



McCabe | Ronsman

2021 Board Member Certification

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Certificate Information

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Course Topics and Objectives

Topics

- Operations
- Elections
- Financial (Reporting, Budgets & Reserves)
- Official Records (Maintenance and Access)

Objectives

- Increase knowledge of duties and obligations and applicable Florida Statutes
- Define role of the board
- Legal obligations as a Board Member
- Association Protection
- Association Problems and Issues

Operations

Governing Documents

- Community association governing documents typically include several items in descending order of authority.
 - Declaration
 - Articles of Incorporation
 - Bylaws
 - Rules and Regulations

Association Must...

- Establish a budget
- Set aside funds for future maintenance
- Collect assessments to pay for common expenses
- Enforce its rules and regulations

Board Responsibilities & What to Know

PROTECT & INSURE

Interests of the association at large

Avoid personal gains

Act fairly and equally

MAINTAIN

All common area interests

ENHANCE

Promote rather than diminish all common area interests

Insurance / Construction: What to Know

5 INSURANCE CLAUSES ASSOCIATIONS SHOULD HAVE/BE AWARE OF:

- 1) Law and Ordinance to policy limits
- 2) Wind driven rain endorsement
- 3) Proper coverage of all structures, including signs, lightposts, doghouses, etc. (everything must be scheduled)
- 4) Co-insurance penalty
- 5) Replacement cost on everything

[Must bring insurance claims within 2 years]

CONSTRUCTION DEFECTS

- Association can bring construction defect claims
- Statute of Limitations (4 years)
- Statute of Repose (10 years)
- Review of time limitation available by law firm

Board Responsibilities

- Act as one unit to set policy
- Enforce governing documents
- Maintain value of the property
- Conduct Board and Annual Meetings
- Set goals for association
- Maintain association's financial stability

The Board's Legal Responsibilities

- Fiduciary obligation
 - A duty to act for someone else's benefit and to act in the best interest of the association and its members
 - Must act with good faith, diligence, care and skill
- Duty of loyalty
- Duty of ordinary and reasonable care
- Duty of confidentiality - during and after term of service

Build Community

- Become community involved
- Seek positive resolution to community and member issues
- Emphasize reasonable living and respect
- Create healthy relationships with renters
- Establish committees

Responsibilities

BOARD

- Board is responsible to make decisions and set policy
- Board must reach a consensus on policy and direction

MANAGEMENT

- Management implements board directives
- Management works with the President to fulfill the policy of the board
- Management serves at the pleasure of the board

Communication with Management

- Shared vision between Board and Community Manager
- Board and management agree on expectations
- Understand the difference between setting policy and directing operations
- Action lists & monthly reports
- Mutual respect
- Support your manager – thankless position, on the “front line” for the Board and officers

Board Member Role & Responsibilities

- Homeowners elected to serve by their peers
- Responsible for the conduct of business and delivery of service to the Association
- Subject to governing documents and laws
- Trustees on behalf of others
- Provide oversight and guidance to the Association

Qualities of a Good Board Member

Strong Board Member

- Good character
- Strong integrity
- Calm judgment
- Willingness to serve
- Committed to the best interests of the community as a whole
- Relevant experience or background
- Previous volunteer service
- Strong "people skills"
- Servant leader

Weak Board Member

- Unable to put the welfare of the community first
- Works behind the board to run things his or her way
- Impulsive or quick tempered
- Has a personal or hidden agenda
- Puts individual interests first
- Little or no experience in management, leadership, or service
- Unable to work with others for the common good

Roles and Responsibilities

- **The President**

- Day to day officer
- Calls meetings to order
- Announces the agenda and adheres to it
- Recognizes members entitled to the floor
- States a question, calls a vote, announces outcomes
- Maintains order through impartial parliamentary procedure
- Expedites business
- Familiar with all rules and documents of the Association
- Appoints committees per bylaws

Roles and Responsibilities

- **The Vice President**

- Serves in the absence of the President
- Maintains order through impartial parliamentary procedure
- Expedites business
- Familiar with rules/documents of Association
- Appoints committees as per bylaws

- **The Secretary**

- Recording officer
- Custodian of records
- Keeps accurate minutes of all meetings
- Signs the minutes and other documents

