introduce items for consideration. Cannot be made if another motion is  
19 being considered by the Board. Yielded to privileged, subsidiary and incidental motions.
- 20 ▪ Subsidiary Motions: Change or affect the motion that has been made (in essence, amend the  
21 main motion)
- 22 ▪ Privileged Motions: Concern special or significant matters not related to pending business.  
23 Are considered before other motions. For instance, a motion to recess would take  
24 precedent over a motion to approve the paint contract.
- 25 ▪ Incidental Motions: Address procedural issues. Must be considered before other motions.  
26 Example: Motion to suspend the rules of discussion for a specific item.
- 27 ▪ Motions for reconsideration: Bring before the Board (or membership) an item that has  
28 already been considered and acted upon. Attempts to amend the outcome of the original  
29 motion. Can only occur when no other business is on the floor.

#### 30 **Exercise 3: Write an example of each of the 5 types of motions.**

#### 31 Voting on Motions:

32 How do we vote on motions?

- 33 • Voice Vote: The President asks those in favor to vote yes; then asks those who vote no  
34 to say no. In a member meeting, it may be difficult to vote by voice vote due to the num-  
35 ber of individuals present and the use of proxies. Generally, voice votes are used at  
36 Board and Committee meetings. Keep in mind that how each person votes needs to be  
37 recorded in the minutes.
- 38 • Show of Hands: Directors or members raise their hands for yes or no, and are counted.  
39 Again, in a member meeting, it may be difficult to ascertain the actual vote, and, in Board  
40 and Committee meetings, the vote of each member must be recorded in the minutes.

- 1 • Roll Call: Each director or member name is called, and the vote recorded
- 2 • Ballot: Members write their vote on a ballot. A limited proxy in a condominium or coop-
- 3 erative is, in essence, a ballot. In Board meetings, ballots may only be used for election
- 4 of officers.
- 5 • General consent: The President asks: Is anyone opposed. If no one indicates opposi-
- 6 tion, it is assumed that the matter was decided in the affirmative.

### 7 Minutes:

8 For every meeting that we have, we must include minutes. Minutes are important because they  
9 record the history of the Association. If recorded incorrectly, they can hinder an Associations'  
10 actions, or even lead to lawsuits for libel. We have suggested several Dos and Don'ts for Mi-  
11 nutes below.

- 12 ▪ Include the type of meeting, as well as the date, time and place. The individuals attending  
13 should be included (although at Board meetings, individual members attending are often not  
14 listed, we recommend doing so). All motions, whether passed or not, should be indicated.  
15 How each directed voted must be included. Any items postponed should be noted, with the  
16 date, time and place postponed. The time the meeting started and ended should be  
17 included.
- 18 ▪ The purpose of the meeting is to keep an objective accounting of what occurred – the  
19 business conducted. Because we quickly forget what occurred, the minutes maintain an  
20 action that is proposed but not passed should also be recorded. Ten years from now, the  
21 minutes will be the only record of where the Association has come from – and where it  
22 thought it was going.
- 23 ▪ Minutes should be concise, reflect what was done (not said), and should attach pertinent  
24 agenda items from the agenda package. They should not reflect every point debated, or  
25 every word spoken. The Secretary may want to summarize briefly a discussion, debate, or  
26 conversation. For instance, the minutes may indicate that the Manager provided a report on  
27 special projects. Instead of giving a list of the projects and the report on each, however, the  
28 report itself can be attached.
- 29 ▪ Be sure to include required details. For instance, when recording a motion, the firm to which  
30 the paint contract is awarded, along with the amount of the award, and any other pertinent  
31 details of the motion, should be incorporated into the minutes. Furthermore, when recording  
32 the various bids, don't put an approximate bid amount; include the actual bid amount.
- 33 ▪ Opinions have no place in minutes. Remember, directors (and members) are not experts,  
34 and their thoughts and opinions have no place in the official records of the Association.  
35 Someone's guesswork on why the expansion joints are leaking could lead to ammunition in  
36 a lawsuit. The minutes should reflect "the facts, just the facts."
- 37 ▪ Except for meetings with attorneys, closed to members until the legal issue is resolved, no  
38 privileged conversations should appear in minutes. Even then, the minutes should reflect  
39 decisions made on how to handle the legal issue, and not speculation as to what caused the  
40 problem or led to the lawsuit.
- 41 ▪ When in doubt, have the Association attorney review minutes before approving them.
- 42 ▪ Keep minutes for all meetings of committees, the Board and the membership. We also  
43 recommend keeping notes for meetings held with less than a quorum of the Board, between  
44 the Manager and a Board member, and between the Manager and/or Board member and a

1 vendor. This information may become critical if a problem arises and there is no record of  
2 what occurred.

