Gold Coast Professional Schools

Dear Community Association Manager:

Since 1970, Gold Coast has been a leading provider of continuing education in Florida. For over 40 years we have helped hundreds of thousands of people, in a variety of professions, obtain and renew their licenses. ***We are committed to offering quality courses, at reasonable prices.***

We recognize that professionals like you are busy and it's not always convenient to attend class. Unfortunately, failure to comply with continuing education requirements can subject you to disciplinary action and possibly result in the ***loss of your hard earned license.***

Gold Coast is taking convenience to a new level! Enclosed in this book are twenty hours of **approved CAM continuing education courses**. The **2013 Update Seminar** should have been completed by **September 30, 2013**, but we've included this course in case you didn't complete it.

Each course has a separate final exam, located at the end of the course. The final answer sheet is located at the back of the book. Complete the answer sheet, and mail or fax it to us with payment for only the courses you complete. Upon achieving a passing grade, your certificate(s) of completion will be mailed to you. ***It's that simple!***

If you have any questions, please contact us.

Sincerely,

James D. Greer, Director

Important Note: The Regulatory Council of Community Association Managers recently passed an amendment to rule 61-20.508 which once again permits all 20 hours of continuing education to be completed by correspondence.

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Frequently Asked Questions

Q: ***How many hours of continuing education do I need?***

A: Most CAMs need 20 hours total, by September 30, 2014. Of the 20 hours, the 2 hour 2013 Legal Update seminar should have been completed by September 30, 2013**. For the September 30, 2014 renewal, courses must be completed in the following areas:**

- 2013 Legal Update Seminar (Should have been completed by **09-30-13**)
- 2014 Legal Update Seminar
- 4 Hours of Human Resources
- 4 Hours of Insurance/Financial Management
- 4 Hours on the Operation of the Association's Physical Property
- 4 additional hours from any of the above 3 topics

This book includes all 20 hours. Complete all of the courses, or only those that you need.

Note that the DBPR has approved some courses to fulfill more than one area of educational requirements. However, you may only use each course for one category

Q: ***September 30, 2014 will be my first CAM license renewal. What do I need to do?***

A: Licensees licensed for 24 months or less at renewal time are exempt from compliance with the CE requirements, above, until the end of the next renewal cycle. However, there are numerous legislative changes that occurred in 2013 legislative session. The DBPR will expect you to know these regardless of the CE requirements. Therefore, you may wish to take the 2014 Legal Update Seminar.

Q: ***Is Gold Coast a reputable company? Are these courses state approved?***

A: Yes! Gold Coast is a state approved provider. (Provider #000842). The Gold Coast family of schools, including Gold Coast Professional Schools, Inc., Gold Coast School of Real Estate, Gold Coast School of Insurance, Inc., and Gold Coast School of Construction, Inc., have been offering pre-license, post-license, and continuing education courses for various licenses since 1970. We are one of the largest private CE providers in the country. Our business has been built on quality courses, at reasonable prices.

If you have any questions, please contact us at 1-800-732-9140.
Our knowledgeable staff will be happy to assist you.

Directory

- **For questions regarding this course:**

Gold Coast Professional Schools, Inc.
5600 Hiatus Road
Tamarac, FL 33321
1-800-732-9140
progers@goldcoastschools.com

- **For questions regarding your CAM license:**

The Regulatory Council of Community Association Managers
1940 North Monroe Street
Tallahassee, FL 32399
(850) 487-1395
http://www.state.fl.us/dbpr/pro/cam/cam_index.shtml
or visit: www.myflorida.com and follow the links to the DBPR, Division of Professions

- **For questions regarding condominiums or cooperatives:**

Division of Florida Land Sales, Condominiums, and Mobile Homes
1940 North Monroe Street
Tallahassee, FL 32399
www.myflorida.com
(Follow the links to the DBPR, Division of Florida Land Sales)

- **To view copies of the Florida Statutes or pending legislation:**

www.myflorida.com
(Follow the links to the Legislature)

2013 Legal Update

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

Legal Update

Gold Coast Professional Schools, Inc Provider # 00842
Correspondence Course Approval # 9626668
Classroom Course Approval # 9626667

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2013 Legal Update
Summary – Legislation 2011[1]

Chapter	Bill #	Effective
2012-202	CS/HB – 13	July 1, 2012
2012-165	CS/HB– 249	October 1, 2012
2012-61	CS/HB – 517	July 1, 2012
2012-208	CB/HB– 693	May 4, 2012
2012-72	CS/HS - 887	October 1, 2012
2012-76	CS/HB– 1001	July 1, 2012
2012-161	CB/HB – 1013	July 1, 2012
2012-80	CB/HB -– 1127	July 1, 2012
2012-13	CB/SB – 704	July 1, 2012

Introduction

The 2013 Legal Update provides community association managers with a review of the changes in the 2012 legislative session that impact community associations.

HB 13 - Sovereignty Submerged Lands – Chapter 253

Effective Date: July 1, 2012

Section 1. Section 253.0347, Florida Statutes, is created to read:

253.0347 Lease of sovereignty submerged lands for private residential docks and piers.—

(1) The maximum initial term of a standard lease of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock is 10 years. A lease is renewable for successive terms of up to 10 years if the parties agree and the lessee complies with all terms of the lease and all applicable laws and rules.

(2)(a) A standard lease contract for sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must specify the amount of lease fees as established by the Board of Trustees of the Internal Improvement Trust Fund.

(b) If private residential multifamily docks or piers, private residential multislip docks, and other private residential structures pertaining to the same upland parcel include a total of no more than one wet slip for each approved upland residential unit, the lessee is not required to pay a lease fee on a preempted area of 10 square feet or less of sovereignty submerged lands for each linear foot of

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

shoreline in which the lessee has a sufficient upland interest as determined by the Board of Trustees of the Internal Improvement Trust Fund.

(c) A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock is not required to pay a lease fee on revenue derived from the transfer of fee simple or beneficial ownership of private residential property that is entitled to a homestead exemption pursuant to s. 196.031 at the time of transfer.

(d) A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must pay a lease fee on any income derived from a wet slip, dock, or pier in the preempted area under lease in an amount determined by the Board of Trustees of the Internal Improvement Trust Fund.

(3) The Department of Environmental Protection shall inspect each private residential single-family dock or pier, private residential multifamily dock or pier, private residential multislip dock, or other private residential structure under lease at least once every 10 years to determine compliance with the terms and conditions of the lease.

(4) This section does not prohibit the Board of Trustees of the Internal Improvement Trust Fund or the Department of Environmental Protection from imposing additional application fees, regulatory permitting fees, or lease requirements as otherwise authorized by law.

Section 2. Beginning with the 2012-2013 fiscal year, the sum of $1 million in recurring funds is appropriated from the General Revenue Fund to the Internal Improvement Trust Fund for purposes of administration, management, and disposition of sovereignty submerged lands.

HB 249 - Relating To Public Lodging Establishments- Chapter 509

An act relating to public lodging establishments; amending s. 509.013, F.S.; revising the definition of the term “public lodging establishment” to exclude certain apartment buildings designated primarily as housing for persons at least 62 years of age and certain roominghouses, boardinghouses, and other living or sleeping facilities; authorizing the Division of Hotels and Restaurants to require written documentation from an apartment building operator that such building is in compliance with certain criteria; authorizing the division to adopt certain rules; amending s. 509.242, F.S.; revising public lodging establishment classifications; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. *Subsection (4) of section 509.013, Florida Statutes, is amended to read:*

509.013 Definitions.—As used in this chapter, the term:

(4)(a) “Public lodging establishment” includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. “Transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. “Nontransient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month. License classifications of public lodging establishments and the definitions therefor, are set out in s. 509.242.

For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors~~.~~;

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services or other similar place regulated under s. 381.0072~~.~~;

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients~~.~~;

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent~~.~~;

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895~~.~~;

6. Any establishment inspected by the Department of Health and regulated by chapter 513~~.~~; and

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to

attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

***Section 2.** Subsection (1) of section 509.242, Florida Statutes, is amended to read:*

509.242 Public lodging establishments; classifications.—

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

(a) Hotel.—A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

(b) Motel.—A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

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

(d) Nontransient apartment ~~or roominghouse~~.—A nontransient apartment ~~or roominghouse~~ is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.

(e) Transient apartment ~~or roominghouse~~.—A transient apartment ~~or roominghouse~~ is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

~~(f) Roominghouse.—A roominghouse is any public lodging establishment that may not be classified as a hotel, motel, nontransient apartment, bed and breakfast inn, vacation rental, or transient apartment under this section. A roominghouse includes, but is not limited to, a boardinghouse.~~

(f)~~(g)~~ Bed and breakfast inn.—A bed and breakfast inn is a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

***Section 3.** This act shall take effect October 1, 2012.*

HB 517 - Relating To Reducing and Streamlining Regulations – Chapters 455, 468, And 718

Amending parts of s. 373.461, F.S.; s. 455.213, F.S., s. 455.271, F.S.; s. 468.4338, F.S.; s468.8317, F.S.; s. 468.8417, F.S.; s. 475.615, F.S.; s. 475.617, F.S.; s. 475.6175, F.S.; s. 477.0212, F.S.; s. 481.209, F.S.; s. 481.211, F.S.; s. 481.213, F.S.; s. 481.217, F.S.; s. 481.315, F.S.; s. 489.116, F.S.; s. 489.519, F.S.; s. 469.002, F.S.; repealing s. 475.42(1)(e), F.S.; ss. 468.391, 475.25, 475.624, and 475.6245, F.S.; repealing s. 475.626(1)(b) and (c), F.S.; s. 475.628, F.S.; s. 468.841, F.S.; s. 475.611, F.S.; s. 475.6171, F.S.; s. 475.6235, F.S.; repealing s. 476.194(1)(b), F.S.; repealing s. 477.0265(1)(c), F.S.; s. 475.451, F.S.; s. 499.003, F.S.; s. 499.01, F.S.; s. 565.07, F.S.; amending s. 718.707, F.S.

Section 2. Subsection (12) is added to section 455.213, Florida Statutes, to read:

455.213 General licensing provisions.—

(12) The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license, in a format prescribed by the department, within 24 months after discharge from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged.

Section 3. Subsection (10) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(10) The board, or the department if there is no board, may not require ~~Before reactivation,~~ an inactive or delinquent licensee, except for a licensee under chapter 473 or chapter 475, to complete more than one renewal cycle of ~~shall meet the same~~ continuing education to reactivate a license ~~requirements, if any, imposed on an active status licensee for all biennial~~

~~*licensure periods in which the licensee was inactive or delinquent. This subsection does not apply to persons regulated under chapter 473.*~~

Section 5. Section 468.4338, Florida Statutes, is amended to read:

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

Section 36. Section 718.707, Florida Statutes, is amended to read:

718.707 Time limitation for classification as bulk assignee or bulk buyer.—A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, *2015* ~~*2012*~~*. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.*

Section 37. This act shall take effect July 1, 2012.