Roles and Responsibilities

- **The Treasurer**

- Keeps thorough and accurate financial records
- Produces regular reports of disbursement and income
- Produces annual financial report to the membership
- Submits financial records for audits
- Authorizes disbursement of funds

Roles and Responsibilities

The Manager

- Scope of duties are specified by contractual agreement
- Carries out the policies as set by the Board
- Administers the services, programs and operations of the Association
- Provides information, training, and leadership
- Acts in the best interests of the Association
- Keeps Board informed on progress of key projects

Meetings

- **Annual meetings**
 - Elections
 - Review of the Year
 - Budget presented (depending on time of year)
- **Board meetings**
 - Frequency defined in documents
- **Member meetings**
- **Committee meetings**

Meeting Requirements

- Quorum
 - Required for official business
 - Any interaction contributing to the development of ideas constitutes a meeting
- Frequency determined by governing documents
- Proper notice required
- Florida Government in the Sunshine does NOT apply to Associations

Quorum Requirements - Condo

- Member Meeting – majority of voting interests
- Board Meeting – simple majority
- Quorum is not required for election if 20% of eligible voters cast a ballot to have a valid election
- Suspended voting rights do not count

Quorum Requirements - HOA

- 30% of voting interests required for quorum (unless lower amount in bylaws) for meeting of members
- Consists of a majority of number of directors prescribed in governing documents
- Decisions that require a vote of members must be made by majority at a meeting where quorum attained
- Suspended voting rights do not count

Board Meeting Attendance

- Open to all unit owners
- Anytime a quorum is present, unit owners have the right to attend unless:
 - Legal counsel is present for the purpose of providing legal advice regarding pending or possible litigation; however, meeting notification is still required
 - Personnel matters are being addressed, closed board meetings are permitted; legal counsel is not required to be present

Board Meeting - Condo

- Board or Committee Meeting Participation with videoconferencing
 - Board or committee member participation in a meeting by telephone - to add real-time videoconferencing, or similar real-time electronic or video communications as an acceptable way for a Board or Committee member to attend, be counted toward quorum and vote.

Board Meeting – E-mail

Board or Committee Meeting Participation

- Board Member Communications – Sections 718.112(2)(c) and 720.303(2)(a) F.S., authorize board members to use email as a means of communication but clarifies that board members may not cast a vote on an association matter via email.
 - HOA prohibition new as of July 1, 2018.

Planning Board Meetings

- Define purpose
- Create an agenda
 - Date, time and location
 - Review of minutes
 - Treasurer report
 - Committee reports if any
 - Action items
 - New business to be considered
- Invite the appropriate people

Meeting Hints

- Start on time
- Stick to the agenda
- Robert's Rules of Order (Parliamentary Procedure)

Key components:

- Motions
- Resolutions
- Debate
- Vote

Meeting Minutes

- Important document maintained by association
- Serve as official record of the organization
- Serve as basis of action taken by board

Minutes - Content

- Kind of meeting
- Date, time and place
- Who chaired the meeting
- Results of the determination of a quorum
- Any action or inaction taken
- Records what was done, not what was said
- Votes
- Summary of reports given

Unit Owner Participation and Personality Problems

- Owner may speak on any designated agenda item
 - When - Adopt reasonable rules. Association role to define frequency, duration and manner of unit owner statements
 - Set do this up front, or during the specific topic – this seems to meet the intent of the statute
 - Members are entitled to be heard regarding matters board intends to consider
- Emergency action item may be considered
- Meetings can be recorded
 - Reasonable rules may be adopted
- Set time limits, frequency and limit board responses

Fining and Suspension of Use Rights

- Board imposes fine, then subject to approval or denial by committee of non-directors, non-officers
- 14 days notice required before hearing in front of committee
- Once fine imposed, due within 5 days of providing notice of hearing results
- Practical consideration: Board imposing fine vs. delegation of fining authority
 - Issue is notice requirements for hearing where fine imposed

Fining and Suspension of Use Rights (cont.)