### 3 **Litigation & Insurance Claims:**

#### 4 Litigation:

5 Litigation within a community association can take up an enormous amount of resources – both  
6 time and money. Litigation may be simple and require little of the board's or manager's time –  
7 such as a lien, or it may be complex and require significant time – such as an owner suing over  
8 whether the board has conducted itself properly in the past year. The litigation may be initiated  
9 by the association – in which case it will cost the members, or it may be initiated by a member  
10 or vendor, in which case, it may be covered by general liability or D & O policies.

11 Some litigation is unavoidable: a member fails to pay his monthly assessments, and the  
12 association, after a reasonable period, files a lien. If the member continues not to pay, the  
13 association moves to foreclosure. Usually, the association attorney handles these, and the  
14 association responsibilities are limited to provision of records and determining other approaches  
15 to resolving the collection issue – such as assessing a tenant for rent. The board and manager  
16 should avoid making these cases more complex than they need to be.

17 Litigation is particularly troublesome in enforcement of use restrictions and rules. After writing  
18 letters, and fining, if the association fails to take legal action to enforce the use restriction, the  
19 association can lose its ability to take action ever on this use restriction/rule – and possibly  
20 others. Boards often see use restriction/rule enforcement as too costly, and therefore fail to  
21 enforce the use restriction/rule. You as the manager need to help them examine the best  
22 solution in these cases. Maybe amending the documents to eliminate some of the use  
23 restrictions/rules is a better alternative. Maybe the association can seek agreement from the  
24 member to go through mediation or arbitration. But, if the board ultimately does not wish to  
25 expend the funds to enforce its documents, it should not have the manager spinning wheels by  
26 writing letters to violators. They will be fully aware that there is no follow through for  
27 enforcement.

28 When the association is sued, or enters into a lawsuit, the manager needs to assure the board  
29 is very clear on the management resources that are required. Some litigious members will  
30 request volumes of documents – and the management staff may spend hours pulling those  
31 documents – taking time away from financial management, building inspections, and other  
32 management responsibilities. The association should weigh the disruption against the cost of  
33 settlement – even if the board believes it has done nothing wrong. If the manager and/or his  
34 staff are unable to perform their regular duties, or become stressed because of overtime they  
35 put in to meet both needs, then the member has already achieved his objective – disruption of  
36 the efficient operation of the association. As an alternative, perhaps the board could employ a  
37 temporary person to assist, or a board member could spend time assisting the manager's staff  
38 with the tasks.

39 Litigation often requires, in addition to production of documents, the completion of  
40 interrogatories. These questionnaires often take hours to complete – and cannot be completed  
41 without the assistance of those individuals on the board at the time of the alleged problem.

42 The association may also experience litigation due to a problem with a vendor, or due to a  
43 vendor suing the association. The key is to employ an attorney who is an expert in the area  
44 involved. While the association's community association attorney is able to handle liens and

1 foreclosures, and should be knowledgeable about use restriction/rule decisions, he may not  
 2 know construction law, or professional liability law. In such cases, the manager needs to assist  
 3 the board in selecting the right attorney to represent the association’s interests. These “expert”  
 4 attorneys are often costly - \$400 or more an hour. However, without their expertise, the  
 5 association is unlikely to have a fair chance of a positive outcome to the case.

6 Of particular importance is for the board to understand that litigation cannot be discussed with  
 7 the community at large. Meetings with the attorney are closed to members specifically for this  
 8 reason. However, once the litigation is resolved, members have the right to inspect the records,  
 9 including any settlement terms.

10 **Exercise 4: Describe a recent litigation case. Look at how the association handled it,**  
 11 **and determine what the board and you could have done to better process the case.**

12 Insurance Claims:

13 Insurance claims in an association are varied: from slip and falls, to breach of contract, to  
 14 damages due to a hurricane or other catastrophe. Each requires a careful documentation of  
 15 facts. Some may require a pictorial follow-up, of initial damage and documentation of repairs.  
 16 Some insurance claims require manager and staff resources, and take away from daily  
 17 activities. The manager must document for the board about what each claim is, and how much  
 18 time he estimates dealing with the claim will take from him and his staff. In case of a major  
 19 catastrophe, the manager and his staff may spend a significant portion of the work day working  
 20 with vendors and members to document and repair damages. In such cases, the manager may  
 21 wish to suggest the board bring in temporary help for the routine issues.

22 Managers should remind their boards that claims can often be subrogation. That is, the  
 23 association pays for the damage, but then puts a claim against the party responsible for the  
 24 damages. This is common in situations where the member was negligent in maintaining his  
 25 equipment – such as water heaters or a/cs, and a pipe burst, flooding other units and the  
 26 common areas.

27 With insurance claims, the manager will need to keep the attorney and insurance adjuster  
 28 advised, so that quick action can be taken to resolve problems as they crop up. The association  
 29 may also need to retain an insurance adjuster to represent the association when there is a  
 30 dispute between the association and the insurer on the value of the claim. These adjusters can  
 31 often find a settlement, without the association expending large sums of money for court action.

