Chapter 5

Operation of the Community Association

5-1 INTRODUCTION

As corporate entities, community associations operate by and through their board of directors. The association and its board are responsible for safeguarding the health, safety, welfare, and property values in the community. The association must act as a good shepherd of the community's finances, ensuring that members' assessments are used properly. This requires transparency in the adoption of the budget and levying of assessments, as well as regular financial reporting. The association should also set aside funds for capital improvements and deferred maintenance.

Property maintenance is one of the community association's primary functions and includes maintenance of common areas held in the homeowners' association name and elements owned in common by condominium unit owners. A condominium association may also be responsible for any real or personal property owned or leased by the association for the use and benefit of its members.

To ensure transparency, the Florida Legislature requires associations to maintain official records that are open to members for inspection and copying. In fact, there are penalties for failure to make the records available to owners in a timely manner and in a reasonably accessible place. Condominium owners also benefit from a statutory right to make written inquiries to the board of directors regarding community operations. These requirements illustrate that serving community members is the only function of

the board of directors and the corporate entity that operates the community.

To assist it in carrying out this function, the association is permitted to hire office staff, maintenance personnel, managers, contractors, engineers, accountants, attorneys, and any other tradesmen or professionals needed to serve the community. To obtain certain goods and services, however, the association must solicit competitive bids and maintain them in official records. While the association is not required by statute to choose the lowest bidder, soliciting bids ensures that the membership has the information it needs to determine whether the board of directors is operating the community using good business judgment.

Despite their many obligations, neither the board of directors nor the association itself is a guarantor of the safety, welfare, and property values of the membership. As such, Florida community associations may obtain insurance against casualty, liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for the common elements, association property, and units. Florida community associations also have a right to sue on behalf of their membership, and may maintain class action suits on behalf of all association members without satisfying all of the Florida Rules of Civil Procedure requirements for pleading and maintaining class actions.

5-2 HOMEOWNERS' ASSOCIATION FINANCES

5-2:1 Homeowners' Association Budgets

Homeowners' associations must prepare annual budgets setting forth the upcoming year's estimated revenues and expenses and the current year's estimated surplus or deficit. In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance. The budget must also state all fees paid by the association for recreational amenities. The association must provide each member with a copy of the annual budget or a written notice that it is available upon request at no charge.[1]

[1.] Fla. Stat. § 720.303(6) (2012).

5-2:2 Homeowners' Association Reserves

The homeowners' association budget may include reserve accounts for capital expenditures and deferred maintenance. If reserve accounts are initially established by the developer, or if the membership elects to provide reserves, the association may maintain, waive, or terminate the reserve in accordance with the provisions of Chapter 720. If reserve accounts are not initially established by the developer, the membership may elect by a majority of the voting interests to provide reserves.

Members must approve reserve accounts either via a vote at a duly called membership meeting or by the written consent of a majority of the total voting interests. The approval action must state that reserve accounts shall be provided for in the budget and must designate the reserve accounts' purpose. Upon membership approval, the board of directors must include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter, unless waived or terminated.[2] If a reserve is terminated, it is removed from the budget.[3]

The amount placed in the reserve is determined based on the "estimated remaining useful life and estimated replacement cost or deferred maintenance expense" of each item for which the reserve is created.[4] Replacement reserve assessments may be adjusted on an annual basis to account for any change in estimated useful life, replacement cost, or deferred maintenance cost.[5] The funding formula must be based on the analysis of each asset as set forth section 720.303(6)(g).[6]

Reserve funds and any interest shall remain in the reserve account and may only be used for intended purposes. A majority of the voting interests, however, may vote in advance to approve their use for other purposes. Prior to turnover, a developer-controlled association may not make unauthorized reserve expenditures unless the use is approved by a majority of all non-developer voting interests voting in person or by limited proxy.[7]

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2. Fla. Stat. § 720.303(6)(d) (2012).
3. Fla. Stat. § 720.303(6)(b) (2012).
4. Fla. Stat. § 720.303(6)(e) (2012).
5. Fla. Stat. § 720.303(6)(e) (2012).
6. Fla. Stat. § 720.303(6)(g) (2012).
7. Fla. Stat. § 720.303(6)(h) (2012).

After a reserve account is established, the membership may eliminate or decrease reserves by a majority vote at a meeting at which a quorum is present, and the developer may vote to waive or reduce the funding of reserves after turnover.[8] Any section 720.303(6)(f) membership or developer vote to waive or reduce reserves is applicable to only one budget year.[9]

If the budget's failure to provide for reserve accounts creates the possibility that the association may need to specially assess for capital improvements, each financial report must contain the following statement in conspicuous type:

> THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.[10]

If reserve accounts are not initially established by the developer or if the membership does not elect to provide for reserves, the association may maintain limited voluntary deferred expenditure accounts. Funding is limited to the extent that the governing documents limit increases in assessments, including reserves. For associations maintaining limited voluntary deferred expenditure accounts, each financial report must contain the following statement in conspicuous type:

> THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES

8. Fla. Stat. § 720.303 (6)(f) (2012).
9. Fla. Stat. § 720.303(6)(f) (2012).
10. Fla. Stat. § 720.303(6)(c) (2012).

> AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.[11]

5-2:3 Homeowners' Association Assessments

A homeowners' association by definition is a "Florida corporation responsible for the operation of a community … authorized to impose assessments that, if unpaid, may become a lien on the parcel."[12] "Assessment" is defined as

> a sum or sums of money payable to the association … by the owners of one or more parcels as authorized in the governing documents, which if not paid by the owner of a parcel, can result in a lien against the parcel.[13]

Assessments levied pursuant to the annual budget must be in the member's proportional share of common expenses. For any homeowners' association created after October 1, 1995, the governing documents must specify the member's proportional share.[14] Shares may differ by "class," which is based on levels of services received by the owner or other relevant factors.[15]

Regardless of how title to property has been acquired, an owner "is liable for all assessments that come due while he or she is the parcel owner."[16] The owner may not avoid assessments because

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11. Fla. Stat. § 720.303(6)(c) (2012).
12. Fla. Stat. § 720.301(9) (2012).
13. Fla. Stat. § 720.301(1) (2012).
14. Fla. Stat. § 720.308(1) (2012).
15. Fla. Stat. § 720.308(1)(a) (2012).
16. Fla. Stat. § 720.3085(2)(a) (2012).

they are not using the common areas, or by abandoning their parcel.[17] In addition, a unit owner is "jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title."[18]

Delinquent assessments bear interest at the rate set forth in the governing documents. If the governing documents are silent, interest accrues at the rate of 18 percent per year.[19] If provided for in the governing documents, the association may charge a late fee "not to exceed the greater of $25 or 5 percent of the amount of each installment that is paid past the due date."[20] Payments accepted by the association are applied first to interest, then to any late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment.[21]

5-3 CONDOMINIUM ASSOCIATION FINANCES

5-3:1 Condominium Association Budgets

The annual budget for a condominium association must set forth estimated revenues and expenses. It must detail the amounts budgeted by accounts and specific expense classifications, including, but not limited to, expenses for administration, management fees, maintenance, rent for recreational facilities, taxes upon association property, taxes upon leased areas, insurance, and security.[22]

A multicondominium association must adopt separate budgets for each condominium it operates and a separate common expense budget for the multicondominium association itself. If the association maintains limited common elements, the use and cost of which is limited by the declaration to specific owner classes, then the budget must delineate the specific amounts designated for their maintenance.[23]

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17. Fla. Stat. § 720.3085(2)(a) (2012).
18. Fla. Stat. § 720.3085(2)(b) (2012).
19. Fla. Stat. § 720.3085(3) (2012).
20. Fla. Stat. § 720.3085(3)(a) (2012).
21. Fla. Stat. § 720.3085(3)(b) (2012).
22. Fla. Stat. § 718.112(2)(f) (2012).
23. Fla. Stat. § 718.112(2)(f) (2012).