- Consider: resolution establishing when fines begin, grace periods, ability to have attorneys present
- Better to have procedure in advance rather than reacting to situation and “making up rules as you go”

Elections

Elections - Condo

- The regular election must occur on the date of the Annual Meeting or as stated in the bylaws
- Any vacancy on the board shall be filled by electing a new board member and the election must be conducted by secret ballot
- Provisions may be made in the bylaws for board member term limits. If term limits are not defined in bylaws, terms expire upon election of successors
- A candidate must be eligible to serve on the board at the time of the deadline for submitting the Notice of Intent to Run (40 days before the election) in order for his/her name to be listed on the ballot

Term Limits – Condo

- Directors in a condominium association may now have longer than 2 year terms if in Bylaws (default was 1 year term unless Bylaws provided for 2 year staggered terms)
- May not serve more than 8 consecutive years on board unless
 - Candidate obtains 2/3 of votes cast at election
 - Not more candidates than vacancies
 - Time period to calculate 8 consecutive years began July 2018

Elections - Condo

- First notice of election must be mailed or delivered no less than 60 days prior to the election
- Candidates must submit their information sheets no less than 35 days prior to the election
- Second notice requirements
 - No less than 14 days and no more than 34 days prior
 - Include meeting agenda
 - Include official ballot listing all candidates and candidate information sheets if provided

Elections - HOA

- The regular election must be held on the date of the Annual Meeting or as stated in the bylaws
- Must be conducted in accordance with the governing documents
- Board of Directors must be elected by a plurality of the votes
- Any person delinquent more than 90 days or has been convicted of a felony and has not had civil rights restored for at least 5 years is not eligible to serve on the board
- Member may nominate himself or herself as a candidate at meeting where election is to be held – unless governing documents provide process for nominating in advance of meeting

Elections – HOA (cont.)

UPDATED JULY 2018

- If an election is not required because there are fewer or equal candidates than vacancies, and nominations from the floor are not required, then write-in nominations are not permitted.
- Candidates must commence service on board of director regardless of whether a quorum was attained at the annual meeting.

Board Member Recall – Condo

(Updated July 2018)

- Board may review recall petition to see if facially valid, must hold meeting within 5 business days to certify recall
- If fail to hold meeting, director(s) automatically recalled
- Recalled Board member may challenge facial validity of written agreement to recall, ballots filed, or compliance with procedural requirements
- Prevailing party entitled to attorneys fees

Proxy Rules - Condo

- Limited Proxy: Must vote as specified on proxy
- General Proxy: Allows proxy to use best judgment in voting
- Voting by proxy is not permitted for Board member election unless Association has 10 or fewer units and association has adopted alternative election procedures
- Limited and general proxies may be used to establish a quorum
- Proxy only valid for 90 days

Proxy Rules - HOA

- Directors may not vote by proxy at Board meetings
- Members have the right to vote by proxy
- A proxy is only valid for the meeting for which it is intended
- Expires 90 days after the date of the meeting for which it was originally given

Financial

(Reporting, Budgets & Reserves)

Financial Topics

Duties & Obligations

- Budgets
 - Operations
 - Reserves
 - Accounting method
- Monitor accounting records
 - Must be open to inspection
 - Accuracy is critical
- Establish assessments
 - Regular
 - Special
- Financial reporting requirements

Budget

- Allows association to prepare for upcoming year
- The proposed budget will include all daily operational expenses and estimated revenues
- Condo
 - Unit owners are entitled to 14 days written notice of the budget meeting, unless bylaws or governing documents provide for longer notice
 - Meeting notice is to be accompanied by a copy of the proposed budget
- HOA
 - The association shall provide each member with a copy of the annual budget or written notice that a copy is available upon request

Annual Budget

- Governing documents set forth responsibilities for preparing, implementing and funding the annual budget
- Most budgets contain...
 - Administrative costs
 - Maintenance
 - Taxes
 - Insurance
 - Reserves

Cash vs. Accrual Accounting

- Cash basis
 - Income recorded when received
 - Expenses recorded when paid
- Accrual basis
 - Income recorded when earned
 - Expenses recorded when incurred

Financial Reports

- Total annual revenues of less than \$150,000- Report of cash receipts and expenditures .
- Total annual revenues of \$150,000 but no more than \$300,000- Compilation.
- Total annual revenues of \$300,000 but no more than \$500,000- Review.
- Total annual revenues \$500,000 or more- Audit.