HB 693 - Relating To Business and Professional Regulation – Chapter 455

Section 8. Subsection (2) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(2) Each board, or the department when there is no board, shall permit a licensee to choose, at the time of licensure renewal, an active or inactive status. ~~*However, a licensee who changes from inactive to active status is not eligible to return to inactive status until the licensee thereafter completes a licensure cycle on active status.*~~

Effective Date: 5/4/2012

SB 704 - Relating To Building Construction and Inspection

This bill amends a number of provisions related to building construction and inspection in Florida. The bill:

- Includes fire safety inspectors among those eligible to take the building code inspector or plans examiner certification exam and shortens the time length of provisional certificate for newly employed or promoted inspectors or examiners (Chapter 468);
- Includes landscape architecture in the mold assessment exemption (Chapter 468);
- Clarifies that a landscape design practitioner may submit planting plans independent of, or as a component of, construction documents (Chapter 481);
- Expands the meaning of “demolish” as it is used to define licensed contractors (Chapter 489);
- Modifies plumbing contractor scope of services to include drain cleaning and clearing and installation or repair of rainwater catchment systems (Chapter 489);
- Expands the roofing contractor licensure scope of work to include skylights (Chapter 489);

- Expands air conditioning and mechanical contractor licensure to include the testing and evaluation of ventilation systems and duct work (Chapter 489);
- Revising the authorized methods of sending notices to violators of local codes (Chapter 162);
- Requires public bodies to open sealed bids for construction and repairs to public buildings at a public meeting (Chapter 255);
- Revises permitting measures, establishes title transfer procedures and provides for the applicability of rules governing on-site sewage treatment and disposal systems (Chapter 381);
- Authorizes building and fire code administrators to accept electronically transmitted construction plans and related documents for permit approval purposes (Chapter 468);
- Clarifies the responsibilities of certified contractors and registered contractors, specifically clarifying that contractors can perform and supervise all work which falls within the scope of their license, whether that work is performed by a subcontractor or a business entity hired by and supervised by the licensed contractor (Chapter 713).

Effective Date: July 1, 2012

HB 887 - Relating To Business and Professional Regulation – Chapter 455

Amending parts of s. 455.213, F.S.; waiving initial licensing, application, and unlicensed activity fees for certain military veterans; amending s. 455.2179, F.S.; revising continuing education provider and course approval procedures; amending s. 455.271, F.S.; limiting to the Department of Business and Professional Regulation the authority to reinstate a license that has become void under certain circumstances; amending s. 455.273, F.S.; revising the method of license renewal notification or notice of pending cancellation of licensure to include an e-mail address; deleting a requirement that a licensure renewal notification and a notice of cancellation of licensure include certain information regarding the applicant; amending s. 455.275, F.S.; and revising a provision relating to maintenance of current address-of-record information to include e-mail address; revising a provision relating to notice to a licensee to allow service of process by e-mail.

Section 3. Subsection (12) is added to section 455.213, Florida Statutes, to read:

455.213 General licensing provisions.—

(12) The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license, in a format prescribed by the department, within 24 months after discharge from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged.

Section 4. Subsection (1) of section 455.2179, Florida Statutes, is amended to read:

455.2179 Continuing education provider and course approval; cease and desist orders.—

(1) If a board, or the department if there is no board, requires completion of continuing education as a requirement for renewal of a license, the board, or the department if there is no board, shall approve the providers and courses for ~~of~~ the continuing education. Notwithstanding this subsection or any other provision of law, the department may approve continuing education providers or courses even if there is a board. If the department determines that an application for a continuing education provider or course requires expert review or should be denied, the department shall forward the application to the appropriate board for review and approval or denial. The approval of continuing education providers and courses must be for a specified period of time, not to exceed 4 years. An approval that does not include such a time limitation may remain in effect pursuant to the applicable practice act or

the rules adopted under the applicable practice act. Notwithstanding this subsection or any other provision of law, only the department may determine the contents of any documents submitted for approval of a continuing education provider or course.

Section 5. Paragraph (b) of subsection (6) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(6)

(b) Notwithstanding the provisions of the professional practice acts administered by the department, ~~the board, or~~ the department ~~if there is no board~~, may, at its discretion, reinstate the license of an individual whose license has become void if the ~~board or~~ department~~, as applicable,~~ determines that the individual ~~has made a good faith effort to comply with this section but has~~ failed to comply because of illness or ~~unusual~~ economic hardship. The individual must apply to the ~~board, or the~~ department ~~if there is no board,~~ for reinstatement ~~in a manner prescribed by rules of the board or the department, as applicable,~~ and ~~shall~~ pay an applicable fee in an amount determined by rule. The ~~board, or the~~ department ~~if there is no board,~~ shall require that such individual meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter. This subsection does not apply to individuals subject to regulation under chapter 473.

Section 6. Section 455.273, Florida Statutes, is amended to read:

455.273 Renewal and cancellation notices.—

~~(1)~~ At least 90 days before the end of a licensure cycle, the department ~~of Business and Professional Regulation~~ shall:

(1)~~(a)~~ Forward a licensure renewal notification to an active or inactive licensee at the licensee's last known address of record or e-mail address provided to ~~with~~ the department.

(2)~~(b)~~ Forward a notice of pending cancellation of licensure to a delinquent status licensee at the licensee's last known address of record or e-mail address provided to ~~with~~ the department.

~~(2) Each licensure renewal notification and each notice of pending cancellation of licensure must state conspicuously that a licensee who remains on inactive status for more than two consecutive biennial licensure cycles and who wishes to reactivate the license may be required to demonstrate the competency to resume active practice by sitting for a special purpose examination or by completing other reactivation requirements, as defined by rule of the board or the department when there is no board.~~

Section 7. Subsections (1) and (2) of section 455.275, Florida Statutes, are amended to read:

455.275 Address of record.—

(1) Each licensee of the department is solely responsible for notifying the department in writing of the licensee's current mailing address, e-mail address, and place of practice, as defined by rule of the board or the department when there is no board. A licensee's failure to notify the department of a change of address constitutes a violation of this section, and the licensee may be disciplined by the board or the department when there is no board.

(2) Notwithstanding any other provision of law, service by regular mail or e-mail to a licensee's last known mailing address or e-mail address of record with the department constitutes adequate and sufficient notice to the licensee for any official communication to the licensee by the board or the department except when other service is required pursuant to s. 455.225.

HB 1001 - Relating To Timeshares – Chapter 721

The bill revises purposes of ch. 721, F.S., relating to vacation & timeshare plans, to include provision of certain disclosure; revises definition of "resale service provider"; defines "consumer resale timeshare interest," "consumer timeshare reseller," "resale broker," "resale brokerage services," "resale advertiser," & "resale advertising service"; deletes provision requiring resale service providers to provide certain fee or cost & listing information to timeshare interest owners; specifies information resale service provider must provide to consumer timeshare reseller; prohibits certain services related to offering of resale advertising by resale advertisers; provides certain restrictions on offering of resale advertising services by resale advertisers; provides voidability of certain contracts; provides duties of resale service provider; provides that provision of resale advertising services in this state constitutes operating, conducting, engaging in, or carrying on business or business venture for purposes relating to jurisdiction of courts of this state; provides penalties.

Effective Date: July 1, 2012

An act relating to timeshares; amending s. 721.02, F.S.; revising purposes of the chapter to include the provision of certain disclosure; amending s. 721.05, F.S.; revising the definition of the term “resale service provider”; defining the terms “consumer resale timeshare interest,” “consumer timeshare reseller,” “resale broker,” “resale brokerage services,” “resale advertiser,” and “resale advertising service”; amending s. 721.20, F.S.; deleting a provision requiring resale service providers to provide certain fee or cost and listing information to timeshare interest owners; creating s.721.205, F.S.; specifying information a resale service provider must provide to the consumer timeshare reseller; prohibiting unlicensed resale service providers from engaging in certain activities; prohibiting certain services related to the offering of resale advertising by resale advertisers; providing certain restrictions on the offering of resale advertising services by resale advertisers; providing voidability of certain contracts; providing duties of a resale service provider; providing that the provision of resale advertising services in this state constitutes operating, conducting, engaging in, or carrying on a business or business venture for purposes relating to jurisdiction of the courts of this state; providing penalties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 721.02, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:

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

(5) Require full and fair disclosure of terms, conditions, and services by resale service providers acting on behalf of consumer timeshare resellers or on behalf of prospective consumer resale purchasers, regardless of the business model employed by the resale service provider.

Section 2. Subsection (44) of section 721.05, Florida Statutes, is amended, and subsections (45) through (50) are added to that section, to read:

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

(44) “Resale service provider” means any resale advertiser, or other person or entity, including any agent or employee of such person or entity, who offers or uses unsolicited telemarketing, direct mail, or e-mail, or any other means of communication in connection with the offering of resale brokerage or resale advertising services to consumer owners of timeshare resellers interests. The term does not include developers or, managing entities, or exchange companies to the extent they offer resale brokerage or resale advertising services to owners of timeshare interests in their own timeshare plans; resale brokers to the extent that resale advertising services are offered in connection with resale brokerage services and no fee for the advertising service is collected in advance; or a

consumer timeshare reseller who acquires a timeshare interest or timeshare interests for his or her own use and occupancy and who later offers the timeshare interest or timeshare interests for rent or offers for resale in a given calendar year seven or fewer of the timeshare interests that he or she acquired for his or her own use and occupancy or members of their own exchange programs.

(45) "Consumer resale timeshare interest" means:

(a) A timeshare interest owned by a purchaser;

(b) One or more reserved occupancy rights relating to a timeshare interest owned by a purchaser; or

(c) One or more reserved occupancy rights relating to, or arranged through, an exchange program in which a purchaser is a member.

(46) "Consumer timeshare reseller" means a purchaser who acquires a timeshare interest for his or her own use and occupancy and later offers the timeshare interest for resale or rental.

(47) "Resale broker" means any person, or any agent or employee of such person, who is licensed pursuant to chapter 475 and who offers or provides resale brokerage services to consumer timeshare resellers for compensation or valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication.

(48) "Resale brokerage services" means, with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, any activity that directly or indirectly consists of any of activities described in s. 475.01(1)(a).

(49) "Resale advertiser" means any person who offers, personally or through an agent, resale advertising services to consumer timeshare resellers for compensation or valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication. The term does not include:

(a) A resale broker to the extent that resale advertising services are offered in connection with timeshare resale brokerage services and no fee for the resale advertising service is collected in advance;

(b) A developer or managing entity to the extent that either of them offers resale advertising services to owners of timeshare interests in their own timeshare plans; or

(c) A newspaper, periodical, or website owner, operator, or publisher, unless the newspaper, periodical, or website owner, operator, or publisher derives more than 10 percent of its gross revenue from providing resale advertising services. For purposes of this paragraph, the calculation of gross revenue derived from providing resale advertising services includes revenue of any affiliate, parent, agent, and subsidiary of the newspaper, periodical, or website owner, operator, or publisher, so long as the resulting percentage of gross revenue is not decreased by the inclusion of such affiliate, parent, subsidiary, or agent in the calculation.

(50) "Resale advertising service" means any good or service relating to, or a promise of assistance in connection with, advertising or promoting the resale or rental of a consumer resale timeshare interest located or offered within this state, including any offer to advertise or promote the sale or purchase of any such interest.

Section 3. Subsection (9) of section 721.20, Florida Statutes, is amended to read:

721.20 Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.

(9)(a) Prior to listing or advertising a timeshare interest for resale, a resale service provider shall provide to the timeshare interest owner a description of any fees or costs relating to the advertising, listing, or sale of the timeshare interest that the timeshare interest owner, or any other person, must

pay to the resale service provider or any third party, when such fees or costs are due, and the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by the resale service provider for each of the previous 2 calendar years.