32 Communications:

33 Communication is the art and science of listening, talking, and writing effectively. When one  
 34 communicates effectively, he can often (but not always) avoid misunderstandings. The more  
 35 acute one’s communication skills, the better able to handle conflict one is. The more clearly one  
 36 conveys his points, the more successful his negotiations. If we think about effective and clear  
 37 ways to communicate our message and listen carefully to what others are truly saying, the more  
 38 success we will likely be in avoiding conflicts and resolving problems.

39 In any business or personal setting, communication takes place in a variety of different formats.  
 40 The most common forms of communication are:

41 reading – 16% used - formal

1 writing – 9% used – formal

2 speaking – 35% used – informal

3 listening – 40% used - informal

4 Although business communication occurs as outlined above, we receive training on these skills  
5 as follows:

6 reading – throughout formal schooling

7 writing – throughout formal schooling

8 speaking – optional classes only

9 listening – none

10 While most formal training concentrates on reading and writing, in most settings, the informal  
11 communication systems are most important. It is not the winning presentation that one makes  
12 at a monthly board meeting or the eloquently written emails to employees and board members,  
13 or the outstanding articles that appeared in the quarterly newsletter that defines the quality of  
14 communication in an association. An individual's effectiveness depends more on how one talks  
15 to others one-on-one, face-to-face, day in and day out; how effectively one listens to and really  
16 hears what others say, and lastly, how one reacts to the communications he or she receives (or  
17 think he or she has received).

18 Listening is probably the essential ingredient for success as a manager. When one tunes out  
19 the person on the other side of his or her desk, both parties are short-changed. The listener  
20 misses the message the other person is trying to convey and *sends a destructive message*  
21 *without saying anything at all*. The *perception* is that the listener has little or no true interest in  
22 the other's concerns, or in working to resolve the problem or issue. However, if one listens at-  
23 tentively, he or she enhances the probability of understanding the issue and message the other  
24 is attempting to convey. Further, positive listening behavior demonstrates concern and respect  
25 for the other party.

26  
27 Most of us only listen to about 25 percent of what we hear. What happens to the other 75%?  
28 We tune it out! Why is good listening important to management?

- 29
- 30 • It helps you figure out what the other person wants and needs.
  - 31 • It can prevent misunderstandings and errors.
  - 32 • It gives you clues about ways to improve the services you provide.
  - 33 • It helps build long-term relationships

34 When individual is in a positive listening environment, one is more likely to openly share ideas,  
35 express feelings, and take the initiative. Empathetic listening promotes honesty exchanges,  
clearer understanding among individuals, and supports development of self-confidence.

36 In listening, one's principal charge is to listen openly, in a nonjudgmental manner. He or she is  
37 seeking information for a specific purpose: to help someone solve a problem, to hold space for  
38 emotional release, to reduce tension or stress, to give legitimacy to another's thoughts or feel-  
39 ings, to allow another to reach certain conclusions on his or her own. Empathetic listening does  
40 not suggest that the speaker is correct in his conclusions.

1 Communication is a two-way street and you have to do your part. Be an active listener. When  
2 someone has something to say, you must determine if you can participate at that time, or  
3 whether you have distracters (work deadline, for instance), that may prevent you from giving the  
4 speaker your full attention. In such cases, you need to tell the speaker the need to discuss his  
5 or her concern at a different time. When appropriate, you should share the reason. Saying “I  
6 can’t talk to you now,” without a reason often conveys to the speaker a lack of interest. Most in-  
7 dividuals understand prioritizing, and will trade speaking to you now for a block of undivided at-  
8 tention later.

9 Three techniques to promote better listening:

10 Even though you may know that an owner or  
11 board member is incorrect, you want the individu-  
12 al to feel that he or she is treated respectfully and  
13 given an opportunity to be heard. Three strate-  
14 gies we suggest are:

**When in doubt, give the benefit  
to the owner or board member –  
until proven otherwise**

- 15 • *Assume innocence.* "Guilty until proven innocent" does not go over well with most people.  
16 Even if what an individual is saying does not sound accurate, presume that it is. It may be  
17 that he or she are explaining things poorly, or are misinformed. This is where your listening  
18 skills are important. You may need to probe to discover the real problem or issue, or to dis-  
19 cover what actually occurred.
- 20 • *Look for teaching opportunities.* What information could the resident or board member have  
21 used before the misunderstanding occurred? If possible, provide him or her with the in-  
22 formation during your conversation. Review and discuss it with him or her, to assure that  
23 any misunderstandings are corrected.
- 24 • *Believe your owner or board member.* Sometimes people are correct in the strangest cir-  
25 cumstances. Occasionally, the person that you thought was 100 percent wrong, turns out  
26 to be right. If you have not given the benefit of the doubt and checked into the situation or  
27 problem. The owner or board member may assure you are not interested or are incompe-  
28 tent.