- New as of July 2018 (Condo)
 - If unit owner does not receive financial report, Division may order it produced within 5 business days
 - If fail to comply, Association cannot waive annual financial reporting requirements for fiscal year in which request made and the following fiscal year

Funding the Budget

- Assessments required from each owner
- Unit serves as security
- Other sources of revenue may come from rent, interest, etc.
- Payment schedule must be determined

Assessments - Condo

- If year over year owners assessment increase is greater than 15%, owners (10% of voting interests) can request a special meeting to consider a substitute budget
- Collections of assessments
 - Manner for collection is stated in bylaws
 - Must be no less frequently than quarterly
 - Can accelerate assessments for delinquency

Manage Delinquencies

- Establish a collection policy
 - Enforcement procedures
 - Apply fairly and equitably to all owners
- Use the statutory remedies
 - Amenity restriction
 - Suspension of voting rights
 - Application of rent

Renters

- Associations can collect rent directly from the tenants of delinquent unit owners
- Demand includes all subsequent rent due from the tenant to the unit owner and is to be paid directly to the association until the delinquent account is paid in full
- A form letter is to be sent to tenants explaining obligation to pay rent directly to the association
- After receiving a written demand by the association the tenant is immune from any claim by the landlord or unit owner related to rent timely paid to the association

REPAIR & RENTAL OF ABANDONED UNITS - CONDO

- Association able to enter abandoned unit to inspect and if necessary make repairs, turn on utilities, or otherwise maintain, preserve and protect the unit and adjoining common elements
- Authority to Association to obtain a receiver to lease abandoned unit for the benefit of the Association, using rental income to offset costs and expenses incurred, and unpaid assessments and associated costs.

Surplus Funds

- Includes all excess monies retained by association after deducting expenses
- If not-for-profit corporation and surplus is not from a special assessment, funds cannot be returned to owners
- Excess funds can be credited towards next year's budget or allocated to the reserve account
- Special assessment surplus – upon completion of specific purpose, excess funds can be returned to unit owners or applied as credit toward future assessments

Overview of Reserves - Condo

- Purpose – major repairs or replacements
- Use for other purposes
- Funds must be separate from other operating funds
- Required reserves – roof, pavement, painting and any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000.
- Budget must include a fully funded reserve schedule
- Pooling method vs. straight line method

Overview of Reserves HOA

- Budget may include reserve accounts
- If reserve accounts are established
 - Determined by formula
 - Maintained and funded
 - Waived upon majority vote
- If reserve accounts are not established
 - Disclosure requirement
 - Funding limited to increases per governing documents
- Reserve account can be terminated by majority vote

Funding Methods

- Straight line – Each component is individually reserved for
- Pooling – Components treated as group funding set so as to not allow the entire fund to drop below zero.

Both are acceptable accounting practices under GAAP.
Answer will be different under each method.

Reserve Funding

- Florida law provides that reserve funding should be included at the fully funded level.
- Owners may vote to waive or reduce the funding level but the budget must contain the fully funded amount.
 - The Board of Directors does not need to present a less than fully funded option to the membership.
- Multiple budgets may be presented to owners with varying funding levels.

Reserve Schedule

- All required deferred maintenance and capital expenditure items
- Estimate of useful life
- Estimate of remaining useful life
- Estimate of costs
- Estimate of fund balance at the beginning of every year
- Required funding for budget year

Reserve Studies

- Florida law does not have a specific law about reserve studies, however, as part of the fiduciary responsibilities of the Board of Directors it is a good idea to obtain reserve studies at least every 3 to 5 years.
- As a recommendation, the association may want to perform an update without the site inspection annually as part of their annual budget review process to make sure the reserve study is up to date.