(b) Failure to disclose this information in writing constitutes an unfair and deceptive trade practice pursuant to chapter 501. Any contract entered into in violation of this subsection is void and the purchaser is entitled to a full refund of any moneys paid to the resale service provider.

Section 4. Section 721.205, Florida Statutes, is created to read:

721.205 Resale service providers; disclosure obligations.—

(1)(a) Before engaging in resale advertising services, a resale service provider must provide to the consumer timeshare reseller:

1. A description of any fees or costs related to such services that the consumer timeshare reseller, or any other person, is required pay to the resale service provider or to any third party.

2. A description of when such fees or costs are due.

(b) A resale service provider may not engage in those activities described in s. 475.01(1)(a) without being the holder of a valid and current active license in accordance with chapter 475.

(2) In the course of offering resale advertising services, a resale advertiser may not:

(a) State or imply that the resale advertiser will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the consumer resale timeshare interest for sale or rent by the consumer timeshare reseller.

(b) State or imply to a consumer timeshare reseller, directly or indirectly, that the resale advertiser has identified a person interested in buying or renting the timeshare resale interest without providing the name, address, and telephone number of such represented interested resale purchaser.

(c) State or imply to a consumer timeshare reseller, directly or indirectly, that sales or rentals have been achieved or generated as a result of its advertising services unless the resale advertiser, at the time of making such representation, possesses and is able to provide documentation to substantiate the statement or implication made to the consumer timeshare reseller. In addition, to the extent that a resale advertiser states or implies to a consumer timeshare reseller that the resale advertiser has sold or rented any specific number of timeshare interests, the resale advertiser must also provide the consumer timeshare reseller the ratio or percentage of all the timeshare interests that have resulted in a sale versus the number of timeshare interests advertised for sale by the resale advertiser for each of the previous 2 calendar years if the statement or implication is about a sale or sales, or the ratio or percentage of all the timeshare interests that have actually resulted in a rental versus the number of timeshare interests advertised for rental by the resale advertiser for each of the previous 2 calendar years if the statement or implication is about a rental or rentals.

(d) State or imply to a consumer timeshare reseller that the timeshare interest has a specific resale value.

(e) Make or submit any charge to a consumer timeshare reseller's credit card account; make or cause to be made any electronic transfer of consumer timeshare reseller funds; or collect any payment from a consumer timeshare reseller that exceeds an aggregate total amount of $75 or more in any 12-month period until after the resale advertiser has received a written contract complying in all respects with paragraph (f) that has been signed by the consumer timeshare reseller.

(f) Engage in any resale advertising services for compensation or valuable consideration without first obtaining a written contract to provide such services signed by the consumer timeshare reseller.

Notwithstanding any other law, the contract must be printed in at least 12-point type and must contain the following information:

1. The name, address, telephone number, and web address, if any, of the resale advertiser and a mailing address and e-mail address to which a contract cancellation notice may be delivered at the consumer timeshare reseller's election.

2. A complete description of all resale advertising services to be provided, including, but not limited to, details regarding the publications, Internet sites, and other media in or on which the consumer resale timeshare interest will be advertised, the dates or time intervals for such advertising or the minimum number of times such advertising will be run in each specific medium, the itemized cost to the consumer timeshare reseller of each resale advertising service to be provided, and a statement of the total cost to the consumer timeshare reseller of all resale advertising services to be provided.

3. A statement printed in at least 12-point boldfaced type immediately preceding the space in the contract provided for the consumer timeshare reseller's signature in substantially the following form:

Timeshare Owner's Right of Cancellation

> …(Name of resale advertiser)… will provide resale advertising services pursuant to this contract. If …(name of resale advertiser)… represents that …(name of resale advertiser)… has identified a person who is interested in purchasing or renting your timeshare interest, then …(name of resale advertiser)… must provide you with the name, address, and telephone number of such represented interested resale purchaser.
>
> You have an un-waivable right to cancel this contract for any reason within 10 days after the date you sign this contract. If you decide to cancel this contract, you must notify …(name of resale advertiser)… in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to …(resale advertiser's physical address)… or to …(resale advertiser's e-mail address)…. Your refund will be made within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from your cleared check, whichever is later.
>
> You are not obligated to pay …(name of resale advertiser)… any money unless you sign this contract and return it to …(name of resale advertiser)….
>
> IMPORTANT: Before signing this contract, you should carefully review your original timeshare purchase contract and other project documents to determine whether the developer has reserved a right of first refusal or other option to purchase your timeshare interest or to determine whether there are any restrictions or special conditions applicable to the resale or rental of your timeshare interest.

4. A statement that any resale contract entered into by or on behalf of the consumer timeshare reseller must comply in all respects with s. 721.065, including the provision of a 10-day cancellation period for the prospective consumer resale purchaser.

(g) Make or submit any charge to a consumer timeshare reseller's credit card account; make or cause to be made any electronic transfer of consumer timeshare reseller funds; or collect any payment from a consumer timeshare reseller in an aggregate amount totaling less than $75 in any 12-month period unless the consumer timeshare reseller has been provided a copy of the terms and conditions of the contract provided for in paragraph (f) and the consumer timeshare reseller has agreed to such terms and conditions by mail or electronic transmission.

(h) Fail to honor any cancellation notice sent by the consumer timeshare reseller within 10 days after the date the consumer timeshare reseller signs the contract for resale advertising services in compliance with subparagraph (f)3.

(i) Fail to provide a full refund of all money paid by a consumer timeshare reseller within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from a cleared check, whichever is later. (3) If a resale service provider uses a contract for resale advertising services that fails to comply with subsection (2), such contract shall be voidable at the option of the consumer timeshare reseller for a period of 1 year after the date it is executed by the consumer timeshare reseller.

(4) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a resale service provider to supervise, manage, and control all aspects of the offering of resale advertising services by any agent or employee of the resale service provider. Any violation of this section that occurs during such offering shall be deemed a violation by the resale service provider as well as by the person actually committing the violation.

(5) Providing resale advertising services with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, or in a multisite timeshare plan registered or required to be registered to be offered in this state, including acting as an agent or third party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this state for the purposes of s. 48.193(1).

(6) The use of any unfair or deceptive act or practice by any person in connection with resale advertising services is a violation of this section.

(7) Notwithstanding any other penalties provided for in this section, any violation of this section is subject to a civil penalty of not more than $15,000 per violation. In addition, a person who violates any provision of this section commits an unfair and deceptive trade practice as prohibited by s. 501.204 and is subject to the penalties and remedies provided in part II of chapter 501.

Section 5. This act shall take effect July 1, 2012.

Approved by the Governor April 6, 2012.

HB 1013 - Relating To Residential Construction Warranties –Chapter 553

The bill provides legislative findings; provides legislative intent to affirm limitations to doctrine or theory of implied warranty of fitness and merchantability or habitability associated with construction and sale of new home; provides definition; prohibits cause of action in law or equity based upon doctrine or theory of implied warranty of fitness and merchantability or habitability for damages to offsite improvements; provides that existing rights of purchasers of homes or homeowners' associations to pursue certain causes of action are not altered or limited; provides for applicability of act; provides for severability.

Effective Date: July 1, 2012, and applies to all cases accruing before, pending on, or filed after that date.

An act relating to residential construction warranties; creating s. 553.835, F.S.; providing legislative findings; providing legislative intent to affirm the limitations to the doctrine or theory of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home; providing a definition; prohibiting a cause of action in law or equity based upon the doctrine or theory of implied warranty of fitness and merchantability or habitability for damages to offsite improvements; providing that the existing rights of purchasers of homes or homeowners' associations to pursue certain causes of action are not altered or limited; providing for applicability of the act; providing for severability; providing an effective date.

WHEREAS, the Legislature recognizes and agrees with the limitations on the applicability of the doctrine or theory of implied warranty of fitness and merchantability or habitability for a new home as established in the seminal cases of Gable v. Silver, 258 So.2d 11 (Fla. 4th DCA 1972) adopted and cert. dism, 264 So.2d 418 (Fla. 1972); Conklin v. Hurley, 428 So.2d 654 (Fla. 1983); and Port Sewall Harbor and Tennis Club Owners Ass'n v. First Fed. S. and L. Ass'n., 463 So.2d 530 (Fla. 4th DCA 1985), and does not wish to expand any prospective rights, responsibilities, or liabilities resulting from these decisions, and

WHEREAS, the recent decision by the Fifth District Court of Appeal rendered in October of 2010, in Lakeview Reserve Homeowners et. al. v. Maronda Homes, Inc., et. al., 48 So.3d 902 (Fla. 5th DCA, 2010), expands the doctrine or theory of implied warranty of fitness and merchantability or habitability for a new home to the construction of roads, drainage systems, retention ponds, and underground pipes, which the court described as essential services, supporting a new home, and

WHEREAS, the Legislature finds, as a matter of public policy, that the Maronda case goes beyond the fundamental protections that are necessary for a purchaser of a new home and that form the basis for imposing an implied warranty of fitness and merchantability or habitability for a new home and creates uncertainty in the state's fragile real estate and construction industry, and

WHEREAS, it is the intent of the Legislature to reject the decision by the Fifth District Court of Appeal in the Maronda case insofar as it expands the doctrine or theory of implied warranty and fitness and merchantability or habitability for a new home to include essential services as defined by the court, NOW THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

***Section 1.** Section 553.835, Florida Statutes, is created to read:*

553.835 Implied warranties.— (1) The Legislature finds that the courts have reached different conclusions concerning the scope and extent of the common law doctrine or theory of implied warranty of fitness and merchantability or habitability for improvements immediately supporting the structure of a new home, which creates uncertainty in the state's fragile real estate and construction industry.

(2) It is the intent of the Legislature to affirm the limitations to the doctrine or theory of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home.

(3) As used in this section, the term "offsite improvement" means:

(a) The street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is not located on or under the lot on which a new home is constructed, excluding such improvements that are shared by and part of the overall structure of two or more separately owned homes that are adjoined or attached whereby such improvements affect the fitness and merchantability or habitability of one or more of the other adjoining structures; and

(b) The street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is located on or under the lot but that does not immediately and directly support the fitness and merchantability or habitability of the home itself.

(4) There is no cause of action in law or equity available to a purchaser of a home or to a homeowners' association based upon the doctrine or theory of implied warranty of fitness and merchantability or habitability for damages to offsite improvements. However, this section does not alter or limit the existing rights of purchasers of homes or homeowners' associations to pursue any other cause of action arising from defects in offsite improvements based upon contract, tort, or statute, including, but not limited to, ss. 718.203 and 719.203.

Section 2. If any provision of the act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 3. *This act shall take effect July 1, 2012, and applies to all cases accruing before, pending on, or filed after that date.*

HB 1127 - Citizens Property Insurance Corporation – Chapter 627

This bill reduces to 2 percent from 6 percent amount of projected deficit in coastal account for prior calendar year which is recovered through regular assessments; requires that remaining projected deficits in personal and commercial lines accounts be recovered through emergency assessments after accounting for Citizens policyholder surcharge; requires OIR of FSC to notify assessable insurers and Florida Surplus Lines Service Office of dates assessable insurers shall collect and pay emergency assessments; removes reference to recoupment of residual market deficit assessments; requires board of governors to make determination that account has projected deficit before it levies Citizens policyholder surcharge; requires limited apportionment company begin collecting regular assessments within 90 days and pay in full within 15 months after assessment is levied; authorizes OIR to assist Citizens Property Insurance Corporation in collection of assessments; replaces term "market equalization surcharge" with term "policyholder surcharge."