5-3:2 Condominium Association Reserves

For condominium associations, reserve accounts must be included in the budget pursuant to statute. The Condominium Act requires condominium associations to maintain reserves for capital expenditures and deferred maintenance, which must include, but are not limited to, roof replacement, building painting, pavement resurfacing, and any other item for which the deferred maintenance expense or replacement cost exceeds $10,000.[24]

Reserve funds may be commingled with association operating funds for investment purposes only, but they must be accounted for separately. In addition, for investment purposes only, a multicondominium association may commingle the operating funds and reserve funds of separate condominiums. A commingled account may not contain an amount less than the amount identified as reserve funds.[25]

The amount in the reserve is determined based on the "estimated remaining useful life and estimated replacement cost or deferred maintenance expense" of each item for which the reserve is created. Replacement reserve assessments may be adjusted on an annual basis to account for any changes in estimates of the useful life of a reserve item caused by deferred maintenance.[26]

Condominium association members may by majority vote at a duly called association meeting elect to provide no reserves or less reserves than the Condominium Act requires. In addition, prior to turnover, the developer may vote to waive the reserves or reduce the funding of reserves for two fiscal years after the recording of the certificate of a surveyor and mapper or an instrument that transfers title to a writ which not accompanied by a recorded assignment of developer rights in favor of the grantee, whichever occurs first. After this period, reserves may be waived or reduced only upon a majority vote of all non-developer voting interests voting in person or by limited proxy at a duly called meeting. After turnover, the developer may use its voting interests to waive or reduce the funding of reserves.[27]

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24. Fla. Stat. § 718.112(2)(f) (2012).
25. Fla. Stat. § 718.111(14) (2012).
26. Fla. Stat. § 718.112(2)(f) (2013).
27. Fla. Stat. § 718.112(2)(f) (2013).

Reserve funds and any interest shall remain in the reserve account and may only be used for intended purposes. The members may vote to use the reserve funds for other purposes if the use is approved in advance by a majority vote of the members at a duly called meeting of the association. Prior to turnover, the developer-controlled association may not vote to use reserves for unintended purposes without the approval of a majority of all non-developer voting interests, voting in person or by limited proxy at a duly called meeting.[28]

Only voting interests subject to assessments for funding the reserves in question may vote to waive or reduce reserves or use reserves for unintended purposes. Proxy questions submitted for votes to waive or reduce reserves, or use reserves for unintended purposes, must contain the following statement in capitalized, bold letters in a larger font size than any other used on the face of the proxy:

> WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.[29]

5-3:3 Condominium Association Assessments

The Condominium Act defines "assessment" as "a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."[30] For residential or mixed-use condominiums created after January 1, 1996, each unit's share of the common expenses of the condominium shall be the same as the unit's "appurtenant ownership interest in the common elements."[31] Common expenses are defined by statute to include expenses incurred in the

> operation, maintenance, repair, replacement, or protection of the common elements and association property … and any other expense … designated as

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28. Fla. Stat. § 718.112(2)(f) (2012).
29. Fla. Stat. § 718.112(2)(f) (2012).
30. Fla. Stat. § 718.103(1) (2012).
31. Fla. Stat. § 718.115(2) (2012).

> common expense by this chapter, the declaration, the documents creating the association, or the bylaws.[32]

A "special assessment" is "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."[33] The association must deliver a written notice to each owner of the specific purpose of any special assessment approved in accordance with the governing documents. The association may only use the special assessments for the specific purpose set forth in the notice. Any excess funds available upon completion of the specific purpose of the special assessment, however, are common surplus that may be returned to the unit owners or applied as a credit toward future assessments.[34]

The condominium association's bylaws must provide for the manner of collecting assessments from unit owners. The association shall levy assessments at least quarterly to pay in advance for "all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred."[35] A unit owner may not be excused from payment of assessments "unless all other unit owners are likewise proportionately excluded from payment."[36]

5-4 FINANCIAL REPORTING

Homeowners' associations and condominium associations are subject to similar financial reporting requirements. Both Chapter 720 and the Condominium Act impose strict guidelines to ensure financial transparency for the protection of the owners. The association must complete a financial report every year within 90 days after the end of the fiscal year or annually on the date provided in the bylaws. The association must provide the members with a copy of the financial report, or written notice that a copy of the financial report is available upon request at no charge, within 21 days after the final financial report is completed. The copy of the financial report or written notice of

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32. Fla. Stat. § 718.115(1)(a) (2012).
33. Fla. Stat. § 718.103(24) (2012).
34. Fla. Stat. § 718.116(10) (2012).
35. Fla. Stat. § 718.112(1)(g) (2012).
36. Fla. Stat. § 718.116(9)(a) (2012).

its availability must be provided to the members no later than 120 days after the end of the fiscal year or such other date as the bylaws provide.[37]

Depending on the association's total annual reserves, it may have to prepare compiled financial statements, reviewed financial statements, or audited financial statements. The financial statements must be prepared in accordance with generally accepted accounting principles.[38]

If a homeowner's association has less than $100,000 in annual revenues, it must prepare a report of cash receipts and expenditures.[39] If a condominium association has less than $150,000 in annual revenues, it shall prepare a report of cash receipts and expenditures.[40] If a homeowners' association has fewer than 50 parcels, it may prepare a report of cash receipts and expenditures unless the governing documents require a financial statement.[41] A condominium association with fewer than 50 units, regardless of annual revenues, must prepare a report of cash receipts and expenditures.[42] A report of cash receipts and disbursements must disclose the amount of receipts and expenses by accounts and classifications. For instance, the report must disclose taxes; reserves; costs for security, management, recreation facilities, building maintenance, and insurance; and expenses for landscaping, refuse collection, and salaries.[43]

By submitting to the board a petition of 20 percent of the owners, homeowners' association members may request a higher level of financial reporting than is statutorily required. Within 30 days of receipt of the petition, the board must notice and hold a members meeting to vote on increasing that year's reporting level. If a majority of the total voting interests approve, the association must amend the budget or adopt a special assessment to pay for the increased level of financial reporting regardless of any contrary provision in the governing documents. Within 90 days of

37. Fla. Stat. § 720.303(7) (2012); Fla. Stat. § 718.111(13) (2012).
38. Fla. Stat. § 720.303(7)(a) (2012), Fla. Stat. § 718.111(13)(a) (2012).
39. Fla. Stat. § 720.303(7)(b) (2012).
40. Fla. Stat. § 718.111(13)(b) (2013).
41. Fla. Stat. § 720.303(7)(b) (2012).
42. Fla. Stat. § 718.111(13)(b) (2013).
43. Fla. Stat. § 720.303(7)(b) (2012); Fla. Stat. § 718.111(13)(b) (2012).

the meeting, or the end of the fiscal year, whichever occurs later, the association must provide (1) compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures; (2) reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or (3) audited financial statements if the association is otherwise required to prepare reviewed financial statements.[44] A condominium association also may prepare a higher-level financial report without owner approval.[45]

The members of both homeowners' and condominium associations may also approve by a majority of the voting interests at a duly noticed meeting a lower level of financial reporting.[46] The Condominium Act restricts unit owners' ability to vote for lower-level financial reporting in the following ways. The meeting held to vote for lower-level reporting must occur before the end of the fiscal year. In addition, the resolution is only effective for the fiscal year in which the vote is taken, unless approval is made for the following fiscal year as well. A condominium association may not waive financial reporting requirements for more than three consecutive years. Before turnover, all unit owners, including the developer, may vote on issues related to the preparation of financial reports for the first two fiscal years following the recording of the certificate of a surveyor or mapper or an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee, whichever occurs first, after which the developer may not vote on such issues until turnover. Before turnover, the developer pays for any audit or review.[47]

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44. Fla. Stat. § 720.303(7)(c) (2012).

45. Fla. Stat. § 718.111(13)(c) (2013) (associations required to prepare a report of cash receipts and expenditures may prepare compiled, reviewed, or audited financial statements; associations required to prepare compiled financial statements may prepare reviewed or audited financial statements; associations required to prepare reviewed financial statements may prepare audited financial statements).

46. Fla. Stat. § 720.303(7)(d) (2012); Fla. Stat. § 718.111(13)(d) (2012) (under these respective subsections, a homeowners' or condominium association may prepare (1) a report of cash receipts and expenditures instead of a compiled, reviewed, or audited financial statement; (2) a report of cash receipts and expenditures or a compiled financial statement instead of a reviewed or audited financial statement; or (3) a report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement instead of an audited financial statement).