Official Records (Maintenance and Access)

Records Maintenance

- The official records of the association are open to inspection by any association member, or authorized representative, at all reasonable times .The right to inspect includes the right to make copies at a reasonable expense
- The official records of the association shall be maintained within the state
- Records shall be made available to owners within 10 working days of receiving a written request sent to the board or designee
- Association is not responsible for the use or misuse of the information provided to a member or member's representative

Records Maintenance

Condominium Association must permanently maintain (HOAs – 7 years):

- Copy of plans, permits, warranties and other items provided by developer
- Copy of recorded declaration, bylaws, articles, rules and amendments thereto
- Minute book
- Accounting records

Association must maintain for at least seven (7) years:

- Current roster and mailing addresses
- Voting certifications
- Current insurance policies
- Current copy of management agreement, lease and other contracts
- Bills of sale or transfer for all property owned by association
- All other written records related to operation of association

Records Maintenance - Condo

- Ballots, sign in sheets, voting proxies – Maintain for one year from date of election
- All rental records as applicable
- Copy of current question and answer sheet as provided in statute
- Copy of inspection report as provided in statute
- New as of July 2018 – Association must keep electronic records related to voting

Condominium Website & Postings

(Updated July 2018)

- New deadline for condominiums of 150 units or more - January 1, 2019
- Records required to be maintained on website:
 - Recorded governing documents and amendments
 - Management agreement, lease, or other contracts to which Association is party
 - Summaries or complete copies of bids for materials, equipment or services exceeding \$500.00 must be on website for 1 year
 - Annual budget and proposed budget
 - Monthly income or expense statements to be considered at next meeting
 - Certification of each director
 - Contracts or transactions between association and any director, firm, corporation or condominium association that is not an affiliated condominium association or any other entity in which association director is also a financially interested director
 - Any contract or document regarding potential conflict of interest
 - Notice and agenda for unit owner meeting— must be posted on front page of website or under separate subpage labeled “Notices”
 - Any documents considered during a meeting or listed on the agenda for a meeting— must be posted at least 7 days before meeting where document considered

Records Not Accessible

- Record protected by lawyer-client privilege
- Information obtained in connection with sale or other transfer of a unit
- Personnel records
- Medical records
- Electronic security passwords
- Software and operating system access information

Records Not Accessible (cont)

- Protected Information
 - Includes: social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, fax numbers, emergency contact information, addresses other than those provided for notice purposes and other personal information
 - Owners can consent in writing to allow the disclosure of their protected contact information
- Contact information which requires no written consent for disclosure includes:
 - Name, unit number, mailing address, property address and any e-mail or fax number provided to fulfill notice requirements

Official Records (cont)

Condo & HOA:

- Statutes clarified that all telephone numbers may be included in a Directory, although an owner may choose to not have their numbers listed (i.e., opt-out). It was also revised to allow an owner to consent to the disclosure of additional contact information by the association (i.e., opt-in).

Inspection

- The official records of the association are open to inspection by any member or authorized representative at all reasonable times.
- Association must respond to record inspection request within **ten (10) business days** (updated as of July 2018 for condominiums – previously 5 business days)
- The association may comply with the inspection requirement by:
 - Having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or
 - Offering the option of making the records available electronically via the Internet or on a computer screen and printed upon request.
- The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements.

Additional Legal Updates

SB 630 – Community Associations

Condominiums and HOAs – Emergency Powers

- Clarifies statutory emergency powers apply to states of emergency as a result of contagions such as COVID-19
- Authorizes boards to conduct board meetings, committee meetings, membership meetings, and elections, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication
- Would allow associations to give meeting notices by electronic transmission

Condominiums and HOAs – Emergency Powers

- Condominiums may consult with public health officials when determining whether any portions of property are unavailable for entry or occupancy
- Condominiums and HOAs may not prohibit owners, guests, tenants, or agents from entering property during state of emergency, unless based on governmental order or determination, or a public health directive from CDC

Condominiums

- Recall disputes may be filed for arbitration with DBPR or court action
- Owners may seek pre-suit mediation instead of arbitration for certain disputes
- Board or committee members may participate remotely in meetings – including for quorum and voting purposes

Condominiums

- If an association's insurance policy does not provide subrogation rights against unit owners, an insurance policy issued to a unit owner may not provide subrogation rights against an association
- Discriminatory provisions may be removed from governing documents without membership vote
- Bids for work to be performed, materials, or services must be maintained by association for at least 1 year after receipt of the bid