29 **Exercise 5 Listening: You will need a partner for this exercise. One of you should be the**  
30 **listener and the other the “talker.” The talker should tell where he came from, how he**  
31 **came to Florida, why he became a manager, what work experiences he has had, and his**  
32 **most recent crisis on the job or at home. At the end of the session, the listener will**  
33 **summarize for the class what the talker has stated, and the talker will advise how must is**  
34 **correct. Talkers: talk fast, with lots of detail.**

35 Written Communications:

36 Two hundred years ago, it took days – even months – for a message to travel from one city to  
37 another. Battles underway at the writing of a message decided wars before the message  
38 reached its destination. A hundred years ago, the telegraph provided quicker communications.  
39 However, the limited number of words meant easy misinterpretations. Letters continue to be  
40 the primary means of sharing significant information and soliciting input for decisions.

41 In the last 25 years, the information revolution and technological advances have provided differ-  
42 ent media through which we interconnect. These enhance the speed at which our messages  
43 travel – not necessarily a positive advance. You can write an email 1t 10:00 AM, and I can  
44 read it at 10:01 AM. So, the written word travels between and among people essentially in-

1   stantaneously.

2   While a verbal remark may be hurtful or annoying, the sting will fade with time, distance. Most  
3   of the time, we will move on to other issues, and the actual comments become a memory –  
4   perhaps still painful, but not usual of great import. An individual may store a letter and perhaps  
5   read and re-read it, but it is likely only a handful of people will ever see it. However, an email,  
6   sent from you to one other person, may quickly be circulated among ten, twenty, a hundred –  
7   or even more recipients – all with the touch of a button.

8   Crafting written communications carefully are exceptionally important. You should carefully re-  
9   view not just the final draft, but each draft – as you do not know who has access to them. You  
10   should never write anything that may come back to haunt you. You may think the president is  
11   a misguided and misinformed idiot – but you certainly do not need to tell that to your colleague  
12   in the neighboring association.

13   There are many guides for business writing. For instance, the Blue Book of Broad Minded  
14   Business Behavior (Auren Uris) provides guidelines for how to write memorandum a letters.  
15   The book's dedication states: those who understand "the job is a crucial part of one's life expe-  
16   rience, accordingly strive to make it constructive, harmonious, and rewarding. However, com-  
17   munity associations are quasi-businesses, and must be cognizant that they are also home to  
18   many, many people. Therefore, the way we write to owners will, of necessity, be different than  
19   how we communicate with vendors and staff.

#### 20   Written Communications Principles

21   Certain principles apply in both cases:

- 22   • *What point are you making?* Before you begin writing, determine your primary objectives.  
23   Specifically, jot down what information are you trying to convey, and what do you want the  
24   reader(s) to do or understand. Determine if the communication is directive, informational,  
25   or corrective, and whether it needs to be formal or informal.
- 26   • *Organize your thoughts.* Write out a brief outline or list of thoughts that you want to ad-  
27   dress. Check off each point as you prepare your communication.
- 28   • *Use quiet time.* Most people cannot focus when there are distractions around them. Be-  
29   cause many letters and emails you will prepare are on sensitive subjects, you need to be  
30   *exceptionally* judicial in choosing your words. Block off time so that you can focus exclu-  
31   sively on the matter at hand.
- 32   • *Research.* Before you put the first word down, make sure you have all your facts. Do not  
33   rely on verbal statements when someone makes a complaint. If the individual will not put it  
34   in writing, then you cannot act upon it. Look at interpersonal relationships. If Mr. Jones  
35   and Mr. Ramones are in conflict, be cautious in sending letters based upon one's complaint  
36   against the other. Seek third party verification first. You do not want to send a letter to Ms.  
37   Tittlecup, asking her to keep Poochie on a leash – only to find out Poochie died 6 months  
38   ago.
- 39   • *Provide evidence or citations.* If a unit owner has violated a rule, cite the rule and quote the  
40   exact language. Remember, we are not attorneys, and may not interpret the law.
- 41   • *Be understandable.* There are times you will need to write in formal, or legislative, terms.  
42   Examples: use restriction enforcement letters, collections, contract negotiations, etc.  
43   However, simple, easy to understand words usually best communicate. For most written  
44   communication, you should write the same way that you speak (unless you tend to speak