47. Fla. Stat. § 718.111(13)(d) (2013).

5-5 COMMON PROPERTY MAINTENANCE, REPLACEMENT, AND IMPROVEMENT

5-5:1 Homeowners' Association Common Areas

Generally, in homeowners' associations the members own their parcels and the association owns the common areas,[48] which the association maintains and operates for use by the homeowners. Common area rights and privileges are generally part of the purchase of a home within the community.[49] Common areas in homeowners' associations are defined as "real property within a community which is owned or leased by an association or dedicated for use or maintenance by the association or its members."[50]

Chapter 720 discusses homeowners' associations' authority to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities. A homeowners association can acquire an interest in country clubs, golf courses, marinas, submerged land, parking areas, conservation areas, and other recreational facilities. If more than 12 months have passed since the declaration's recording, any agreement to acquire leaseholds, memberships, and other possessory or use interests must be authorized by the declaration as a material alteration or substantial addition to the common areas or association property. If the declaration does not address the association's authority to enter into this type of transaction, 75 percent of the total voting interests must approve. The declaration may delineate as common expenses those costs related to the association's possessory or use interests. The association may also impose covenants and restrictions concerning use of the lands or facilities.[51]

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48. *Florida Farm, LLC v. 360 Developers*, 45 So. 3d 810, 815 (Fla. 3d DCA 2010) ("Homeowners' associations differ from condominium associations in that homeowners' associations own the common property used by the property owners, whereas condominium associations do not own any real property.").

49. *Savanna Club Worship Serv., Inc. v. Savanna Club Homeowners' Ass'n*, 456 F. Supp. 2d 1223, 1229-30 (S.D. Fla. 2005).

50. Fla. Stat. § 720.301(2) (2012).

51. Fla. Stat. § 720.31(6) (2012).

5-5:2 Condominium Association Common Elements

In condominiums, the unit owners own an undivided share of the common elements, which include condominium property not included in the units; easements through units for wiring, ducts, plumbing, and other facilities for utilities; an easement of support in every portion of the unit which contributes to support of the condominium building; and all property and installations required to furnish utilities and other services to more than one unit or to the common elements.[52] The declaration may also designate other parts of the condominium as common elements.[53]

An undivided share in the common elements passes with title to the unit.[54] This is what distinguishes the condominium form of ownership. While units themselves are subject to exclusive ownership,[55] they are just one part of the condominium parcel, which includes both the unit and an undivided share in the common elements.[56] The common elements are by definition "those portions of the condominium property not included in the units."[57] The unit, by definition, is "subject to exclusive ownership," and "may be in improvements, land, or land and improvements together, as specified in the declaration."[58]

The condominium may also include limited common elements, which are portions of the common elements that are intended for specific unit owners' exclusive use. This may include elements like lanais and patios connected to a unit. Courts will look to the condominium documents for the definition of the unit boundaries in determining what elements of the condominium property constitute the unit, the common elements, and the limited common elements.

The following is an example of a typical description of unit boundaries found in a declaration of condominium:

> Unit Boundaries. Each unit shall include that part of the building that lies within the following

52. Fla. Stat. § 718.108(1) (2012).
53. Fla. Stat. § 718.108(2) (2012).
54. Fla. Stat. § 718.106(2) (2012).
55. Fla. Stat. § 718.103(27) (2012).
56. Fla. Stat. § 718.103(12) (2012).
57. Fla. Stat. § 718.103(8) (2012).
58. Fla. Stat. § 718.103(27) (2012).

> boundaries: (A) Upper and Lower Boundaries. The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries: (1) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the unit. (2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the unit. (B) Perimeter Boundaries. The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the unit as shown in the survey and plot plan incorporated by reference herein, extended to the intersections with each other and with the upper and lower boundaries.

Condominium documents are subject to basic rules of interpretation. Words of common usage in the declaration, such as the description of the unit boundaries above, are construed in their ordinary sense.[59] Moreover, the parol evidence rule applies, dictating that "the terms of a valid written contract or instrument cannot be varied by a verbal agreement or other extrinsic evidence" and prohibiting the use of parol evidence "to contradict, vary, defeat, or modify a complete and unambiguous written instrument" or "to charge, add to, or subtract from it, or affect its construction.[60]

The condominium association is responsible for the operation of the common elements.[61] While owners typically may not improve condominium property outside of their units, they also are not obligated to maintain the common elements. The association is authorized to maintain the condominium's aesthetics, including the building exterior, and is protected by the "business judgment rule," which shields it from liability as long as it acts in a reasonable manner.[62] Therefore if "in [its] good business judgment" an association determines that an alteration or improvement is "necessary or beneficial" to maintain, repair, or replace common

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59. *Koplowitz v. Imperial Towers Condominium*, 478 So. 2d 504 (Fla. 4th DCA 1985).
60. *J. M. Montgomery Roofing Co. v. Fred Howland*, 98 So. 2d 484, 485-86 (Fla. 1957).
61. Fla. Stat. § 718.103(2) (2012).
62. *Farrington v. Casa Solana Condo. Ass'n*, 517 So. 2d 70 (Fla. 3d DCA 1987).

elements, "all unit owners should equally bear the cost as provided in the declaration, by-laws and statutes."[63]

Common elements are different than "association property," which is real or personal property "owned or leased by, or … dedicated by a recorded plat to, the association for the use and benefit of its members."[64] The association may acquire title to property or hold, convey, lease, and mortgage association property for the members' use and benefit. The association can only acquire, convey, lease, or mortgage association real property in the manner provided in the declaration. If the declaration does not specify the procedure, then the association must obtain approval of 75 percent of the total voting interests.[65]

The association has the power to lease common elements or association property. The association may not, however, charge unit owners use fees for the use of common elements or association property unless otherwise provided for in the declaration or unless approved by a majority vote of the owners, unless the charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.[66]

Unit owners are entitled to exclusive possession of their unit, and use of the common elements in accordance with their intended purposes. A unit owner's use of the common elements may not infringe on other unit owners' lawful rights.[67] Tenants also have full use rights in the common elements. Generally, when a unit is leased, the tenant takes on the owner's use rights, and the owner takes on the use rights of a guest. The Condominium Act permits association rules that specifically prohibit owner-tenant dual usage of association property and common elements. This does not prohibit a unit owner from exercising his or her right to access the unit as a landlord as provided by the Florida Residential Landlord and Tenant Act.[68]

A unit owner's undivided share in the common elements may not be separated from the unit. The undivided share passes with

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63. *Tiffany Plaza Condo. v. Spencer*, 416 So. 2d 823, 826 (Fla. 2d DCA 1982).
64. Fla. Stat. § 718.103(3) (2012).
65. Fla. Stat. § 718.111(4) (2012).
66. Fla. Stat. § 718.111(4) (2012).
67. Fla. Stat. § 718.106(3) (2012).
68. Fla. Stat. § 718.106(4) (2012); Fla. Stat. § 83.001 et seq. (2012).

title to the unit. The owner's share in the common elements can only be conveyed or encumbered with the owner's unit and must remain undivided. A party may not file a court action to divide the common elements.[69] A condominium association, however, has limited power to convey the common elements. For condominiums created on or after October 1, 1994, the bylaws must include a provision granting the association a limited power to convey a portion of the common elements to condemning authorities for utility easements, right-of-way expansions, or other public purposes. If the bylaws are silent on this issue, they are deemed to include this limited power to convey.[70]

The condominium association is obligated to maintain the common elements, with the exception of limited common elements used by specific owners whom the governing documents obligate to maintain such elements.[71] Unit owners may not do anything to adversely affect the safety or soundness of the common elements or any portion of association maintained property.[72] The association is also authorized to improve the common elements. Any material alterations or substantial additions to the common elements must be made in accordance with the declaration. If the declaration is silent as to material alteration or substantial addition approval procedures, then the association must obtain approval of 75 percent of the total voting interests.[73]

For multicondominium associations, material alterations or substantial additions to the common elements require approval in compliance with the affected condominium or condominiums' declaration. If the declaration is silent, material alterations or substantial additions to the common elements require approval of 75 percent of the total voting interests of each affected condominium. This rule does not prohibit governing document provisions granting unit owners in any condominium operated by the same association, or the board, the right to approve material alterations or substantial additions to the common elements.[74]

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69. Fla. Stat. § 718.107 (2012).
70. Fla. Stat. § 718.112(2)(m) (2012).
71. Fla. Stat. § 718.113(1) (2012).
72. Fla. Stat. § 718.113(3) (2012).
73. Fla. Stat. § 718.113(2)(a) (2012).
74. Fla. Stat. § 718.113(2)(b) (2012).