Condominiums

- Renters only have right to inspect the association's declaration and bylaws
- Associations may not require an explanation or reason to inspect official records
- Associations may make records available through mobile device application in lieu of posting on website
- Clarifies that 8 consecutive year limit for directors applies for years of service beginning July 2018 onward

Condominiums

- Transfer fees increased from \$100 to \$150, and DBPR may further increase every 5 years based on increase in Consumer Price index
 - Remember – transfer fee may only be charged if association has approval power over sale/lease
- Natural gas fuel vehicles have similar rights to electric vehicles (charging stations, etc)
- 14 day notice required for all membership meetings if bylaws do not specify a specific notice requirement

Condominiums

- Conflict of interest provisions in F.S. 718.112(2)(p) between directors and officers and service providers removed, but can still allege conflict of interest between director/officer and provider under F.S. 718.3027
- Clarifies fines due within 5 days of providing notice to owners of committee decision

Homeowner Associations

- Recall and election disputes may be filed for arbitration with DBPR or court action. Currently, may only proceed to arbitration with DBPR
- Associations may remove discriminatory restrictions from governing documents without a membership vote
- Eliminates requirement to send notices to owners' addresses as listed on property appraiser's website for notices required under F.S. 720.306 (repeals recent statutory change that required this)

Homeowner Associations

- Rules and regulations not considered governing documents (thus would eliminate requirement to record any changes, among other items)
- Election documents must be maintained for 1 year after date of the election
- Associations with more than 100 members may provide alternative notice of meeting by posting on website or mobile device application. Board must adopt rule with procedures before implementing
- Records regarding security access (if in gated, guarded community) not considered open for inspection by membership
- Eliminates requirement to maintain mandatory reserves established by Developer

Homeowner Associations

- Leasing restriction amendments adopted after July 1, 2021 do not apply to owners who do not vote for such amendments and would only apply to future owners except for restrictions of rental terms fewer than six (6) months, or which prohibit owners from renting his or her parcel more than three (3) times per year
 - Such amendments would be applicable to all owners regardless of whether they vote in favor
- Clarified what constitutes “change of ownership” for purposes of applicability of amendments to future owners

HB 7 – Civil Liability for Damages Relating to COVID-19

EFFECTIVE March 29, 2021

Covered Entities and Institutions

- Would provide liability protection to corporations not for profit as defined in F.S. 617.01401
- Creates bifurcated claims process where initial stage heard by judge and plaintiff (party bringing claim) must plead with particularity, submit an affidavit from a Florida-licensed physician that defendant caused COVID-19-related damages, and prove that defendant did not make good faith effort to substantially comply with controlling health standards or guidance

SB 56 – Community Association Assessment Notices

Condominium and HOAs

- Provides if an association changes method of delivery of invoices for assessments, association must provide owner written notice of change of delivery method 30 days before issuance of invoice
- Owner must affirmatively acknowledge the change in delivery method before it can be implemented
- Association must provide an owner with a 30-day late notice before attorneys fees can be assessed to an account. Includes proposed form notice that must be substantially complied with
- Increases time required to provide intent to lien from 30 days to 45 days, as well as for notice of lien and intent to foreclose letter (30 to 45 days) - Condominiums

SB 1966– DBPR

Condominiums

- Replaces “monetary obligation” with “assessment” when looking at delinquency of member wishing to run for the Board of Directors
- Annual budget must be presented to members no later than 14 days before the beginning of the fiscal year

SB 76 – Property Insurance

Property Insurance

- Reduces time for bringing a claim from 3 to 2 years
- Establishes mandatory pre-suit notice for claims not brought by an assignee
 - Must be provided 10 business days before filing suit (which tolls statute of limitations if would otherwise run)
 - Must include alleged acts or omissions, damages in dispute, demand, and reasonable and necessary attorneys fees incurred by claimant
 - Pre-suit notice admissible
- May not be brought before coverage determination under F.S. 627.70131

Summary

- Board members have the fiduciary obligation to set aside personal agenda and put the association first
- Stay focused on the job at hand
- Be familiar with the governing documents
- Know your duties and perform them competently
- Set goals and establish values
- Obtain the necessary education

Thank you for attending!

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