Effective Date: July 1, 2012

An act relating to Citizens Property Insurance Corporation; amending s. 627.351, F.S.; conforming cross-references; reducing to 2 percent from 6 percent the amount of the projected deficit in the coastal account for the prior calendar year which is recovered through regular assessments; requiring that remaining projected deficits in personal and commercial lines accounts be recovered through emergency assessments after accounting for the Citizens policyholder surcharge; requiring the Office of Insurance Regulation of the Financial Services Commission to notify assessable insurers and the Florida Surplus Lines Service Office of the dates assessable insurers shall collect and pay emergency assessments; removing reference to recoupment of residual market deficit assessments; requiring the board of governors to make a determination that an account has a projected deficit before it levies a Citizens policy holder surcharge; requiring that a limited apportionment company begin collecting regular assessments within 90 days and pay in full within 15 months after the assessment is levied; authorizing the Office of Insurance Regulation to assist the Citizens Property Insurance Corporation in the collection of assessments; replacing the term "market equalization surcharge" with the term "policyholder surcharge"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. *Paragraphs (b), (c), (q), and (w) of subsection (6) of section 627.351, Florida Statutes, are amended to read:*

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a

certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

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

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

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

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

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If the financing obligations are no longer outstanding, the corporation may use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation.

Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan to consolidate the three separate accounts into a single account.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. ~~No part of~~ The income of the corporation may not inure to the benefit of any private person.

3. With respect to a deficit in an account:

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

(I) Is not greater than 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II) Exceeds 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 ~~6~~ percent of the projected deficit or 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph d. ~~c.~~

b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

c. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., the remaining projected deficits in the personal lines account and in the commercial lines account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph d.

d.~~c.~~ Upon a determination by the board of governors that a projected deficit in an account exceeds the amount that is expected to ~~will~~ be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i. ~~h.~~, the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date may be not less than 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account under this sub-subparagraph in any calendar year may be less than but not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e.~~d.~~ The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a. or subparagraph (q)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under sub-subparagraph d. c. shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

f.~~e.~~ As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by

assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

g.~~f.~~ The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h.~~g.~~ The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i.~~h. If a deficit is incurred in any account~~ In 2008 or thereafter, upon a determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

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

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

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

(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

j.~~i.~~ If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage. 2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses. (II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3.a. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, <u>policyholder surcharges</u> ~~market equalization~~ and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

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

shall develop a plan to implement the report and submit the plan for review, modification, and approval to the Financial Services Commission. Upon the commission's approval of the plan, the board shall begin implementing the plan by January 1, 2013.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of eight individuals who are residents of this state, from different geographical areas of this state.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and is deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows: a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured

under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period remains eligible for coverage from the corporation regardless of an offer of coverage from an authorized insurer or surplus lines insurer.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

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

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds ~~pursuant to s. 627.3512,~~ but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments ~~assessment~~ must be paid in full within 15 ~~12~~ months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial

appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

18. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

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

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

ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE 824 AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

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

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

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable

and prudent steps necessary to collect the amount of assessments ~~assessment~~ due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate ~~such assessment~~. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraphs (b)3.a. and b. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

(w) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. <u>The</u> ~~No such~~ proceeding <u>does not</u> ~~shall~~ relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, <u>policyholder surcharges</u> ~~market equalization~~ or other surcharges under <u>sub-subparagraph (b)3.i.</u> ~~subparagraph (c)10.~~, or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, <u>policyholder surcharges</u> ~~market equalization~~ or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue

unaffected by such proceeding. As used in this subsection, the term "financing documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

5. As long as the corporation has any bonds outstanding, the corporation may not file a voluntary petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and a public officer or any organization, entity, or other person may not authorize the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

6. If ordered by a court of competent jurisdiction, the corporation may assume policies or otherwise provide coverage for policyholders of an insurer placed in liquidation under chapter 631, under such forms, rates, terms, and conditions as the corporation deems appropriate, subject to approval by the office.

***Section 2.** This act shall take effect July 1, 2012.*

Rule 61b-80.1165 – Relating To Arbitration

Department Of Business and Professional Regulation
Division of Florida Condominiums, Timeshares and Mobile Homes

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to articulate the arbitrators' ability to issue orders necessary to effectuate discovery, to prevent delay, and otherwise to promote the just, speedy, and inexpensive determination of all aspects of pending cases under Chapter 718 and 720, Florida Statutes.

SUMMARY: The proposed rule articulates the arbitrators' ability to issue orders necessary to effectuate discovery, to prevent delay, and otherwise to promote the just, speedy, and inexpensive determination of all aspects of pending cases under Chapter 718 and 720, Florida Statutes.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:
The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department conducted an analysis of the proposed rule's potential economic impact and determined that it did not exceed any of the criteria established in Section 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

Rulemaking Authority: 718.1255(4) Fs.
Law Implemented: 718.1255(3)(C) Fs.

61B-80.1165 Non-Final Orders.

(1) The presiding arbitrator before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case.

(2) When a case is abated, held in abeyance, or administratively closed, no filing fee is necessary to reopen the case or otherwise proceed with the matter.

Rulemaking Authority 718.1255(4) FS. Law Implemented 718.1255(3)(c) FS. History–New.

Rule 61b-50.1265 – Relating To Arbitration

Department Of Business and Professional Regulation
Division of Florida Condominiums, Timeshares and Mobile Homes

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to articulate the arbitrators' ability to issue orders necessary to effectuate discovery, to prevent delay, and otherwise to promote the just, speedy, and inexpensive determination of all aspects of pending cases under Chapters 718 and 720, Florida Statutes.

SUMMARY: The proposed rule articulates the arbitrators' ability to issue orders necessary to effectuate discovery, to prevent delay, and otherwise to promote the just, speedy, and inexpensive determination of all aspects of pending cases under Chapter 718 and 720, Florida Statutes.

Summary of Statement Of Estimated Regulatory Costs And Legislative Ratification: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department conducted an analysis of the proposed rule's potential economic impact and determined that it did not exceed any of the criteria established in Section 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

Rulemaking Authority: 718.1255(4) Fs.
Law Implemented: 718.1255(3)(C) Fs.

61B-50.1265 Non-Final Orders.

(1) The presiding arbitrator before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case.

(2) When a case is abated, held in abeyance, or administratively closed, no filing fee is necessary to reopen the case or otherwise proceed with the matter.

Rulemaking Authority 718.1255(4) FS. Law Implemented 718.1255(3)(c) FS. History–New.

Arbitration[1]

Arbitration Defined

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

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

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

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

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

Parties and Appearances in an Arbitration Proceeding?

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

[1] Some information extracted from DBPR website.

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

Pre-Arbitration Requirements and Filing Tip

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

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

How to Petition for Arbitration

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

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

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

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

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

Several arbitration cases follow in full, for your information.

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES
IN RE: PETITION FOR ARBITRATION - HOA
CARLA BONTEN, SHIRLEY BARRICK,
and JIM BONNIE,
Petitioners,
v. Case No. 2011-04-0156
MARBELLA AT SPANISH WELLS
HOMEOWNERS ASSOCIATION, INC.,
Respondent.

Summary Final Order

On review of the petition, the answer and other filings in this case, there is no material issue of fact at issue. There is one issue of law regarding the election of the Board of Directors for Marbella at Spanish Wells Homeowners Association, Inc.

Statement of the Issues

Does an Association have an obligation to keep a current membership list, and is an election valid if the Association does not accept proxies from unit owners who are not on the official membership list of the Association?

Procedural History

Carla Bonten, Shirley Barrick and Jim Bonne filed a petition for arbitration on August 11, 2011 naming Marbella at Spanish Wells Homeowners Association Inc. (the "Association") as Respondent. On September 8, 2012, the Association filed its answer. The arbitrator then ordered subsequent filings which were timely received.

This Summary Final Order is based on the pleadings and exhibits filed by the parties.

Findings of Fact

1. The Association is a sub-association of the master association Spanish Wells Community Association, Inc. ("the Master Association"). The membership of the Association contains 256 condominium units and 86 individual single-family homes with a total of 342 voting interests.

2. The condominium unit owners are also members of one of three condominium associations: Marbella at Spanish Wells Condominium Association I, Inc. ("Marbella I"), which consists of 88 units; Marbella at Spanish Wells Condominium Association II, Inc. ("Marbella II"), which consists of 48 units; and Marbella at Spanish Wells Condominium Association III, Inc. ("Marbella III"), which consists of 120 units.

3. The organization structure is as set out graphically as follows:

4. The Association's board of directors consists of five members with two-year staggered terms. Master Association (multiple sub-master associations) **RESPONDENT ASSOCIATION** 352 total voting interests 86 Individual single-family homes Marbella I Condo 88 units Marbella II Condo 48 units Marbella III Condo 120 units

5. At the April 20, 2011 annual meeting, Petitioners presented proxies to be used to cast votes in the annual election for three seats on the board of directors.

6. At least 17 of Petitioners' proxies were rejected because the name on the proxy did not match the homeowner's name on the Association's official membership list. It is undisputed that the 17 homeowners were, in fact, owners of condominium units/homes within the Association on April 20, 2011, but they were not listed as such on the official membership list.

7. At the meeting, Petitioner Carla Bonton offered to download ownership public information from the Lee County, Florida Property Appraiser's website on her laptop computer. The Association refused her offer and rejected the proxies.

8. The Association's management company knew that its membership list was out-of-date and attempted to have the condominium associations send it their membership lists. The condominium associations did not respond to the request.

9. The Association's Master Association controls security gates and access codes. The Association members notify the Master Association of property transfer to obtain access to the security gate. The Master Association also collects capital contributions from property transfers.

10. The condominium associations collect assessments on behalf the Association for unit owners who are also members of the condominium associations.

11. Petitioner Jim Bonnie attempted to nominate himself before a nominating committee, but was rejected by the committee.[1] All three Petitioners were nominated on the floor of the annual meeting.

12. All notices were sent to persons who were on the Association's official membership list.

13. Section 3.03 of the Association's By-laws requires that the secretary of the Association shall maintain a register showing the names and addresses of the members of the Association, and each member is responsible for advising the secretary of any change of address and any change of ownership. Additionally, it states the Association "shall not be responsible for reflecting any changes, until notified of such changes in writing."

14. The membership list has not been actively updated for several years.

15. Because many of Petitioners' proxies were not counted toward their vote totals, they were not elected to the board of directors. If all of their discounted proxies had been counted, they would have been elected to the board.

16. The Association has advised that the 2012 annual meeting and the election of the other two directors is scheduled for April 18, 2012.

16. Petitioners dispute other proxies, which were not accepted for various reasons. As the membership list issue is determinative of this matter, it unnecessary to address these issues.

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[1] Although Petitioners aver this fact in their petition, they do not base their claim of relief on the fact that Mr. Bonnie not being able to nominate himself at the nomination committee meeting. However, Section 720.306(9)(a) Florida Statutes provides:

> Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. All members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held or, if the election process allows voting by absentee ballot, in advance of the balloting.

(Emphasis supplied). Nomination procedures in governing documents that conflict with this statute are unenforceable. *See The Townhomes at Villas Del Campo Homeowners' Ass'n, Inc. v Villas Del Campo Community Ass'n, Inc.* Arb. Case 2011-03-1962, Summary Final Order (December 16, 2011).