The board must adopt hurricane shutter specifications for the condominium building. This includes specifications for color, style, and any other relevant factors. Hurricane shutter specifications must comply with all applicable building codes. The board may not refuse to approve hurricane shutter installation or replacement by a unit owner that conforms to board-adopted specifications, even if the documents require approval.[75]

If it receives majority voting interest approval, the association may install hurricane shutters, impact glass or other code-compliant windows, or hurricane protection that complies with or exceeds the applicable building code. Installation of hurricane shutters is not a material alteration of the common elements requiring approval of 75 percent of the owners. An owner vote is not required at all if maintenance, repair, and replacement of hurricane shutters, impact glass, or other code-compliant windows are the association's responsibility pursuant to the declaration. If hurricane protection was already installed, the board may not install hurricane shutters, impact glass, or other hurricane protection without approval by a majority of the voting interests.[76]

The declaration determines whether hurricane protection maintenance is the association or the owner's responsibility. If necessary to protect the condominium property, the association may operate hurricane shutters installed by the association without permission of the unit owners.[77]

A condominium association may not refuse a unit owner's request to attach a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep on the unit owner's door frame or mantel.[78] In addition, regardless of the governing documents, the board of directors may, without unit owner approval, install on the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.[79]

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75. Fla. Stat. § 718.113(5) (2012).
76. Fla. Stat. § 718.113(5) (2012).
77. Fla. Stat. § 718.113(5) (2012).
78. Fla. Stat. § 718.113(6) (2012).
79. Fla. Stat. § 718.113(7) (2012).

Condominium associations can purchase any land or recreation lease subject to the same manner of approval for the acquisition of leaseholds discussed below.[80] Unless prohibited by the governing documents, condominium associations can also purchase condominium units and lease, mortgage, and convey them. There is no limitation on the association's right to purchase a unit at a foreclosure sale when the association forecloses a lien for unpaid assessments, or its right to take title by deed in lieu of foreclosure.[81]

Unless prohibited by the declaration, the board of directors can grant, modify, or move any easement that is part of or crosses the common elements or association property. The association cannot, however, modify or vacate easements created for the use or benefit of anyone who is not a unit owner, or crossing the property of anyone who is not a unit owner, without the consent or approval of those other persons, as required by law or the easement instrument.[82]

A condominium association may acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities to provide recreation or other use or benefit to the unit owners. If more than 12 months have passed since the recording of a certificate of a surveyor and mapper or the recording of an instrument that transfers title to a writ which is not accompanied by a recorded assignment of developer rights in favor of the grantee, any agreement to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities is considered a material alteration or substantial addition to association property. This requires the vote of, or written consent by, a majority of the total voting interests or declaration sanctioned authorization. The declaration may designate associated fees as common expenses. The association may also impose covenants and restrictions concerning facility use.[83]

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80. Fla. Stat. § 718.111(8) (2013).
81. Fla. Stat. § 718.111(9) (2012).
82. Fla. Stat. § 718.111(10) (2012).
83. Fla. Stat. § 718.114 (2013).

5-5:3 Limited Common Elements

Under the Condominium Act, condominium declarations may designate portions of the common elements, known as limited common elements, for particular unit owners' exclusive use. Limited common elements usually consist of parking spaces, balconies, patios or other such property which the unit owners use individually but in which they share a common interest in maintaining. For instance, to ensure the uniform quality of appearance of all the exterior balconies, they might be designated as limited common elements for the exclusive use of the unit owner but subject to maintenance by all the unit owners through the condominium association. Usually, however, every unit owner has the exclusive use of a similar item. If this were not the case, unit owners without balconies would be unjustly obligated help pay for the maintenance of a balconies used exclusively by other unit owners.

Exclusive rights in the declaration to use limited common elements pass with title to the unit. This includes the right to transfer exclusive use rights to other units or unit owners if authorized by the declaration. A condominium declaration may be amended to provide for the transfer of limited common element use rights.[84] This type of amendment does not materially modify unit appurtenances, which would require approval of all unit owners and record owners of liens on the units.[85] The transfer of limited common element use rights must be made in accordance with the declaration's procedures.[86]

The Act's definition of "limited common elements" implies that they are a subset of "common elements" and therefore a "common expense" properly within the scope of the association's authority.[87] The declaration, however, may provide that unit owners with rights to use the limited common elements are the only owners obligated to maintain them. Alternatively, the declaration may obligate the association to maintain the limited common elements as a cost shared only by those entitled to use the limited common

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84. Fla. Stat. § 718.106(2) (2012).

85. Fla. Stat. § 718.110(4) (2012).

86. Fla. Stat. § 718.106(2) (2012).

87. *Cedar Cove Efficiency Condo. Ass'n v. Cedar Cove Properties*, 558 So. 2d 475, 479 (Fla. 5th DCA 1990).

elements. If the association provides maintenance of limited common elements as a cost shared only by those entitled to use the limited common elements, then the declaration must describe the method of apportioning the costs among users. The association may enforce payment with all its lien and collection rights.[88]

The association is also empowered to regulate common element and limited common element use, so long as the association's regulation is reasonable and does not violate the governing documents. The reasonableness of the association's common element regulation is assessed on a case-by-case basis, examining all the facts of a given set of circumstances. In general, associations may exercise their broad statutory and contractual authority to regulate common element and limited common element use, provided they exercise such power in a manner that is "reasonable," "not violative of any constitutional restrictions," and does "not exceed any specific limitations set out in the statutes or condominium documents."[89]

5-6 THE CONDOMINIUM ACT AND INSURANCE

Unlike Chapter 720, the Condominium Act provides strict guidelines for insurance. In providing uniform regulation of condominium insurance, the Florida Legislature's express intent is "to protect the safety, health, and welfare of the people of the State of Florida," "to ensure consistency in the provision of insurance

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88. Fla. Stat. § 718.113(1) (2012).

89. *Juno By The Sea N. Condo. Ass'n v. Manfredonia*, 397 So. 2d 297, 302-304 (Fla. 4th DCA 1980) (assessing the reasonableness of regulations related to a parking scheme with limited common elements (garage parking spaces) and regular common elements (an outdoor parking lot); the plan required all owners to share equally in the maintenance costs for both garage and outdoor parking, despite the fact that garage parkers paid a premium in advance for their spaces and were prohibited from using the common elements (outdoor parking) to which all owners were ostensibly entitled; the court held that the rules were entirely reasonable because (1) the detriment to outdoor parkers (the cost of maintaining garage parking from which they were prohibited) was offset by the benefit they received (exclusive use of outdoor parking), and (2) the detriment to garage parkers (the cost of maintaining the outdoor parking from which they were prohibited) was offset by the benefit they received (exclusive use of garage parking); the court held that the association exercised its broad statutory and contractual authority to regulate common element and limited common element use in a manner that was "reasonable," "not violative of any constitutional restrictions," and did "not exceed any specific limitations set out in the statutes or condominium documents"; under the circumstances, the court held that the condominium association's plan made good sense, and was the only reasonable alternative).

coverage to condominiums and their unit owners," and to "encourage lower or stable insurance premiums for associations."[90]

5-6:1 Condominium Property Insurance Coverage

Condominium property insurance policies must provide primary coverage for condominium property as originally installed or replacement of like kind and quality, and all alterations or additions made to condominium property in accordance with the Condominium Act and the association's governing documents. The coverage must exclude owners' personal property within the unit or limited common elements; floor, wall, and ceiling coverings; electrical fixtures; appliances; water heaters; water filters; built-in cabinets and countertops; and window treatments. Personal property and any insurance on it is the owner's responsibility.[91]

Items such as Jacuzzis, trellises, and screen enclosures that are purchased, installed, removable, and usable only by individual unit owners are not condominium property that the association must insure. Indeed, the law does not require association members to take responsibility for insuring property "which they do not and cannot use, and from which they derive no benefit … [and] have no insurable interest … even permit[ing] their maintenance of valid insurance."[92] An item's location outside a unit, rather than inside, does not automatically delineate it as condominium property for which all owners are obligated to pay for insurance.[93]

Condominium associations must obtain adequate property insurance based on the replacement cost of the insured property, as determined by an independent insurance appraisal which must be updated at least once every 36 months.[94] In determining the adequate amount of coverage, the association may consider deductibles,[95]

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90. Fla. Stat. § 718.111(11) (2012).