- 1 in a formal manner). Do not use metaphors or similes. As English is a second language  
2 for many community association residents, simple is best.
- 3 • *Shorter is usually better.* You are not writing the “Great American novel.” Every word you  
4 write should have a purpose. Do not write just to fill the page. Many studies have demon-  
5 strated that, especially for informational pieces, most individuals will only read a few para-  
6 graphs, and will not read a second page. If you can keep your communicate to one page,  
7 do so.
  - 8 • *Simple is better.* Your job is to communicate a specific message. It is not to provide that  
9 you have studied the Oxford dictionary and know 14 ways to say: “Your assessment is  
10 late.” Simple terms, not complicated jargon, are more effective. Again, remember that  
11 many of your residents read & understand limited English. Your goal is to communicate to -  
12 and not confuse or embarrass – them
  - 13 • *If you polish it, it will shine.* Review & rework your message several times. Even a gifted  
14 author recognizes that his art may be improved with a little – or a lot of reworking. If possi-  
15 ble, have someone review your communication. See if he or she “gets” your message. Get  
16 their suggestions for improvements.
  - 17 • *Avoid negativity.* Convey the message in appositive way whenever possible. If negative  
18 points must be made, include some positive comments – if possible.
  - 19 • *Set deadlines, discuss alternatives, & advise of consequences.* If the communication re-  
20 quires action from the other party, advise them of the time frames in which he or she needs  
21 to respond and/correct the problem. If there are other possible solutions, discuss them and  
22 the conditions under which the association might grant them. Lastly, warn the other party  
23 of the consequences if the issue or problem is not resolved or responded to by the deadline  
24 stated.
  - 25 • *Sleep on it.* You are angry. A board member wrote a critical email about you – none of it  
26 true. You want to response **NOW**. So, write your response now, but let it sit at least over-  
27 night. When you have had a bad day, or you are angry or distressed – or tired – you need  
28 to craft your communications with even more care. Remember, your written word will be  
29 memorialized – for at least 7 years.
  - 30 • *Manager’s Reports.* The purpose of the manager’s report is to inform the board (and the  
31 community) of the status of specific projects, note any potential (or current) problems for  
32 which they should prepare or take action, identify current objectives, assist the board in dis-  
33 cerning policy issues for which decision may be required, and assuring that the manager  
34 and board are “rowing” in the same direction. Reports should be succinct. Some manag-  
35 ers like to use bullet points. Others, narrative. Either style can work.
  - 36 • *Cite pros and cons.* If you are asking the board for action, summarize your case, and pro-  
37 vide the pros and cons for your recommendations. If there is more than one possible solu-  
38 tion, discuss them in descending order of desirability. Remember, your objective is to ob-  
39 tain board concurrence for your preferred solution. *If you have no preferred solution, tell*  
40 *the board that and explain why.*
  - 41 • *Newsletters:* Keep articles short, to the point and informative. Pictures help. If writing  
42 about the new pool furniture, show your residents at the pool. New exercise equipment.  
43 Snap a picture of a resident using the new weight machine.

#### 44 Verbal Communications:

45 Managers engage in spoken communication on a regular basis. This includes communicating

1 with owners, board members, and employees. On a daily basis, we converse with unit own-  
2 ers. We meet with board members and discuss projects and priorities. We oversee staff and  
3 assess their performance. We contact vendors to negotiate contracts. We seek advice from  
4 association attorneys and colleagues. One manager estimated that he spent 50% of his time  
5 on the phone or speaking one-on-one to people.

6 In a community association, the primary "customer" is  
7 generally the board of directors. A secondary customer is  
8 the unit owner, who may come to you for information or  
9 advice. Unit owners do not necessarily know your areas  
10 of responsibility, your job description, or what you perso-  
11 nally can and cannot do for them. Moreover, they often  
12 do not care. To the unit owner, a problem with the as-  
13 sociation is yours to resolve. Internally the association  
14 must decide types of issues, complaints, and concerns that the manager will handle, and for  
15 what issues the board of directors will be responsible. How you handle issues that are not  
16 your responsibility is just as important as how you handle issues that are your responsibility.

***No matter how busy you are,  
you must take time to make the  
other person feel important!"***

*Mary Kay Ash, founder  
Mary Kay Cosmetics*

17 Generally, one cannot be prepared for "impromptu" meetings. What we can do is assure that  
18 we have important information at our fingertips and our "pulse" on the association. Often,  
19 keeping a list of key projects and problems, with handwritten notes on the status, is helpful.  
20 Many managers maintain a journal, to which they can refer about daily responsibilities and ac-  
21 tivities. Managers are expected to have certain types of knowledge and experience. We iden-  
22 tify five areas of "service style," or handling owner complaints.

- 23 • *General Knowledge.* Owners and board members expect you to know the answers, such  
24 as understanding community documents, laws, rules and regulations, etc. This is one of the  
25 reasons you take the legal update every year.
- 26 • *Procedural Knowledge.* Residents expect you to know how the organization works, so you  
27 can guide them to someone who can meet their needs if you are unable to assist.
- 28 • *Listening Skills.* Residents and board members expect you to listen, understand, and re-  
29 spond to their specific needs as they explain them to you. They want you to get things right  
30 the first time. **Listening skills are vital.**
- 31 • *Problem-Solving Skills.* Owners and board members expect that you will be able to recog-  
32 nize their needs as they express them and quickly find solutions. When things go wrong, or  
33 do not work, they expect you to know how to fix things...very fast.
- 34 • *Empathy.* Each person is different. Some individuals may know what they need when they  
35 walk in, having done their own research. These people may need to be praised for their  
36 knowledge, or coached as to the accuracy of their information. Another person may come  
37 in meek or timid. This person must be reassured that they are in the right place and that  
38 you can help them.