Conclusions of Law

Sections 720.306 and 720.311, Florida Statutes, provide that the Department shall conduct mandatory binding arbitration of election disputes between a member and a homeowners' association. Because there is no issue of material fact in dispute after the filings provided to date by the parties, this case is appropriate for summary disposition pursuant to Rule 61B-80.114, Florida Administrative Code.

Membership List

Every record owner of legal title of a parcel in the subdivision is registered to vote, as a matter of law, in a homeowners' association defined in section 720.301, Florida Statutes. Subsection 720.310 provides:

> (9) "Homeowners' association" or "association" means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which voting membership is a mandatory condition of parcel ownership, and which is; authorized to impose assessments: that, if unpaid, may become a lien on the parcel. The term "homeowners' association" does not include a community development district or other similar special taxing district created pursuant to statute.
>
> (10) "Member" means a member of an association, and may include, but is not limited to, a parcel owner or an association representing parcel owners or a combination thereof, and includes any person or entity obligated by the governing documents to pay an assessment or amenity fee.

Subsection 720.310(12) provides, "Parcel owner means the record owner of legal title to a parcel." Additionally, the legislature has imposed specific obligations upon homeowners' associations to know and keep track of the voting membership. *Castro v. Snapper Creek Townhouse Home Owners Ass'n, Inc.* Arb. Case No. 2009-01-2882, Summary Final Order (July 10, 2010). (Among other requirements, the homeowners' association must maintain as an official record, "A current roster of all members and their mailing addresses and parcel identifications." § 720.303(4)(g), Fla. Stat.; and the association must give actual notice to all parcel owners of Membership meetings which must be mailed, delivered or electronically transmitted. § 720.306(5), Fla. Stat.).

The Association relies on the provision in its bylaws that it cannot be held responsible for failure to maintain its membership list if the homeowner does not provide the information in writing. The Association cannot absolve itself of its statutory obligations by pointing to its bylaws. *Id.* The Association's management company knew its list was outdated, and it asked for assistance from the condominium associations. Additionally, the Association is part of a nesting structure of homeowner and condominium associations. It is difficult for homeowners to fulfill their notification responsibilities to all of the associations of which they may be a member. Also, the property appraiser in Lee County, Florida provides free public access to ownership information, which is updated regularly.

The Association with minimal effort could have updated its membership list with reliable information. The Association is not required to be perfect in the maintenance of its membership list, but it must put forth reasonable efforts to ensure proper notice of its elections to comply with sections 720.303(4)(g) and 720.306(5), Florida Statutes. In this case, the Association did not put forth reasonable efforts to update its membership lists before noticing and conducting an election.

Relief Requested

Petitioners have requested that the discounted proxies be counted towards their total votes and that they be declared the winners of the election. They request that the three members elected by the Association be removed from office, and that they be placed on the board.

The Association's membership list was so deficient that the arbitrator can only conclude that the entire election was not properly noticed to a significant number of the members of the Association. A significant number of members were denied participation. Because Petitioners were able to contact 17 members themselves and obtain proxies does not account for all those who may not have received notice of the election. The arbitrator cannot speculate what the results of the election would have been if all of the membership had been properly notified. A new election must be ordered.

Based upon the foregoing, it is **ORDERED:**

1. No later than 60 days after the date of this order, the Association shall properly notice and hold a special election for the three members whose terms will end in 2013.

2. Given the legal deficiencies in the prior election described herein, the Association may wish to cancel its upcoming April 18, 2012 election of the two other directors. The Association has the option of canceling its 2012 election and rescheduling it to occur at the same time as the special election. If the elections occur at the same time, the two candidates who receive the most votes will have terms ending in 2014. The remaining three candidates elected will have terms ending in 2013.

DONE AND ORDERED this 12th day of April, 2012, at Tallahassee, Leon County, Florida.

_____

Terri Leigh Jones, Arbitrator

Department of Business and

Professional Regulation

Arbitration Section

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES
IN RE: PETITION FOR BINDING ARBITRATION - HOA
Maritza A. Jimenez,[1]
Petitioner,
v. Case No. 2011-01-7142
The Townhomes at
Villas del Campo HOA, Inc.,
Respondent.

Summary Final Order

Procedural History

On March 25, 2011, Andrew Jimenez (Petitioner) filed a petition for mandatory binding arbitration of a homeowner's election dispute naming The Townhomes at Villas del Campo HOA, Inc., (the Association) as Respondent. On April 22, 2011, an Order Requiring Answer was entered. On June 2, 2011, the Association filed an Answer.

On June 8, 2011, an Order was entered requiring the parties to file supplemental information. The Order required Petitioner to file, on or before June 20, 2011, a fully executed Qualified Representative Application which Petitioner did on June 22, 2011.

The Order required the Association to file, on or before June 20, 2011, a copy of the minutes of the February 28, 2011 Annual Meeting. On June 28, 2011, the

Association moved for an extension of time until July 1, 2011, to file a copy of the minutes, and the motion was granted. The Association filed a copy of the minutes on July 1, 2011[2]

Both parties were required to file, if available, a copy of any audio or video recording made of the February 28, 2011 Annual Meeting. As of the date of this Summary Final Order, neither party filed a recording of the Annual Meeting.

Statement of the Issues

The issues presented are whether the Association improperly conducted the annual election for the board of directors by:

1. Refusing to recognize proxies;
2. Rejecting proxies because the owner was delinquent 90 days in the payment of maintenance fees;
3. Failing to reschedule the annual election; and

[1]As originally filed, the petition named Andrew Jimenez as Petitioner, and counsel for Respondent has not objected to Andrew Jimenez as the Petitioner. Maritza A. Jimenez is the owner of property in the subdivision but Andrew Jimenez is not. *See infra* p. 3 and note 4. A Qualified Representative Application has been filed by Maritza A. Jimenez naming Andrew Jimenez as the Qualified Representative and that application is approved by the undersigned. Therefore, Maritza A. Jimenez has been substituted as the named Petitioner.

[2] The minutes show they were approved on June 30, 2011. While not ordered to do so, the Association also filed a copy of the roster. The Association's July 1, 2011 filing also indicated a copy of the proxies also would be filed. The Association was not ordered to file a copy of the proxies. As of the date of this Summary Final Order, the Association has not filed a copy of the proxies. In any event, the Association's filing or not filing a copy of the roster and the proxies does not affect the result of this Summary Final Order.

4. Failing to allow homeowners to speak.[1]

Findings of Fact

1. Maritza A. Jimenez is the owner of a lot in the subdivision governed by the Association and the governing documents, including the Neighborhood Declaration of Covenants, Restrictions and Easements for The Townhomes at Villas del Campo HOA, Inc. and the Articles of Incorporation and By-laws of the Association.[2]
2. The Association is the entity responsible for implementing the governing documents.
3. The Association does not dispute that there are 197 voting interests in the homeowners' association.
4. The Association does not dispute that 78 written proxies were submitted to the board of directors (board) at the February 28, 2011 Annual Meeting and that the proxies filed with the petition are copies of the proxies submitted to the board on that date. However, only 71 proxies were filed with the petition.
5. Article III of the By-laws is entitled MEMBERSHIP. In pertinent part, Article III, MEMBERSHIP, states,

> Section 5. Except as otherwise provided in these By-Laws, the Articles of Incorporation, or the Declaration of Covenants, the presence in person or by proxy of at least one third (33 1/3\ [sic]) percent of the Members of the Association entitled to vote shall constitute a quorum of the Membership. Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. In the event, however, that the required quorum is not present, another meeting may be called subject to the same notice requirement, although the required quorum at the subsequent meeting shall remain thirty-three and one-third (33 1/3%) percent of the total Members of the Association entitled to vote.
>
> Section 6. Votes may be cast in person or by proxy. Proxies must be in writing and filed with Secretary at least twenty-four (24) hours before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease after completion of the meeting for which the proxy was filed and upon conveyance by the Member of the fee simple title of his Unit.

6. In pertinent part, Article IV of the By-laws provides,

> Section 1. Initially, there shall be a minimum of three (3) directors of the Association who shall be elected annually at the annual meeting of the Members . . .
>
> Section 2. Election of the directors shall be conducted in the following manner:
>
> (a) Election of directors shall be held at the annual members' meeting . . . .

7. Article VII of the By-laws is entitled MEETING OF MEMBERS. In pertinent part, Article VII, Meeting of Members, States,

> Section 1. The regular annual meeting of the Members shall be held in each year beginning in the year in which the Declaration of Covenants is recorded, at such time, date

[1] The petition also alleges the Association's management company was not licensed at the time of the annual meeting. This issue is not within the jurisdiction of the arbitrator under Section 720.311(1) & (2), Florida Statutes.
[2] By Quit Claim Deed recorded June 27, 2005, Andrew Jimenez and Maritza Jimenez a/k/a Maritza A. Jimenez, his wife, conveyed the property to Maritza A. Jimenez.

and place as shall be determined by the Board of Directors, but no later than thirteen (13) months from the date of the previous annual meeting.

Section 4. The presence in person or by proxy at the meeting of Members entitled to cast thirty-three and one-third (33-1/3%) percent of the votes shall constitute a quorum for any action governed by these By-Laws.

Section 5. Any Member may give to a specified Board of Director [sic] or to any other Member a proxy to vote on behalf of the absent Member at any meeting. Such proxy shall be in writing, be signed by the absent Member and filed with the Association prior to or at the meeting. The proxy shall be effective only for the specific meeting for which it is originally given. It will be revocable at the pleasure of the Owners executing it if revoked by a duly delivered written notice thereof.

Conclusions of Law

The Division has jurisdiction over the parties and the subject matter pursuant to Sections 720.306(9), 720.311 and 718.1255, Florida Statutes. Andrew Jimenez is authorized to act as Qualified Representative for Maritza A. Jimenez.

Rejection of Proxies

Section 720.306 (1) and (8), Florida Statutes, authorize the use of proxies at a meeting of the members.[1] The Association's By-laws also authorize proxy voting. The Association argues it properly rejected the proxies because under Article III of the By-laws, entitled MEMBERSHIP, at section 6, the proxies were not filed with the Secretary at least twenty-four (24) hours before the appointed time of the meeting of the members. Further, the Association argues that even though section 5 of Article VII of the By-laws, MEETING OF MEMBERS, has no such time limitation, section 5 is inapplicable under "[t]he general rule of statutory construction . . . that a specific provision prevails over a general provision."

The Association's argument must fail. The Association seeks to apply the rule of construction in a vacuum. The Association ignores the fact that Article VII of the By-laws, MEETING OF MEMBERS, specifically addresses the regular annual election meeting of the Members and does not include a pre-meeting deadline for filing proxies, while Article III of the By-laws, MEMBERSHIP, addresses various topics. In any event, the time for filing a proxy as stated in Article VII, section 5, is quite specific – a proxy may be filed "prior to or at the meeting." (emphasis added). Thus, proxies may be filed at the regular annual election meeting of the Members, and need not be filed 24 hours in advance of the meeting. Any other interpretation of the By-laws precludes voting by members who for any reason determined, less than 24 hours before the meeting, they could not attend but wanted to exercise their vote and completed a proxy for that purpose. *See Castro v. Snapper Creek Townhouse Home*

[1] In pertinent part, the statute provides as follow:

(1) QUORUM; AMENDMENTS.—

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

(8) PROXY VOTING.—The members have the right, unless otherwise provided in this subsection or in the governing documents, to vote in person or by proxy.