91. Fla. Stat. § 718.111(11)(f) (2012).

92. *Costa Del Sol Ass'n v. State, Dep't of Bus. & Prof'l Regulation, Div. of Florida Land Sales, Condominiums, & Mobile Homes*, 987 So. 2d 734, 736 (Fla. 3d DCA 2008) (holding that items on condominium patios are not deemed condominium property that the association must insure simply because they are outside units, rather than inside units, since there is no basis in law for a strict inside-outside distinction to determine ownership of items on condominium property).

93. *Costa Del Sol Ass'n v. State, Dep't of Bus. & Prof'l Regulation, Div. of Florida Land Sales, Condominiums, & Mobile Homes*, 987 So. 2d 734, 736 (Fla. 3d DCA 2008).

94. Fla. Stat. § 718.111(11)(a) (2012).

95. Fla. Stat. § 718.111(11)(a) (2012).

provided they are "consistent with industry standards and prevailing practice" for communities of similar size, age, construction, facilities, and location.[96] Deductibles may be based on available funds, including reserve accounts, or predetermined assessment authority.[97]

5-6:2 Failure to Maintain Condominium Property Insurance

Before turnover, failure to maintain adequate property insurance is a breach of the developer-appointed board members' fiduciary duty, unless the members can show that they made their best efforts to maintain required coverage.[98] After turnover, owner-controlled residential condominium associations must use their best efforts to obtain and maintain adequate property insurance to protect the association, association property, common elements, and the condominium property.[99] A condominium association may provide property insurance through a self-insurance fund pursuant to Florida's Commercial Self-Insurance Fund Act.[100]

5-6:3 Other Types of Condominium Association Insurance

Condominium associations may also obtain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for the common elements, association property, and units.[101] The association must maintain insurance or fidelity bonding for anyone with the authority to control or disburse association funds, including individuals authorized to sign checks on behalf of the association, as well as the president, secretary, and treasurer. This must cover the maximum funds that will be in the custody of the association or its management agent at any one time. The association bears the cost of any such bonding.[102]

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96. Fla. Stat. § 718.111(11)(c)(1) (2012).
97. Fla. Stat. § 718.111(11)(c)(2) (2012).
98. Fla. Stat. § 718.111(11)(b) (2012).
99. Fla. Stat. § 718.111(11)(d) (2012).
100. Fla. Stat. § 718.111(11) (a) (2012).
101. Fla. Stat. § 718.111(11)(e) (2012).
102. Fla. Stat. § 718.111(11)(h) (2012).

5-6:4 Condominium Owners' Residential Property Insurance

A condominium unit owner's residential property policy must conform to section 627.714's requirements.[103] For policies issued or renewed on or after July 1, 2010, this requires at least $2,000 in property loss assessment coverage for all assessments made as a result of the same direct loss to common elements if the loss is covered by the unit owner's residential property insurance policy, to which a deductible of no more than $250 per direct property loss applies. If a deductible is applied to other property loss sustained by the unit owner resulting from the same direct loss to the property, no deductible applies to the loss assessment coverage. The coverage afforded by this policy is excess over the amount recoverable under any other policy covering the same property.[104]

5-6:5 Reconstruction Work After Property Loss

All reconstruction work after a property loss is the association's responsibility. A unit owner may perform reconstruction on their unit with the board's written consent, which may be conditioned upon repair method approval, contractor qualifications, and the construction contract. Before commencing construction, the unit owner is required to obtain all appropriate permits.[105]

Unit owners are responsible for the reconstruction costs of any portions of the condominium property for which they are required to carry property insurance. The cost of any reconstruction work undertaken by the association on any portion of the condominium property for which the unit owner is required to carry property insurance is chargeable to the unit owner and enforceable with all of the association's lien rights.[106]

The association must reconstruct, repair, or replace as necessary portions of damaged condominium property that it is obligated to insure. The owners share the cost of such reconstruction as a

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103. Fla. Stat. § 718.111(11)(g) (2012); Fla. Stat. § 627.714 (2012).
104. Fla. Stat. § 627.714(12) (2012).
105. Fla. Stat. § 718.111(11)(g) (2012).
106. Fla. Stat. § 718.111(11)(g) (2012).

common expense. Deductibles, uninsured losses, and any damage in excess of coverage are a common expense of the association.[107]

Unit owners are responsible for the costs of repair or replacement of the condominium property not paid for by insurance proceeds if the damage is caused by the owners' intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules and regulations. This includes damage caused by owners' family members, unit occupants, tenants, guests, or invitees. The insurer retains all subrogation rights. This rule also applies to the costs of repairing or replacing other unit owners' or the association's property, as well any other real or personal property which the unit owners are required to insure.[108]

With majority approval of the association's total voting interests, an association may opt out of Condominium Act provisions for the allocation of repair or reconstruction expenses, and may instead allocate repair or reconstruction expenses in the manner provided in the declaration. The consent of any mortgagees is not required.[109] An association that opts out of the Condominium Act's guidelines for repair or reconstruction expenses must record a notice setting forth the opt-out vote date and the page of the official records book on which the declaration is recorded. The decision to opt out is effective upon the date of recording. An "opt out" association may also reverse that decision with approval of a majority of the total voting interests without consent of any mortgagees. Notice thereof must be recorded in the official records.[110]

If the cost of repair or reconstruction for which the unit owner is responsible is reimbursed to the association by insurance proceeds, the association must reimburse the unit owner for any payments made. The association is not obligated to pay for reconstruction or repairs of property losses if the unit owner knew or should have known about the losses and did not report them to the association until after the association's insurance claim was settled, resolved,

107. Fla. Stat. § 718.111(11)(j) (2012).
108. Fla. Stat. § 718.111(11)(j) (2012).
109. Fla. Stat. § 718.111(11)(k) (2012).
110. Fla. Stat. § 718.111(11)(m) (2012).

or denied for untimely filing. With respect to all of the foregoing, the insurer retains all subrogation rights.[111]

The association is not obligated to pay for reconstruction or repair of any improvements if the improvement benefits only a single unit and is not part of the standard improvements installed by the developer on all units during original construction, whether or not the improvement is located within the unit. This provision "does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for such improvements," including the association's obligation to reimburse the unit owner for any payments made if the cost of repair or reconstruction for which the unit owner is responsible is reimbursed to the association by insurance proceeds.[112]

5-6:6 Multicondominium Associations

By a majority vote of members of the individual condominiums in a multicondominium association, the association may operate the condominiums as a single condominium for insurance matters, including purchasing property insurance and apportionment of deductibles and damages in excess of coverage. The costs of insurance must be stated in the association budget. The decision to operate as a single condominium for insurance matters constitutes an amendment to the declaration of all condominiums in the multicondominium association, and the amendments must be recorded in the public records of the county where the declaration is recorded.[113] The association may amend the declaration of condominium so that it conforms to the Condominium Act's coverage requirements without approval by mortgagees.[114]

111. Fla. Stat. § 718.111(11)(j) (2012).
112. Fla. Stat. § 718.111(11)(n) (2012).
113. Fla. Stat. § 718.111(11)(g) (2012).
114. Fla. Stat. § 718.111(11)(i) (2012).

5-7 OFFICIAL RECORDS

5-7:1 Homeowners' Association Official Records

Community associations must maintain their official records and make them available for inspection by the owners. For homeowners' associations this includes copies of any plans, specifications, permits, and warranties related to association property; a copy of the governing documents and the amendments thereto; a copy of the current rules and regulations; the minutes of all board and member meetings; a current roster of all members, including their mailing addresses, parcel identifications, and email addresses if the owners consented to notice by electronic transmission; the association's insurance policies; a copy of all contracts to which the association is a party; bids received by the association for work to be performed; the financial and accounting records; a copy of the section 720.401(1) disclosure; and "all other written records of the association not specifically included in the foregoing which are related to the operation of the association."[115]

The meeting minutes and insurance policies must be retained for at least seven years. Work bids received by the association must be kept for one year. If the owners revoke their consent to receive notices by electronic transmission, unit owners' email addresses and numbers must be removed from the official records. The association is not liable for any erroneous information disclosure.[116]

The association must keep all financial and accounting records in accordance with good accounting practices. The financial and accounting records include "accurate, itemized, and detailed" records of all receipts and expenditures; a current account and a periodic statement of the account for each member, including the name and address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge, the date and amount of each payment, and the balance due; all tax returns, financial statements, and financial reports; and any other financial records. The financial records must be maintained for at least seven years.[117]

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115. Fla. Stat. § 720.303(4) (2012).
116. Fla. Stat. § 720.303(4) (2012).
117. Fla. Stat. § 720.303(4) (2012).