### 39 **Conflicts & Disputes:**

40 Physiologically, we respond to conflict along a continuum between avoidance/reaction and ag-  
41 gression/confrontation. Further, most of us have differing responses to conflicts in various cir-  
42 cumstances. Our responses are physiological cues from our personalities, many formed as we  
43 grew up, watching how those around us handled conflict – sometimes we witnessed proficiency,  
44 and other times, flawed abilities. *There are no good or bad strategies – only good or bad out-*

1 *comes*. Our goal is to assess, regardless of our initial physiological response, the conflict and  
2 intentional choose the method most likely to result in solving the problem at hand.

3 Experts estimate that we average five conflicts, disagreements, disputes, arguments, or “chal-  
4 lenges” each day. Each of these “contests” increase our stress level, take attention away from  
5 other important activities, and, if not settled, leave “psychic” scars that interfere with future inte-  
6 ractions of similar natures. Additionally, unresolved conflicts can lead to a heightened level of  
7 aggression.

8 Conflict management requires **self-awareness**. If we can more effectively control our reactions  
9 to conflict, we are less apt to practice destructive behaviors that ultimately may affect all areas  
10 of our lives. Listening, oral communication, interpersonal communication, and collaboration are  
11 key skills in working effectively together with others and resolving disputes.

### 12 Mediation, Arbitration, Court.

13 If the owner does not comply, or refuses to correct the use restriction violation, the board may  
14 need to take further or additional action. The board may include in its procedures arbitration or  
15 mediation as a means of gaining compliance with the rules.

16  
17 In mediation, the board and the owner meet with a mediator, who facilitates discussion and  
18 helps them reach a mutual agreeable settlement, if possible. The mediator writes the settle-  
19 ment terms into an agreement, which both parties sign. Mediation is especially helpful in resolv-  
20 ing disputes between two unit owners, such as noise violations. It may be helpful in cases  
21 where an owner agrees that he is in violation, but the board and owner cannot agree upon a  
22 timeframe for compliance. Mediation is unlikely to be helpful in cases where the board and  
23 owner are in dispute over whether a violation occurred or exists. Generally, the two parties  
24 share the cost of mediation, unless otherwise agreed. Associations should use only trained  
25 mediators who have experience with community association disputes. The State of Florida  
26 maintains a list of volunteer and paid mediators.

27  
28 Arbitration is a non-judicial process in which an arbitrator acts as a judge, listening to and re-  
29 viewing evidence presented by both sides. Once all evidence has been presented, the arbitra-  
30 tor makes a decision in favor of one side. If the arbitration is binding, the board and owner have  
31 agreed to abide by the arbitrator’s decision. In non-binding arbitration, the losing party may take  
32 further steps. Arbitration may be helpful in resolving problems similar to those discussed above  
33 for mediation. Generally, the two parties share the cost of arbitration, unless otherwise agreed.  
34 It is extremely important for the board to use an arbitrator who is familiar with community asso-  
35 ciations.

36  
37 F.S. 718 (Condominium Act) and F.S. 719 (Cooperative Act) require **non-binding** arbitration for  
38 certain disputes:

- 39 ▪ Elections & recalls
- 40 ▪ Meetings: Noticing, improper conduct, etc.
- 41 ▪ Failure to allow inspection of books or records
- 42 ▪ The board’s authority to require a unit owner to take action, or not to take action, involving  
43 that owner’s unit or disagreements concerning the board’s authority to alter or add to a  
44 common area or element.

45 F.S. 720 (HOA Act) requires **binding** arbitration for:

1   ▪ Elections

2   ▪ Recalls

3 Boards and managers should bring to mediation and arbitration hearing copies of their docu-  
4 ments, rule enforcement policies, and unit owner file. Only one person from the board should  
5 present the case to the mediator or arbitrator. Additionally, the board must empower its repre-  
6 sentative with decision-making authority to settle the case. While not required, some boards  
7 chose to have the association attorney represent them.

8

9 In 2007, the HOA Act was amended to require pre-suit mediation for disputes. Disputes be-  
10 tween an association and a parcel owner subject to presuit mediation:

11   ▪ use of or changes to parcel or common areas and other covenant enforcement disputes

12   ▪ amendments to association documents

13   ▪ meetings of board and committees appointed by board

14   ▪ membership meetings not including election meetings

15   ▪ access to official records

16 The aggrieved party must serve responding party with offer of mediation, using a form included  
17 in F.S. 720. The offer must be in writing, sent certified and first class mail. The aggrieved party  
18 suggests 5 mediators, from which the responding party will select one. If responding party  
19 agrees, the mediation must be held within 90 days, unless extended by mutual agreement.  
20 Each party pays half of the costs. The aggrieved party can go to court if the responding party:

21   ▪ fails to respond within 20 days

22   ▪ fails to choose 1 of the 5 mediators

23   ▪ fails to prepay half of fee

24 If either party does not participate in mediation, he or she cannot recover attorney's fees or  
25 court costs

26

27 Most associations chose to go to court if the owner does not correct the violation or continues to  
28 violate the rule. In such cases, the board should rely upon its attorney to prepare the paper-  
29 work, file the case, and represent the association's interests.