The parties also may wish to note the statutory quorum requirement.

Owners Ass'n, Inc., Arb. Case No. 2009-01-2882, Summary Final Order (July 10, 2009) (Association improperly rejected proxies because they had not been filed with the secretary before the date of the election meeting.). The Association will be required to hold a new election.

Rescheduling Annual Election

Petitioner alleges that the Association adjourned the February 28, 2011 Annual Meeting without re-scheduling the annual meeting in violation of Section 720.306(7), Florida Statutes. Section 720.306(7), Florida Statutes, provides,

> (7) ADJOURNMENT.—Unless the bylaws require otherwise, adjournment of an annual or special meeting to a different date, time, or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to s. 720.303(2). Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under s. 607.0707, notice of the adjourned meeting must be given to persons who are entitled to vote and are members as of the new record date but were not members as of the previous record date.

Petitioner apparently contends that the Association had an affirmative duty to reschedule the annual meeting.

The Association counters that based upon Article III, section 5, of the By-laws, it is within the Association's discretion to reschedule the annual meeting. The Association points to the language of section 5 of Article III of the By-laws which provides, in pertinent part, "In the event, however, that the required quorum is not present, another meeting may be called subject to the same notice requirement." Article VII of the By-laws, MEETING OF MEMBERS, does not provide for rescheduling the meeting.

Neither Section 720.306(7) nor the Association's By-laws required the Association to re-schedule the annual meeting and election when the Association determined a quorum had not been attained. *See Drish v. Ivy Lake Estates Ass'n, Inc.*, Arb. Case No. 2008-03-9462, Summary Final Order (Feb. 19, 2009) (citing *Villamil v. Brickell Key One Condo. Ass'n, Inc.*, Arb. Case No. 94-0087, Summary Final Order (Oct. 19, 1994)) (In *Villamil* no statutory affirmative duty to re-schedule election when condominium election failed due to lack of quorum at annual election meeting, thus where by-laws of homeowners' association authorized members at annual election meeting to reconvene meeting but members failed to do so, homeowners' association neither authorized nor obligated to reconvene annual election meeting). However, under section 5 of Article III of the By-laws, the Association has the authority to reschedule the meeting if the Association properly determines a quorum is not present.

Failure to Allow Homeowners to Speak

Petitioner alleges homeowners were not allowed to speak at the annual election meeting for "the minimum 3 minutes in accordance with FS720.303(2)(b) [sic] and FS720.303(2)3(d) [sic]." However, Section 720.303, Florida Statutes, is not the relevant statute as paragraph (2)(b) of that section relates to a homeowner's right to speak at a board meeting.

In pertinent part, Section 720.311, Florida Statutes, provides,

(1) . . . In addition, the department shall conduct mandatory binding arbitration of election disputes between a member and an association pursuant to s. 718.1255 and rules adopted by the division.

(2)(a) . . . disputes regarding . . . membership meetings not including election meetings . . . shall be the subject of presuit mediation . . . .

Section 720.306(6), Florida Statutes, provides,

> (6) RIGHT TO SPEAK.—Members and parcel owners have the right to attend all membership meetings and to speak at any meeting with reference to all items opened for discussion or included on the agenda. Notwithstanding any provision to the contrary in the governing documents or any rules adopted by the board or by the membership, a member and a parcel owner have the right to speak for at least 3 minutes on any item, provided that the member or parcel owner submits a written request to speak prior to the meeting. The association may adopt written reasonable rules governing the frequency, duration, and other manner of member and parcel owner statements, which rules must be consistent with this subsection.

Rule 61B-80.103(2), Florida Administrative Code, provides,

> (2) Election disputes include a controversy relating to the conduct of a regular, special, or runoff election; the qualification of candidates for the board; the filling of a vacancy caused by any reason other than the recall of one or more directors of the board; and other disputes regarding an association election.

Based upon the statutes and rule quoted immediately above, Petitioner's dispute regarding the Association's denial of the homeowners' right to speak is within the jurisdiction of the arbitrator. The Association's Answer and Defenses do not deny the allegation that homeowners were not permitted to speak for up to three minutes at the annual election meeting. Therefore, the Association violated the homeowners' right to speak at the annual election meeting.

Rejection of Proxies for Delinquent Payment of Maintenance Fees

Because the Association will be required to hold a new election, Petitioner's remaining issue relating to rejection of proxies because the owner was delinquent 90 days in the payment of maintenance fees need not be addressed.[1] In any event, Petitioner will need to obtain new proxies as 90 days have elapsed since the February 28, 2011 Annual Meeting. *See* § 720.306(8)(a), Fla. Stat.

Based upon the foregoing, it is **ORDERED**:

The Association shall conduct a new election. On or before July 18, 2011, the Association shall notify all members of a meeting of members to elect directors. The date of the election meeting shall be scheduled for a date certain as soon as possible after the entry of this Summary Final Order, and the election shall be conducted consistent with the law, the terms of the Association's governing documents and this Summary Final Order. Those board members who are seated at the election required by this Order shall serve only until the next regularly scheduled election as provided in the governing documents.

DONE AND ORDERED this 8th day of July, 2011 at Tallahassee, Leon County, Florida.
Glenn Lang, Arbitrator
Division of Florida Condominiums,
Timeshares & Mobile Homes
Dept. of Business & Professional Regulation

[1] However, the parties may wish to refer to Section 18 of Chapter 2011-196, Laws of Florida, effective July 1, 2011, amending section 720.305, Florida Statutes.

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES
IN RE: PETITION FOR ARBITRATION
Lauderdale Oaks Condominium 10, Inc.,
Petitioner,
v. Case No. 2010-03-4040
Bobby Sharp, Donald Karasik,
Carmen Pinnock and Janet Molyneaux
Respondents.

Summary Final Order

Statement of the Issue

The issue in this case is which individuals legally occupy seats on the board of directors of Petitioner.

Procedural History

On July 6, 2010, Lauderdale Oaks Condominium 10, Inc. filed a petition for arbitration against Respondents, alleging that Respondents held themselves out as the board of administration for Petitioner. An Order Requiring Answer was entered on July 13, 2010. On July 16, 2010 Respondent Pinnock was duly served by certified mail. On July 27, 2010, Petitioner filed a Motion for Emergency Relief and Temporary Injunction. On August 4, 2010, an Order Requiring Service as to the remaining individual Respondents was entered. Respondents Sharp, Karasik and Molyneaux were personally served on August 6, 2010. The attorney for all Respondents field a Notice of Appearance on August 19, 2010.

A case management telephone conference was held on August 25, 2010 to address the number of board members required by Petitioner's governing documents and Chapter 718, Florida Statutes. The governing documents provide for "not less than three (3) nor more than nine (9)." The parties were unaware of any by-law amendment or minutes from a membership meeting that chose a specific number of board members.

Statement of the Facts

1. Lauderdale Oaks Condominium 10, Inc. ("Association") is the entity responsible for operation and maintenance of Lauderdale Oaks Condominium 10.
2. Respondents are owners of units in Lauderdale Oaks Condominium 10.
3. According to the records of the Division of Corporations of the Office Secretary of State of Florida, the number of directors of Lauderdale Oaks Condominium 10 has fluctuated from as many as 7 to as few as 4 during the decade before 2010. In 2009, there were six directors.
4. The by-laws of the Association schedule the statutorily required annual membership meeting for the third Tuesday of February each year.
5. On December 17, 2009, a first notice of the Association's annual meeting was sent out for February 16, 2010, by Frank Tacher, LCAM, of Phoenix Management Services, Inc., for the purpose of electing three directors and other business.
6. The first notice advised that persons who wished to be candidates for the election to be held at the annual meeting should mail a "Notice of Intent to be a Candidate for the Board of Directors" to the corporate office of Phoenix Management by January 7, 2010.

7. On December 23, 2009, the Association sent a letter terminating the association management contract with Phoenix Management, effective as of January 30, 2010.
8. Before January 7, 2010, the president of the Association received notices of intent for the candidacies of Albert Adams, Bobby Sharp and Ourania Tsekos.
9. On February 1, 2010, a Second Notice of Annual Meeting was sent by Frank Tacher, LCAM of Phoenix Management Services. This notice stated that only one person had filed a notice of intent so that no election would be held. The second Notice concluded:

   Your new Board of Directors will consist of the unit Owner(s) who have submitted their Notices of Intent to serve on the Board of Directors prior to the deadline date. This one person will fill the open seats via appointment to the Board. The one unit owner is Osvaldo Luis Valentin.

10. Osvaldo Valentin had submitted a notice of intent to Phoenix Management before February 1, 2010.
11. A meeting of the membership was held on February 16, 2010. At the meeting Albert Adams, Bobby Sharp and Ourania Tsekos were installed as directors without an election.
12. A corporation Annual Report was filed with the Office of the Secretary of State by A. Adams on March 20, 2010, listing the directors as Albert Adams, Bobby Sharp and Ourania Tsekos.
13. Mr. Valentin did not challenge the results of the annual meeting of February 16, 2010, or make any claim with respect to his notice of intent to be a candidate.
14. On June 14, 2010, a Notice of Meetings was posted for "Election of Directors/Annual Membership Meeting" to be held on June 17, 2010 at 7:00 p.m.
15. No membership meeting was held on June 17, 2010.
16. An Amended Annual Report for Lauderdale Oaks Condominium 10, Inc. was filed with the Office of the Secretary of State of the State of Florida, by Sheldon Goldberg, on June 18, 2010, listing five officers and directors for the Association - Bobby Sharp, Donald Karasik, Carment Pinnock, Osvaldo Valentin and Janet Molyneaux.
17. On June 21, 2010, Sheldon Goldberg, President of Phoenix Management Services sent a letter to the unit owners of Lauderdale Oaks Condominium 10, advising them to mail their maintenance fees to Phoenix Management.
18. Minutes have been produced for a board meeting held on June 23, 2010 at 2:00 p.m., which report:

    The meeting was called to order at 2:0PM by Osvaldo Valentin.

    The purpose of the meeting was to fill open seats on the Board of Directors.

    Being the only person to submit a valid "Intent" form to run for the Board, it fell upon Mr. Valentin to fill the open seats. Appointments to the open seats were…

    Bobby Sharp

    Donald Karasik

    Carment Pinnock

    Sandra Swanton

    An organizational meeting was immediate held appointing the following officers.

    President – Bobby Sharp

VP - Donald Karasik

Sec/treas – Osvaldo Valentin

It was noted that all officers may sign checks and that all checks will require two signatures

There being no further business to transact, the meeting was adjourned at 2:40PM

19. On June 29, 2010, Osvaldo Valentin sent a fax to the attorney for Petitioner advising that, "I'm no longer consider myself a validly elected board member director of the association. Efective 06-29-2010." Respondents deny that this communication constitutes a resignation from the board.

Conclusions of Law

The arbitrator has jurisdiction of the parties and the subject matter of this dispute pursuant to sections 718.1255(1)(b) and 718.1255(5), Florida Statutes.

A Summary Final Order is appropriate in this case pursuant to Rule 61B-45.030, Florida Administrative Code, because there are no disputed issues of material fact.

Insufficient Number of Candidates for Annual Election

Section 718.112(2)(d)1, Florida Statutes (2009), provides in pertinent part:

> If no person is interested in or demonstrates an intention to run for the position of a board member whose term has expired according to the provisions of this subparagraph, such board member whose term expired shall be automatically reappointed to the board of administration and need not stand for reelection.