A homeowners' association's official records must be maintained in Florida and open to members or their authorized agents for inspection and photocopying. Members must request in writing access to inspect and copy records. The association must provide access to the member within 45 miles of the community or within the county in which the association is located within 10 business days after receipt of the written request.[118]

Failure to provide access to the records within 10 business days after receipt of a written request by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply.[119] If the association willfully denies access to the official records, it is liable for any actual damages that a member incurs as a result. Alternatively, the association is liable for minimum damages of $50 per calendar day up to ten days. The calculation of minimum damages begins on the eleventh business day after receipt of the written request.[120]

The association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspections. The association may not, however, require a parcel owner to demonstrate a proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one eight hour business day per month.[121]

If the association has a photocopier available at the location where the records are maintained, it must provide the owner with up to 25 pages of copies on request during the inspection. The association must allow an owner to use a portable device to scan or take photographs of official records in lieu of the association providing copies.[122] The association may impose fees to cover the costs of providing copies. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopier available, or if the requested copies exceed 25 pages in length, the association may use an outside vendor or association management company

118. Fla. Stat. § 720.303(5) (2013).
119. Fla. Stat. § 720.303(5)(a) (2012).
120. Fla. Stat. § 720.303(5)(b) (2012).
121. Fla. Stat. § 720.303(5)(c) (2012).
122. Fla. Stat. § 720.303(5) (2013).

personnel. In this case, the association may charge the actual cost of copying, if the time spent to retrieve and copy the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. The association must maintain enough copies of the governing documents to ensure they are available to members and prospective members.[123]

Certain records are not accessible to owners, including documentation typically deemed privileged and confidential. This includes documents protected by the attorney-client privilege and the work-product doctrine.[124] The attorney-client privilege extends to any communication between a lawyer and a client that "is not intended to be disclosed to third persons."[125] This is subject to certain exceptions enumerated in section 90.502.[126] Work-product privileged documents include, but are not limited to, records prepared by an association attorney which reflect mental impressions, conclusions, litigation strategies, or legal theories. To benefit from protection under this doctrine, the records must have been prepared for, or in anticipation of, litigation or adversarial administrative proceedings.[127]

The association must keep confidential the following information and documentation and refuse to allow inspection and copying by association members: information obtained in connection with the approval of a lease, sale, or other transfer; personnel records of the association's employees, including disciplinary, payroll, health, and insurance records; medical records of owners or residents; social security numbers; driver license numbers; credit card numbers; email addresses; telephone numbers; facsimile numbers; emergency contact information; addresses other than those provided for association notice requirements; and other personal information, excluding names, parcel designations, mailing addresses, and property addresses. Notwithstanding the restrictions, the association may print and distribute to owners a directory of owners' contact information. However, an owner may exclude his or her telephone

123. Fla. Stat. § 720.303(5)(c) (2013).
124. Fla. Stat. § 720.303(5)(c) (2012).
125. Fla. Stat. § 90.502(1)(c) (2012).
126. Fla. Stat. § 90.502 (2012).
127. Fla. Stat. § 720.303(5)(c) (2012).

number by written request. The association must also implement electronic security measures, including computer passwords. The association need not provide access to software used by the association to organize and manage data.[128]

Protected personnel records do not include employment contracts and financial records that indicate employee compensation. An owner may consent in writing to disclosure of their personal identifying information. The association is not liable for disclosing owners' personal identifying information if the owner voluntarily provided it, it was included in an official association record, or if the association did not request it.[129]

The association must provide prospective purchasers and lienholders access to any official records that it is required to disclose to owners. Unless it is required by law to provide the information, the association may charge a reasonable fee to the prospective purchaser or lienholder, or the current parcel owner or member, for providing good faith responses to information requests. In no event, however, may the association charge more than $150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.[130]

5-7:2 Condominium Association Official Records

The Condominium Act requires associations to maintain their official records in Florida for at least seven years. This includes the following: a copy of the plans, permits, warranties, and other items provided by the developer; a photocopy of the recorded declaration, bylaws, and amendments thereto; a certified copy of the articles of incorporation and amendments thereto; a copy of the rules and regulations; a book of meeting minutes; a current list of unit owners, including their addresses, unit identifications, voting certifications, and, if known, telephone numbers; all current insurance policies; a current copy of any management agreement, lease, or other contract to which the association is a party; bills of sale or transfer for all association property; accounting records; ballots, sign-in sheets, voting proxies, and all other papers relating

128. Fla. Stat. § 720.303(5)(c) (2013).
129. Fla. Stat. § 720.303(5)(c) (2012).
130. Fla. Stat. § 720.303(5)(d) (2012).

to voting; all rental records if the association is acting as rental agent for condominium units; a copy of the current question and answer sheet as described in section 718.504; a copy of the turnover inspection report; and all other records which are related to the operation of the association. Papers relating to voting by unit owners, including ballots and voting proxies, need only be maintained for one year from the date of the election, vote, or meeting to which the document relates.[131]

The accounting records must include, but are not limited to, accurate, itemized, and detailed records of all receipts and expenditures; a current account and a monthly, bimonthly, or quarterly statement of the account for each unit stating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due; all audits, reviews, accounting statements, and financial reports; and all bids and contracts for work to be performed. The Condominium Act imposes a civil penalty on any person who knowingly or intentionally defaces or destroys the accounting records, or who knowingly or intentionally fails to create or maintain the accounting records, with the intent of causing harm to the association or its members.[132] Undifferentiated summary records of unit owner accounts do not satisfy the statutory requirements[133] because the purpose of the statute is "to ensure that condominium associations maintain readily understood and accessible accounting records with respect to individual condominium units."[134]

The association must also maintain the email addresses and facsimile numbers of unit owners consenting to electronic notice. If an owner does not consent in writing to the disclosure of this protected information, their email addresses and facsimile numbers

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131. Fla. Stat. § 718.111(12)(a) (2012).

132. Fla. Stat. § 718.111(12)(a) (2012).

133. Fla. Stat. § 718.111 (requiring the association to maintain a "current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due").

134. *Hobbs v. Weinkauf*, 940 So. 2d 1151, 1152 (Fla. 2d DCA 2006) (holding that a condominium association that maintained account statements for each owner, but failed to maintain account statements for each unit, did not comply with section 718.111 requirements to maintain account statements "for each unit," and that the potential to deduce individual unit information from a multi-unit owner's summary accounting records does not satisfy the statute).

are not accessible to the other members; however, the association is not liable for an inadvertent disclosure if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.[135]

The association's official records must be available for inspection by any member or authorized representative at all reasonable times.[136] Within five business days of receipt of a unit owner's request to inspect the official records, the association must make the records available to the owner within 45 miles of the condominium property or within the county in which the condominium property is located. This distance requirement does not apply to an association operating a timeshare condominium. The association may comply by having a copy of the records available for inspection on the condominium property. Alternatively, the association may offer to make the records available electronically via the Internet or by allowing the owner to view the records in electronic format that is printable upon request. Barring an affirmative statutory duty not to disclose unit owner information, the association is not responsible for the use or misuse of information provided to an association member or their authorized representative "pursuant to the compliance requirements of this chapter."[137]

Any condominium association member has the right to make copies of official records, subject to reasonable association rules regarding the frequency, time, location, notice, and manner of inspections and copying. The association must keep enough copies on the condominium property for unit owners and prospective purchasers of the following documents: governing documents, rules and regulations, all amendments thereto, the section 718.504 question and answer sheet, and year-end financial reports. The association may charge for the actual costs of preparing and furnishing these documents. In addition, the association must allow the member to scan or photocopy records with portable devices in lieu of providing the member with a copy of such records.[138]

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135. Fla. Stat. § 718.111(12)(a), (c) (2012).
136. Fla. Stat. § 718.111(12)(c) (2012).
137. Fla. Stat. § 718.111(12)(b) (2012).
138. Fla. Stat. § 718.111(12)(c) (2013).