30

31 Many judges will send disputes to mediation before they allow the case to be heard in court. In  
32 most cases, the court ordered mediation is a part of the court filing costs. Court mediators gen-  
33 erally are not knowledgeable about association laws and documents. If a judge orders media-  
34 tion, the board should consider hiring a private mediator knowledgeable about community asso-  
35 ciations.

36

37 If the case is not settled in mediation (referred to as an "impasse"), the case will proceed to  
38 court. The judge will give each side the opportunity to present its case, and to cross-examine  
39 the other side. Not all judges are knowledgeable about association law or documents. The as-  
40 sociation may lose even if the evidence appears overwhelming in its favor. It is therefore impor-  
41 tant to have an attorney well qualified in community association law, who can tailor the case  
42 presentation to the judge hearing it.

1 **Conclusion:**

2 We have presented you with information helpful in designing a program for your board. **For the**  
3 **final exercise, you design a six-meeting program, where you spend the first half hour**  
4 **providing the board with information about its functions and responsibilities.** A well in-  
5 formed board will enable you to do your job better, and will improve the board's performance.

6  
7 Good luck!

8  
9

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**1 Questions**

- 2 1. A basic objective of a community association is:
- 3 a) Maintain low assessments so that all residents can afford to keep their homes
- 4 b) Strictly enforce rules and regulations, without regard to any demographic changes in
- 5 the association population
- 6 c) Preserve and protect the value of the community
- 7 d) Maintain a fully funded reserve for all common elements
- 8 2. Standards to which director are held include:
- 9 a) Discharge duties, in a manner in which he absolutely believes is in the best interests of
- 10 the board
- 11 b) Discharge duties with the care an ordinary prudent person would take in similar cir-
- 12 cumstances
- 13 c) Discharge duties relying primarily on input from members regarding what they want
- 14 d) Discharge duties by attending board meetings and voting on all issues
- 15 3. Our ethical code:
- 16 a) Is the same as the laws & statutes to which we are bound
- 17 b) Is taught in schools as part of our social studies classes
- 18 c) Encompasses the sense of legal responsibility to ourselves and others
- 19 d) Encompasses a sense of moral responsibility and our duty to respect and consider the
- 20 rights and needs of others as well as ourselves
- 21 4. Community associations have all but the following functions:
- 22 a) Charity
- 23 b) Business
- 24 c) Government
- 25 d) Community
- 26 5. The President of the Association:
- 27 a) May take any action he believes necessary to further the objectives of the association
- 28 b) Grants exceptions to members for violation of use restrictions and rules
- 29 c) Should never participate in debate on a motion
- 30 d) Usually directs the day-to-day activities of the association
- 31 6. Conflicts of interest do not include:
- 32 a) Proffering expertise
- 33 b) Self-dealing
- 34 c) Bid rigging
- 35 d) Kickbacks
- 36 7. A strategic plan can:
- 37 a) Help members and directors reduce delinquencies
- 38 b) Enable the board to envision problems of the future and anticipate financial needs
- 39 c) Create diverse goals & objectives for the future of the community
- 40 d) Confine planning to the board of directors
- 41

- 1 8. A community association should have a financial plan
  - 2 a) Which must be followed exactly
  - 3 b) Which serves as the basis for determining financial obligations of its members
  - 4 c) Which limits the amount of monies the association may expend on any operating line
  - 5 item
  - 6 d) which creates a benchmark by which to measure board performance against past
  - 7 boards
  
- 8 9. An operating budget:
  - 9 a) Consists of monies restricted for a specific purpose
  - 10 b) Cannot be amended without member approval
  - 11 c) Allocates monies to capital projects exclusively
  - 12 d) Identifies categories of expenses for day-to-day activities of the association
  
- 13 10. Surplus income from a special assessment:
  - 14 a) May be used for a proposed special assessment not yet enacted
  - 15 b) Must be returned to members within 30 days of completion of the special assessment
  - 16 projects
  - 17 c) Can be used to fund bonuses for directors and officers
  - 18 d) Will result in a minimum 25% tax penalty to the State
  
- 19 11. Any communications related to the collection of delinquent assessments may be subject to:
  - 20 a) F.S. 559, the Federal Fair Debt Collection Act
  - 21 b) F.S. 559, Florida Statutes, the statute relating to collecting debts
  - 22 c) Only the Federal Fair Debt Collection Act
  - 23 d) F.S. 962, the State Fair Debt Collection Act
  