Thus the statements in the unauthorized letter of February 1, 2010, from Phoenix management, to the effect that if only one person submitted a notice of intent to be a candidate, that person would become a board member empowered to appoint the remaining members of the board, conflicts with the statute. If only one person submits a notice of intent, the remaining seats are automatically occupied by the reappointed members of the previous board.

Delivery of Notice of Intent to Be Candidate

The February 1, 2010 letter was also incorrect in its apparent assumption that notices of intent would only be valid if delivered to the association manager, as directed by the first notice of the annual meeting prepared by the association manager. Section 718.112(2)(d)3, Florida Statutes, provides that, "Any unit owner or other eligible person desiring to be a candidate for the board must give written notice to the association not less than 40 days before a scheduled election." Rule 61B-23.0021(5), Florida Administrative Code, provides that, "Written notice shall be effective when received by the association." Neither the association nor a condominium association manager can limit the statute to written notice to the association manager at an address different than that of the association. *See Coletta v. The Bayshore Yacht & Tennis Club Condominium Ass'n, Inc.*, Arb. Case No. 99-1256, Summary Final Order (September 14, 1999); *Frederick v. Naples Bath & Tennis Club, Unit H., Inc.*, Arb. Case No. 97-0072, Final Order (January 26, 1998).

On the other hand, where the Association sent notice to its members that notice of intent should be sent to a named agent, in this case the then association manager, the Association must accept notice given to the agent.

At the Association's duly noticed annual meeting on February 16, 2010, in accordance with the provisions of Chapter 718 and the governing documents, Albert Adams, Bobby Sharp and Ourania

Tsekos were installed as members of the board of directors of Lauderdale Oaks Condominium 10, Inc. for a one-year term.

Unfortunately the analysis cannot end with the February 16, 2010 meeting, because, if the proper number of directors were, exactly, three, there should have been an election among four candidates, including Osvaldo Valentin. On the other hand, if the number of board members is more than three, Osvaldo Valentin should have been installed as the fourth board member on February 16, 2010. Whether his communication June 29, 2010, constitutes a resignation from the board is not at issue in this case and may be revisited by the board.

Number of Board Members

Section 718.112(2)(a)1, Florida Statutes provides that, in the absence of any provision in the by-laws specifying otherwise, "the board of administration shall be composed of five members."

Arbitration cases have consistently held that, when the governing documents provide a range for the number of directors, such as "not less than *x* but not more than *y*", the statute sets the number at five. *See Kamber v. Kenilworth Condominium Association, Inc.*, Arb Case No. 2003-06-2726, Summary Final Order (July 23, 2003). An Association always has the power to reset the number by a properly noticed membership meeting to amend its by-laws, provided that the number cannot be amended in the same meeting as the annual election. *Smith v. Ocean View Association, Inc.*, Arb. Case No. 97-0040, Summary Final Order (June 27, 1997).

Smith concluded that application of section 718.112(2)(d)3, Florida Statutes together with Rule 61B-23.0021, Florida Administrative Code, requires that the first notice of election accurately state the number seats up for election at the annual meeting. Otherwise, votes for some candidates on ballots with too many choices would have to be rejected while votes for candidates on ballots with too few would be given undue weight. In either event the election would be subject to being set aside.

Conclusion

In this case the process by which directors were chosen at the annual meeting on February 16, 2010 was flawed because the first notice of election incorrectly advised that three directors would be chosen and because it did not include all candidates who provided a notice of intent. Had a timely legal challenge been filed, a new election would have been ordered, even though the directors named at the annual meeting were legally named to open seats. Although this case arises from a different challenge, it is not too late to correct the procedural errors.

The person(s) who named a new set of directors in June 2010 perpetrated a fraud. The June 14, 2010 notice for an annual meeting was a nullity in conflict with the by-laws of the Association, which require the meeting to be held on the third Tuesday in February. The Amended Annual Report and letter to unit owners from Phoenix Management were unauthorized and contrary to law. The supposed minutes of the alleged meeting on June 23, 2010, conflict with the June 14 notice and the Amended Annual Report, but, in any event, there was no meeting of the membership of the association or of the board of the association on that date. At no time did Osvaldo Valentin have authority to name other members of the board.

Accordingly, it is ORDERED:

1. Bobby Sharp, Donald Karasik, Carmen Pinnock and Janet Molyneaux do not have, and never had the legal right to act as the board of administration for Lauderdale Oaks Condominium 10, Inc.;

2. As of February 16, 2010, and continuing to the date of this Order, the board of directors of Lauderdale Oaks Condominium 10, Inc., consists of Albert Adams, Bobby Sharp, Ourania Tsekos and Osvaldo Valentin;
3. The board of directors shall, on or before September 24, 2010, send out a first notice for election of five directors to be held December 7, 2010, in accordance with section 718.112(2), Florida Statutes and Rule 61-B23.0021, Florida Administrative Code;
4. The directors elected December 7, 2010, shall hold office until the annual meeting in February 2011, for which a notice of election shall be immediately sent out by the newly elected board.

DONE AND ORDERED this 31st day of August, 2010, at Tallahassee, Leon County, Florida.

_____

Bruce A. Campbell, Arbitrator
Dept. of Bus. & Prof. Reg.
Arbitration Section

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES
IN RE: PETITION FOR ARBITRATION

Richard Rosado,
Petitioner,
v. Case No. 2010-03-1036
Fountains of Tamarac Condominium
Association, Inc.,
Respondent.

Summary Final Order

Procedural History

On June 18, 2010, Richard Rosado filed a Petition for Arbitration against Respondent, Fountains of Tamarac Condominium Association, Inc., seeking an order declaring a rule regarding record inspections to be unreasonable. An Order Requiring Answer was entered June 23, 2010. Respondent filed a Motion for Extension of Time, which was granted, and an Answer was filed on August 13, 2010.

On August 23, 2010, an Order Requiring Supplemental Filings directed both parties to present evidence as to the content of the rule and its application in records productions. Each party made a supplemental filing on September 3, 2010. This Summary Final Order is entered based on review of all the pleadings, and official notice of the Department record showing that Fountains of Tamarac has a total of 32 units.

Findings of Fact

1. Petitioner owns a unit in Fountains of Tamarac Condominium and is a member of the board of directors of its Association.

2. Respondent is the entity responsible for maintenance and operation of Fountains of Tamarac Condominium, which consists of 32 units.

3. At the Association board meeting of April 16, 2010, the board adopted a new rule limiting review of records to five files for each scheduled records inspection. Respondent was present at this meeting.

4. Under this rule, a file consists of all documents pertaining to a topic or category, generally organized into multiple folders containing many pages. For example, when Petitioner requested minutes for all board meetings from 2007 to the present, a file with 82 pages was produced in response. When the topic was election results, the production contained 271 pages.

5. Respondent is a self-managed association, so that day-to-day functions, such as records productions, are performed by individual board members.

6. Respondent's records are not stored on the premises of the condominium. For inspection, the records are retrieved and transported in boxes to the condominium. The minutes of the meeting at which the rule was adopted reflect a concern that more than five boxes would not fit in a standard size passenger car for a single trip.

7. Respondent schedules records productions for every Tuesday morning for two hours during normal business hours.

8. The current dispute arose from a written request to review 29 categories of documents spanning a four year period. During the first scheduled session after the five-record rule was adopted, inspection of the available records occupied the full time available. Petitioner brought this action after the Association did not agree to produce all the requested records at the next two hour session.

Conclusions of Law

The Division has jurisdiction over a dispute that involves the failure of the Association to allow inspection of books and records pursuant to section 718.1255, Florida Statutes.

Rule 61B-45.030(2), Florida Administrative Code provides that an arbitrator shall enter a summary final order denying relief if no disputed issues of material fact exist and no preliminary basis for relief has been demonstrated.

Section 718.111(12)(b), Florida Statutes, provides in pertinent part:

> The official records of the association shall be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 5 working days after receipt of a written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

Section 718.111(12)(c), Florida Statutes, authorizes, "The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of records inspections and copying."

Whether a rule is reasonable or unreasonable depends on the facts and circumstances of each individual case. *Wanda DiPaola Stephen Rinko General Partnership v. Beach Terrace Association, Inc.*, Arb. Case No. 2007-02-2785, Final Order (February 7, 2008). The rule may not be so restrictive as to substantially erode or eliminate a unit owner's right of access. *Porta Bella Yacht & Tennis Club Condominium Association, Inc. v. Mechler*, Arb Case No. 98-3475, Final Order Dismissing Petition (April 17, 1998).

Respondent's record storage system appears primitive when compared to the options, now approved by the legislature, to make records available electronically. But reasonableness must be based upon the reality that this small condominium does not employ a professional association manager or clerical staff, or have a secure storage space on site. With those limitations, the volunteer directors must maintain and protect official records of the association. In any event, chapter 718 requires that some records, such as election results, must be maintained as physical paper. Also, a unit owner investigating an election would likely insist on inspecting original outer envelopes and ballots instead of copies scanned to a computer. For other records, there is no requirement that an association incur the expense of converting documents to electronic formats. Thus, despite available technology, it remains reasonable for paper records to be kept in file folders which are stored in boxes.

Unfortunately, if the unit owner only wants to inspect a limited number of documents, the effort for the person retrieving a box is the same as if every page in the box will be inspected. Then, if individual documents were separated from their appropriate folders and transported with unrelated documents to a remote location, the filing system would be disrupted for a period of time. It is reasonable, instead, to choose to produce only whole boxes to avoid more complicated steps to maintain and to restore the system.

A representative of the condominium must remain present with original records during the inspection, so a second representative would be required to go back and forth to produce more than one car-full of boxes. It cannot be said to be unreasonable that, with limited manpower, document transportation and inspection will be provided by one person at a time.

It would seem, with only 32 units, an inspecting unit owner would be able to inspect all records wanted in less than two hours. On the other hand, it is just as reasonable to assume that five boxes of records from many years will contain more documents than can be inspected and copied in two hours. As a practical matter, the new rule will slow down the unit owner who wants to inspect all the condominium's records, but it will not impact a unit owner whose requests fall within five or fewer topics.

In conclusion, because the five-record rule for Fountains of Tamarac does not substantially erode or eliminate a right to access, it is reasonable within the contemplation of section 718.111(12)(c), Florida Statutes.

Accordingly, it is ORDERED that Petitioner's requests for relief are denied.

DONE AND ORDERED this 14th day of September, 2010, at Tallahassee, Leon County, Florida.

_____

Bruce A. Campbell, Arbitrator

Dept. of Bus & Prof. Reg.

Arbitration Section

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES
IN RE: PETITION FOR ARBITRATION

Ray W. Miller,
Petitioner,
v. Case No. 2010-02-5044
Harbor Isles Condominium
Association, Inc.,
Respondent.

Summary Final Order

Procedural History

On May 6, 2010, Petitioner Ray W. Miller filed a Request for Expedited Determination of Jurisdiction accompanied by a Petition for Mandatory Non-Binding Arbitration. On May 24, 2010, an Order on Petitioner's Request for Expedited Determination of Jurisdiction and Order Requiring Answer was entered. On June 4, 2010, Robert Hollenberg, President of Harbor Isles Condominium Association, Inc. (Association), filed an Answer. On June 8, 2010, an Order Requiring Qualified Representative Application was entered. On June 16, 2010, Kevin T. Wells, Esq., filed a Notice of Appearance on behalf of the Association.