An association's failure to provide access to its official records within 10 business days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with the Condominium Act's requirements. If the association willfully denies access to the official records, it is liable for any actual damages a member incurs as a result. Alternatively, the association is liable for minimum damages of $50 per calendar day up to ten days. The calculation of minimum damages begins on the eleventh business day after receipt of the written request. Any person prevailing in an action to enforce their right to inspect the official records is entitled to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denied access.[139]

A unit owner may contact the Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) directly to obtain assistance in obtaining access to condominium association records. If a unit owner provides proof to the Division that he or she requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days elapsed since the second request and the association failed to provide access, the Division will issue a subpoena requiring production where the records are kept.[140]

A condominium association need not provide access to confidential or privileged records, including documents protected by the attorney-client privilege and the work-product doctrine.[141] To benefit from protection under this doctrine, the records must have been prepared for, or in anticipation of, litigation or adversarial administrative proceedings.[142]

The association must keep the following information and documentation confidential and refuse to allow inspection and copying by association members: information obtained in connection with the approval of the lease, sale, or other transfer of a unit; personnel records of association or management

139. Fla. Stat. § 718.111(12)(c) (2012).
140. Fla. Stat. § 718.501(1)(d) (2012).
141. Fla. Stat. § 718.111(12)(c) (2012).
142. Fla. Stat. § 718.111(12)(c) (2012).

company employees; medical records of unit owners; electronic security measures used by the association to safeguard data, including passwords; and the software and operating system used by the association to manage data. This does not include written employment agreements with an association employee or management company, or financial records showing the compensation paid to an association employee.[143]

The condominium must also safeguard owners' personal identifying information, including social security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, facsimile numbers, emergency contact information, and addresses. This does not include information provided by the owner to fulfill the association's notice requirements. Notwithstanding the restrictions, the association may print and distribute to owners a directory of owners' contact information. However, an owner may exclude his or her telephone number by written request. The association is not liable for inadvertent disclosure of personal identifying information included in association official records that an owner voluntarily provided, unsolicited by the association.[144]

The association must provide prospective purchasers and lienholders access to any official records that it is required to disclose to owners. Unless it is required by law to provide certain information, the association may charge a reasonable fee to the prospective purchaser or lienholder, or the current parcel owner or member, for providing good faith responses to information requests. In no event, however, may the association charge more than $150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response. An association and its authorized agent are not liable for providing information to prospective purchasers and lienholders in good faith pursuant to a written request. To help avoid liability, the person providing the information should include the following written statement: "The responses herein are made in good faith and to the best of my ability as to their accuracy."[145]

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143. Fla. Stat. § 718.111(12)(c) (2012).
144. Fla. Stat. § 718.111(12)(c) (2013).
145. Fla. Stat. § 718.111(12)(e) (2012).

5-8 WRITTEN INQUIRIES

The Condominium Act provides unit owners with a mechanism for requesting information about the operation of the community. A unit owner may send a written inquiry by certified mail to the board of directors. In response, the board must respond in writing within 30 days with a substantive response, a notification that a legal opinion was requested, or a notification that the board is seeking advice from the Division.[146]

If the board seeks a legal opinion, it must provide a substantive response to the owner within 60 days after receipt of the inquiry. If the board seeks advice from the Division in response to the written inquiry, the board must provide a substantive response to the owner within 10 days of receipt of the advice. If the association fails to provide a substantive response to the unit owner, the board may not recover attorney's fees and costs if it prevails in litigation arising from the inquiry's subject matter. The association may adopt reasonable rules and regulations regarding written inquiries, including reasonable restrictions on the frequency and manner of responses. The association is permitted to adopt a rule that it will only respond to one written inquiry per unit every 30 days.[147]

5-9 HIRING MANAGERS, CONTRACTORS, ATTORNEYS, AND ACCOUNTANTS

While board of directors members are often elected because of the professional backgrounds and unique skills they bring to community governance, they are simply volunteers who may not have the expertise needed to operate and manage the community association. As such, both homeowners' associations and condominium associations are authorized to enter into agreements with licensed community association managers and professionals, such as accountants and attorneys, to provide specialized services. To protect the community and ensure transparency and fiscal responsibility, the statutes governing Florida community associations set forth guidelines for certain types of professional contracts.

Both Chapter 720 and the Condominium Act effectuate the policy consideration underlying the statute of frauds and apply

146. Fla. Stat. § 718.112(2)(a) (2012).
147. Fla. Stat. § 718.112(2)(a) (2012).

it to Florida community associations. Specifically, they provide that any association contract for services or for the purchase, lease, or renting of materials or equipment must be in writing if it may not be fully performed within one year.[148] This is a restatement of Florida's statute of frauds, which states,

> No action shall be brought … upon any agreement that is not to be performed within the space of 1 year from the making thereof … unless the agreement or promise, or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith.[149]

The Condominium Act takes this one step further and provides that all contracts for the provision of services must be in writing. Condominium associations with 10 or fewer units may opt out of this requirement by an affirmative vote of two-thirds of the unit owners.[150]

The Condominium Act also sets forth specific criteria for certain types of agreements. To be valid and enforceable, maintenance or management services contracts must contain specific provisions. The Condominium Act distinguishes between (a) maintenance or management services for which the association pays vendors directly, and (b) services related to equipment or property provided for the unit owners' convenience, such as laundry services/equipment, food services, telephone vendors, cable television operators, retail stores, businesses, "or similar vendors."[151] Valid maintenance or management contracts must specify the services and obligations to which the parties agree.[152] Any services not stated on the face of the contract are unenforceable.[153]

The contract must specify the reimbursable costs that the party providing maintenance or management services may incur. The contract must indicate the frequency of each service and specify a minimum number of personnel to be employed. Pre-turnover

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148. Fla. Stat. § 720.3055(1) (2012); Fla. Stat. § 718.3026(1) (2012).
149. Fla. Stat. § 725.01 (2012).
150. Fla. Stat. § 718.3026(1) (2012).
151. Fla. Stat. § 718.3025(4) (2012).
152. Fla. Stat. § 718.3025(1) (2012).
153. Fla. Stat. § 718.3025(3) (2012).

contracts must disclose any financial or ownership interest between the developer and maintenance or management service provider. Finally, the contract must disclose any financial or ownership interest between board members and the maintenance or management service provider.[154]

The Condominium Act provides a remedy for condominium associations when the maintenance or management service provider fails to perform in accordance with the contract. In such cases, the association may procure services from some other party, and the breaching maintenance or management service provider is liable to the association for the costs and fees expended in procuring substitute services.[155]

The Condominium Act also provides strict regulations for contracts or transactions between the association and board members or entities in which board members may have a financial interest. For any such contracts, the association must comply with section 617.0832, which requires that (a) the board member's interest is disclosed or known to the board of directors, which approves the contract or transaction by a vote without counting the votes of the interested directors; (b) the board member's interest is disclosed or known to the members entitled to vote on the contract, if any, and they approve it by vote or written consent; or (c) the contract is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the members.[156]

The foregoing disclosures must be written into the condominium association minutes.[157] In addition, the members are entitled to cancel the contract at the next regular members meeting after the contract is executed. At that meeting, the existence of the contract or other transaction must be disclosed to the members. Upon any member's motion, contract cancellation must be set for referendum, with a majority vote by present members sufficing for cancellation. If the members cancel the contract, the association is only liable for the reasonable value of goods and services provided

154. Fla. Stat. § 718.3025(1) (2012).
155. Fla. Stat. § 718.3025(2) (2012).
156. Fla. Stat. § 617.0832(1) (2012).
157. Fla. Stat. § 718.3026(3) (2012).

until cancellation. The association is not liable for any termination fee, liquidated damages, or other penalty for early termination.[158]

5-9:1 Competitive Bids

A homeowners' association must obtain competitive bids for materials, equipment, or services before it enters into a contract that requires payment exceeding 10 percent of the annual budget, including reserves. This includes service contracts and contracts for purchase, lease, or renting of materials or equipment. It does not include employment contracts; contracts with community association managers; contracts with attorneys, architects, or engineers; contracts for landscape architect services;[159] and contracts for materials, equipment, or services provided to the association under a local government franchise agreement by a franchise holder.[160] In addition, this rule does not apply if the contracting party is the only source of the goods, materials, equipment, or services.[161] This rule also does not require the association to accept the lowest bid.[162]

If a contract is awarded following a competitive bid, and the contract allows the board to cancel on 30 days' notice, a renewal of the contract is not subject to the competitive bid requirements. Contracts with managers, if made by a competitive bid, may be made for up to three years.[163]