- 24 12. Condominiums must seek bids for contracts that are in excess of \_\_\_% of the budget, in-
  - 25 cluding reserves, and HOA, \_\_\_ of the budget including reserves.
    - 26 a) 5%; 5%
    - 27 b) 10%; 5%
    - 28 c) 5%; 10%
    - 29 d) 15%; 10%
  
- 30 13. Florida law states that for a person to be eligible for board membership, he must:
  - 31 a) Be a natural person
  - 32 b) Be 21 years of age or older
  - 33 c) Have a valid driver's license
  - 34 d) Own a property within the association
  
- 35 14. The Condominium Act prohibits:
  - 36 a) Co-owners of a unit or units from ever serving on a board
  - 37 b) Members who are 90 days or more delinquent from serving on the board
  - 38 c) Anyone who has ever been convicted of a felony to serve on a board, regardless of
  - 39 whether his rights have been restored
  - 40 d) Non-owners from serving on a board, once the developer has turned over the associa-
  - 41 tion to members other than the developer

42

- 1 15. Some requirements that are typically seen in documents for scheduling meetings include:  
2 a) Specific quorum of board members  
3 b) Specific agenda items  
4 c) Longer notification time for board members  
5 d) Specific language for agenda items
- 6 16. A 14 day notice is required for all but:  
7 a) Amending documents  
8 b) Waiving reserves  
9 c) Adding reserves in a condominium  
10 d) Adding reserve in an HOA
- 11 17. There are five types of motions, which include all but the following  
12 a) Main motions and secondary motions  
13 b) Main motions and incidental motions  
14 c) Main motions and privileged motions  
15 d) Main motions and subsidiary motions
- 16 18. Communications is:  
17 a) Mainly focused on reading  
18 b) the art of debate  
19 c) the art and science of listening, talking and writing effectively  
20 d) learned through courses in school
- 21 19. Most of us listen to about \_\_\_\_ of what we hear.  
22 a) 30%  
23 b) 40%  
24 c) 35%  
25 d) 25%
- 26 20. F.S. 720 requires binding arbitration for:  
27 a) Elections & recalls  
28 b) Meetings  
29 c) Access to official records  
30 d) Amendments to association documents  
31

## INSTRUCTIONS

### READ CAREFULLY PRIOR TO COMPLETING ANY COURSES.

- Step 1** Select the course(s) you need to take. Be sure that you select the appropriate course(s) for your specific needs. No credit is given for taking the same course more than once. (CE requirements are listed in the front of this book or you can contact the CAM Council's office.)
- Step 2** Read the course materials for each course you take.
- Step 3** Find the "**CAM CONTINUING EDUCATION ANSWER SHEET**", located at the back of this book. *There is space to complete all courses on the one answer sheet.* Fill in the "**Student Information**" section and the "**Payment Information**" section. (**Courses will not be processed until complete payment has been made.**)
- Step 4** Complete your answers for each course by completely filling in one "bubble" per question. Note: A specific type of pen or pencil is not required.
- Step 5** We suggest that you make a photocopy of your answer sheet for your own records.
- Step 6** For "**Standard Grading**", mail your Answer Sheet to Gold Coast Professional Schools, Inc., 5600 Hiatus Road, Tamarac, FL 33321. Your Answer Sheet is graded and your course completion certificate(s) will be mailed as soon as possible, usually within 5 business days.

We also offer an optional "**NEXT DAY**" fax service. This optional service is provided for an additional \$10. Fax your completed Answer Sheet to us by 5 p.m. and we will fax your completion certificate(s) to you by 5 p.m. on the following business day. Your original completion certificate(s) will be mailed to you.

To use this service, fax your Answer Sheet to us at: **(954) 485-9865**

**Note:**

- To use the optional fax service, payment must be made by credit card.
- The optional fax service is available in the continental United States only.
- We will attempt to fax your completion certificate(s) to the number you provide up to a maximum of three times. If the third transmission does not go through, your certificate(s) will be mailed to you.

**Step 7** When you receive your certificates, **verify that you have received certificates for each of the courses you took.** If there are any errors or omissions, call our office at: 1-800-732-9140 as soon as possible.

**Step 8** Under the new reporting procedures, Gold Coast will report your results directly to the DBPR. You should still retain your course completion certificates in case of audit.

**Note:** Students who do not achieve a score of at least 75% will be required to redo their examination, and pay a \$5 handling fee for the re-examination. If a student does not successfully pass the second time, they will be given a different exam. If a student is not successful on the re-examination they will have one final chance to redo the second examination. Any student who is not successful after two attempts, at two different examinations will not be allowed to attempt another through our school. The tuition paid (excluding handling fees) for the correspondence course will be credited towards the same course, offered in any of our classroom locations.



**The answer sheet is  
located on the back  
of this page.**

**PLEASE CAREFULLY  
DETACH THE ANSWER  
SHEET AND MAIL OR FAX IT  
TO US.**

**IF YOU HAVE ANY QUESTIONS  
CONCERNING THESE COURSES, PLEASE  
CALL US AT 1-800-732-9140**