Statement of the Issue

The issue in this case is whether Petitioner, Ray W. Miller, should be seated on the board of directors following a recount of the votes in the March 3, 2010 election of the seven (7) member board.

Findings of Fact

1. On March 3, 2010, the Association held its annual election for the seven (7) member board of directors. There were 15 candidates for the seven seats. The seven candidates with the highest number of votes are seated on the board.

2. The dispute relates to the number of votes for two candidates to fill the seventh seat, i.e. the candidates with the seventh and eighth highest number of votes. The results of the election for the other six (6) seats are not in dispute.

3. The first count of the ballots at the annual meeting was 177 for James Comer and 176 for Petitioner, and James Comer was declared the winner to fill the seventh seat on the board.

4. More than one recount of the ballots was conducted, but not until March 25, 2010, did the board approve a complete recount.

a. Petitioner filed a document which was identified as the President's statement to the board of directors on April 8, 2010. According to the document, members of the Certified Election Committee met on March 16, 2010 and conducted a review of the ballots, pursuant to a written request to the Association by certified letter. This review did not alter the results of the election for the seventh seat on the board determined at the annual meeting. The Association does not dispute the assertions in this document.

b. On March 25, 2010, the board held a meeting and "approved" a complete recount of the election. The recount was conducted on March 29 and 30, 2010.

5. During the March 29 and 30, 2010 recount, some ballots were discarded. According to the Association two ballots were rejected because of an overvote for the number of directors and one ballot was rejected because one of the "X"s indicating a vote for a candidate was obliterated and an "X" indicating a vote for a candidate was in a "different hand."

6. The outcome of the March 29 and 30, 2010 recount was that Ray Miller received more votes for the seventh board seat than James Comer.

7. At the board's April 1, 2010 meeting, a motion was made to accept the result of the March 29 and 30, 2010 recount. The motion was tabled after an objection was raised that the recount was not authorized. The motion was again tabled at the April 8, 2010 board meeting.

8. At the board's meeting April 22, 2010, the board determined to accept the results of the March 3, 2010 election, and James Comer was seated on the board.

9. Petitioner filed a document which was identified as the manager's statement to the board of directors on April 8, 2010. That document states that "[c]hecks and cross-checks were instituted in the re-count procedure, and . . . those cross-checks will be in place for all future elections." The Association does not dispute the statements in this document.

Conclusions of Law

The Association is an association within the meaning of s. 718.103, Fla. Stat. By his ownership of a unit in the condominium, Petitioner is subject to the governing condominium documents. Pursuant to Section 718.1255, Fla. Stat., the undersigned has jurisdiction over the parties to, and the subject matter of, this dispute. If no disputed issues of material fact exist, the arbitrator may enter a summary final order. Fla. Admin. Code R. 61B-45.030.

Chapter 718, Fla. Stat., and the applicable administrative rules do not provide for a recount of the ballots as was conducted by the Association. The condominium governing documents also do not provide for a recount. If the Legislature intended to permit a recount in a condominium annual election, the Legislature would have so provided as it has done with respect to elections for governmental offices. *See, e.g.,* §§ 102.141 and 102.166, Fla. Stat. Similarly, the condominium governing documents could have so provided, but they do not.

Accompanying the petition were copies of several arbitration cases relating to elections. Those cases do not address a recount of the votes as has taken place in the case at hand.

Petitioner filed a copy of a letter from the Association's attorney addressed to the Association's manager, dated April 21, 2010. The letter references the case of *Parker v. East Linden Estates Homeowners Ass'n., Inc.*, Arb. Case No. 2007-04-5781, Summary Final Order (Oct. 1, 2007). In that case, Parker challenged the board's action in setting aside the results of the annual election. At the annual meeting, Parker received a sufficient number of votes to be elected to the board. At the conclusion of the annual meeting, the ballots were sealed and delivered to another candidate who had received fewer votes than Parker and was not seated on the board. This candidate and other homeowners later conducted a "private recount;" a meeting of the board of directors was not convened for this purpose. Thereafter, Parker was notified that the recount showed Parker was not elected and the other candidate was. Parker was prevented from serving as a director. The arbitrator found that because the post-election disposition of the ballots was so susceptible to suspicion, the ballots that were the subject of the "recount" could not be admitted in a legal proceeding. The arbitrator also found that the Association had no authority to hold a recount, because no law, governing document or procedure provides for a recount under any circumstances.

The April 21, 2010 letter noted above suggests that the *Parke*r case provides no guidance, because it involves a homeowner's association election which is governed by law that is very different from

that governing a condominium election. The election law for a homeowner's association and a condominium is not so different as to lead to a different result when the ballots are provided to a losing candidate who then conducts a recount that results in that candidate receiving more votes than his opposition received at the time the ballots were originally counted. More importantly, the difference in the law is not such as to authorize a recount when neither homeowner's association or condominium law nor the governing documents authorize a recount.

Neither party addresses the fact that the ballots were reviewed on March 16, 2010, and that review did not change the result reached at the annual meeting. The recount on March 29 and 30, 2010, instituted unspecified "[c]hecks and cross-checks" that were not implemented at the annual meeting, and a different result was reached. The documents filed suggest that during the March 16, 25 and 30 recounts the ballots were secured. However, there is no mention of the security of the ballots between the conclusion of the annual meeting on March 3 and the March 16 recount or between March 16 and the recount on March 29 and 30. In this case, there is no legal authorization for the recount of the ballots that occurred. In any event, the ballots have been recounted more than once using different checks and cross-checks with differing outcomes for the two affected candidates and the whereabouts of the ballots for significant periods of time is uncertain, therefore it is appropriate that there be a runoff election between the two candidates. *See Stevens v. Cricket Club Condo. Ass'n, Inc.*, Arb. Case No. 2005-00-7443, Order Abating Action and Requiring Runoff (April 4, 2004) (where ballots could not be matched with envelopes thereby rendering it impossible for arbitrator to recount ballots and re-determine results of election, runoff election was appropriate).

Based upon the foregoing, it is **ORDERED**:

The Association shall conduct a runoff election between Ray W. Miller and James Comer for the seat currently occupied by James Comer. The runoff election shall be conducted following the procedures in Rule 61B-23.0021(10)(c), Fla. Admin. Code, and shall be held not less than 21 days, nor more than 30 days, after the notice of the runoff election is mailed to the Association membership. The notice of the runoff election shall be mailed to the Association membership no later than July 13, 2010.

DONE AND ORDERED this 28th day of June, 2010, at Tallahassee, Leon County, Florida.

_____

Glenn Lang, Arbitrator

Department of Business and

Professional Regulation

Arbitration Section

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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 will be given for taking the same course more than once. (CE requirements are listed on 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 completed***. 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 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.

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2013 Legal Update Questions:

1. The DBPR shall waive what for a military veteran who applies to the DBPR for a license in a format prescribed by the DBPR?
    a. Biennial renewal fee
    b. Initial application fee
    c. Fingerprint fees
    d. Prelicensure course fees

2. Within what time period must the veteran apply for the above benefit?
    a. 24 months
    b. 6 months
    c. 12 months
    d. 18 months

3. What are the special requirements with regard to the veteran's separation from the military?
    a. A wounded veteran
    b. Have at least a general discharge
    c. Have an honorable discharge
    d. Have a purple heart

4. Susie Sunshine did not complete the requirements for her 2010 licensure. She has just completed the 2012 continuing education credits, and learns that she must do what to reactivate her license.
    a. Complete 10 hours of continuing education
    b. Take a legal update
    c. Pay a penalty of $250
    d. Complete continuing education of one renewal cycle

5. The time limitation for classification as a bulk assignee or bulk buyer in a condominium was amended in the 2012. The new time period is:
    a. December 31, 2015
    b. March 31, 2015
    c. July 1, 2015
    d. September 30, 2015

6. The time frame for a bulk assignee expires on:
    a. July 1, 2013
    b. July 1, 2014
    c. July 1, 2015
    d. July 1, 2016

7. The DBPR must send renewal notices for licenses at least ___ days before the end of a licensure period to the email addresses, place of practice or current mailing address
    a. 30 days
    b. 90 days
    c. 120 days
    d. 180 days

8. What are the cancellation provisions for a contract for purchase of a time share:
    a. 10 days
    b. 15 days
    c. 10 business days
    d. 15 business days

9. A full refund must be provided by a resale advertiser within ___ days of a prospective purchaser's cancellation of a timeshare agreement, or __ days after the check has cleared, wherever is ____.
    a. 10, 8 earlier
    b. 5, 20 later
    c. 20, 5 later
    d. 8, 10 later

10. Any person who violates the resale advertising services provisions for timeshare interests could be submit to a civil penalty of up to:
    a. $25,000
    b. $15,000
    c. $ 5,000
    d. $10,000

11. Resale service providers may not engage in those activities of a real estate broker unless:
    a. Licensed real estate agenda
    b. Licensed community association manager
    c. Licensed real estate broker
    d. Time real estate broker

12. Among those eligible to take the building code inspector and plans examiner certification exam includes:
    a. Fire safety inspectors
    b. Landscape architects
    c. Community association managers
    d. Construction litigation attorneys

13. Roofing contractor licensure scope of work has been expanded to include:
    a. HVAC systems
    b. Skylights
    c. Elevator venting
    d. Fire escape systems

14. What does the definition of “offsite improvement” not apply to a new home, pursuant to F.S. 553?
    a. Garage
    b. Street
    c. Drainage
    d. Utilities

15. Citizens can charge a surcharge to its policyholders when there is a deficit in a Citizens account of:
    a. 5%
    b. 4%
    c. 1%
    d. 2%

16. Citizens must provide a premium payment plan option to its policyholders which, at a minimum, allows for what type of payments of premiums?
    a. Quarterly and semiannual payment.
    b. Monthly payment
    c. Annual payment
    d. Any of the above.

17. Citizens must limit coverage on mobile homes or manufactured homes built before 1994 to:
    a. Appraised value of the dwelling
    b. Replacement costs of the dwelling
    c. Actual cash value of the dwelling
    d. Taxable value of the dwelling

18. If a deficit has been determined by the Citizens board of governors, the board shall levy a surcharge against all policyholders of 15%, which is payable:
    a. Within 30 days of cancellation or termination of the policy
    b. Within 20 days of the renewal of the policy
    c. Upon issuance of a new policy within the first 12 months after the date of levy of the assessment
    d. Citizens may not levy surcharges for deficits

19. Ray W. Miller, Petitioner, v. Harbor Isles Condominium Association, Inc., Respondent, and arbitration decision, suggests that:
    a. Ballots may be quickly discarded about the initial count of the votes
    b. Associations should hold original ballots in a safe place in case anyone questions the total vote for anyone candidate
    c. Arbitrators do not intervene in election disputes
    d. Candidates do not have the right to question the count of an election, only an independent authority.

20. Carla Bonten, Shirley Barrick & Jim Bonnie, Petitioners, v. Marbella At Spanish Wells HOA arbitration decision suggests:
    a. Associations should hire external entities to oversee elections, and not use their management companies.
    b. The association must verify the addresses of the owners prior to sending out election information, to ascertain that information it has on file is as accurate as possible.
    c. The membership should accept the out of an election, regardless of whether or not it agrees, as it is too costly to protest
    d. DBPR have no jurisdiction over HOA elections.