Condominium associations must obtain competitive bids if a contract will cost the association more than 5 percent of the total annual budget, including reserves. This includes any contract for services, as well as contracts for purchase or lease of materials or equipment. This rule does not require the association to accept the lowest bid,[164] and does not apply to employment contracts; contracts for landscape architect services; and contracts with attorneys, accountants, architects, managers, timeshare management firms,

158. Fla. Stat. § 718.3026(3) (2012).
159. Fla. Stat. § 720.3055(2)(a) (2012).
160. Fla. Stat. § 720.3055(2)(a) (2012).
161. Fla. Stat. § 720.3055(2)(c) (2012).
162. Fla. Stat. § 720.3055(1) (2012).
163. Fla. Stat. § 720.3055(2)(a) (2012).
164. Fla. Stat. § 718.3026(1) (2012).

and engineers.[165] A condominium association need not obtain a competitive bid in emergency cases in which the association would be prevented from obtaining needed goods or services. In addition, the rule does not apply if only one business entity is capable of supplying the goods or services.[166] Condominium associations with 10 or fewer units may opt out of this requirement by an affirmative vote of two-thirds of the unit owners.[167]

5-10 CONDOMINIUM ASSOCIATION EMERGENCY POWERS

Under the Condominium Act, condominium associations have certain powers to respond to damages from events giving rise to a Governor's state of emergency proclamation. When an emergency causes damage, a condominium association may generally conduct necessary business without the corporate rituals required by the Condominium Act and the governing documents, unless the governing documents specifically prohibit the association from such actions. In such cases, the board members have a duty to act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the association's best interests.[168] These emergency powers are limited to the time reasonably necessary to mitigate further damage, make emergency repairs, and protect the health, safety, and welfare of the association, the unit owners, and their family members, tenants, guests, agents, or invitees.[169]

In response to state-of-emergency damages, the board of directors may take the following actions: conduct meetings with notice given as is practicable; cancel and reschedule any meeting; name non-directors as assistant officers to fill in for incapacitated or unavailable executive officers during the emergency; relocate the association's principal office; enter into agreements with local counties and municipalities to assist with debris removal; and

165. Fla. Stat. § 718.3026(2) (2012).
166. Fla. Stat. § 718.3026(2) (2012).
167. Fla. Stat. § 718.3026 (2012).
168. Fla. Stat. § 718.1265(1) (2012).
169. Fla. Stat. § 718.1265(2) (2012).

implement a disaster plan, including shutting down elevators, electricity, water, sewer, security systems, or air conditioners.[170]

The association may also designate any portion of the condominium property unavailable for entry based upon advice of emergency management officials or licensed professionals, and subsequently determine whether such property can be safely inhabited or occupied. The association may require condominium property evacuation in the event of a mandatory evacuation order. The association shall be immune from liability for injury to persons or property arising from an owner or occupant's failure to evacuate during a board-required evacuation. The association may take steps to mitigate further damage, including removing debris and preventing the spread of fungus by removal of wet drywall, insulation, carpet, cabinetry, personal property, or other fixtures on or within the condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those items.[171]

The association may contract, on behalf of any unit owner, for items or services for which the owners are typically responsible, but which are necessary to prevent further damage to condominium property, including drying units, boarding broken windows or doors, and the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property. The unit owner is ultimately responsible for reimbursing the association for the items or services' actual costs, and the association may use its lien authority to enforce collection of the charges. The association may also levy special assessments without a vote of the owners, as well as borrow money and pledge association assets as collateral to fund emergency repairs without unit owner approval.[172]

5-11 RIGHT TO SUE AND BE SUED

Both homeowners' and condominium associations have the right to sue and be sued on any issue regarding community association operation. After turnover, the association may

170. Fla. Stat. § 718.1265(1) (2012).
171. Fla. Stat. § 718.1265(1) (2012).
172. Fla. Stat. § 718.1265(1) (2012).

also litigate disputes in its name on behalf of all unit owners regarding matters of common interest. The right to sue and be sued includes the right to settle disputes. Settlement of a dispute regarding the community's management and operation is within the board of directors' discretion and does not need court approval.[173]

5-11:1 Homeowners' Associations' Right to Sue and Be Sued

After turnover, the association may institute, settle, or appeal legal actions in its name on the members' behalf. The association may litigate and settle disputes regarding matters of common interest, including, but not limited to, common areas; any buildings or improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving a building or improvement for which the association is responsible; and representations of the developer pertaining to commonly used facilities. The association may also protest ad valorem taxes on commonly used facilities. The association may defend eminent domain actions or bring inverse condemnation actions.[174]

Approval by a majority of the voting interests at a membership meeting at which a quorum is present is a precondition to filing actions in which the association intends to litigate amounts in excess of $100,000.[175] This statutory limitation on the association's authority to commit resources to litigation is designed to protect association members.[176]

5-11:2 Condominium Associations' Right to Sue and Be Sued

A condominium association may sue or be sued on any issue respecting maintenance, management, and operation of the condominium property. After turnover, the association may litigate and settle disputes in its name on behalf of all unit

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173. *Ocean Trail Unit Owners Ass'n v. Mead*, 650 So. 2d 4, 8 (Fla. 1994).

174. Fla. Stat. § 720.303(1) (2012).

175. Fla. Stat. § 720.303(1) (2012).

176. *Lake Forest Master Cmty. Ass'n v. Orlando Lake Forest Joint Venture*, 10 So. 3d 1187, 1195 (Fla. 5th DCA 2009).

owners regarding matters of common interest, including the common elements; any buildings or improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving a building or improvement for which the association is responsible; and representations of the developer pertaining to commonly used facilities. The association may also protest ad valorem taxes on commonly used facilities. The association may defend eminent domain actions or bring inverse condemnation actions. If the association has the authority, it may bring a class action or be joined in an action as a class representative.[177]

5-11:3 Class Action Suits

After turnover, Rule 1.221 of the Florida Rules of Civil Procedure permits both homeowners' associations and condominium associations to institute class actions on behalf of all association members regarding matters of common interest, *without* satisfying the following Rule 1.220 prerequisites[178] for pleading and maintaining class actions: (1) class size that makes separate joinder impracticable, (2) common questions of law and fact, (3) typicality of the class representative's claims or defenses, and (4) capability of the class representative to fairly and adequately represent class member interests.[179] A homeowners' association or condominium association may also be joined in an action as representative of all association members regarding matters of common interest. This rule does not limit any statutory or common law right of any owner, or class of owners, to bring an action that is otherwise available.[180]

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177. Fla. Stat. § 718.111(3) (2012).

178. Fl. R. Civ. P. Rule 1.220 (2013) (requiring the court to make the following conclusions before any claim or defense may be maintained on behalf of a class by one or more parties suing or being sued as the class representative: (1) the members of the class must be so numerous that separate joinder of each member is impracticable; (2) the representative party's claim or defense must raise questions of law or fact common to those of each class member; (3) the class representative's claim or defense must be typical of the claim or defense of each class member; and (4) the court must conclude that the class representative can "fairly and adequately protect and represent the interests of each member of the class").

179. Fl. R. Civ. P. Rule 1.221 (2013).

180. Fl. R. Civ. P. Rule 1.221 (2013).

To maintain a class action on behalf of its members, the only requirement for a community association is that the action concern matters of common interest. In cases involving master homeowners' associations comprised of distinct subdivision associations, subdivision associations have the right to maintain class actions on behalf of their members against the master association, provided subdivision members have a common interest in obligations that are (1) distinct from their interests as members of the master association, and (2) distinct from the interests of homeowners in other subdivisions in the master association.[181]

[181] *Homeowner's Ass'n of Overlook v. Seabrooke Homeowners' Ass'n*, 62 So. 3d 667, 670 (Fla. 2d DCA 2011) (a subdivision homeowners' association filed a class action against its multi-subdivision master association for declaratory relief regarding obligations to maintain the other subdivisions' roadways; the action was based on a provision in the master association's declaration that members are only obligated to maintain their own subdivision's roads; the court rejected the master association's argument that the subdivision had no standing to maintain an action on behalf of its members, holding that "the sole requirement for the bundling of a class is that the members of the association have a common interest regarding the common elements of the property"; the court held this requirement was met since subdivision members had a common interest in their obligation to pay the costs of maintaining the roads in other subdivisions, which was distinct from any interest as members in the master association and from the interests of other subdivision homeowners).