

## CHAPTER 61B-75 COOPERATIVES

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### **61B-75.004 Audio or Video Recording of Meetings.**

Any unit owner is entitled to tape record or videotape meetings of the board of administration, committee meetings, or unit owner meetings, subject to the following restrictions:

(1) Rules: Associations may adopt rules, which are consistent with this rule, regarding the placement and use of audio and video equipment by unit owners who exercise their rights to tape association meetings. Association rules for this purpose must be adopted in accordance with the procedures for adopting association rules established by the cooperative documents.

(2) Placement: Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting.

(3) Use: Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording.

*Specific Authority 719.106(1)(c), (d)5. FS. Law Implemented 719.106(1)(c), (d)5. FS. History--New 8-3-06.*

### **61B-75.005 Regular Elections; Vacancies Caused by Expiration of Term, Resignations, Death.**

(1)(a) Unless otherwise provided herein, the provisions of this rule apply to all regular and runoff elections conducted by a cooperative association, regardless of any provision to the contrary contained in the cooperative documents.

(b) Except as otherwise provided by Rules 61B-75.007 and 61B-75.008, Florida Administrative Code, the provisions of this rule do not apply to vacancies created by the recall of a board member or members. The method of removing board members by recall and the procedures for filling such vacancies are set forth in Rules 61B-75.006 through 61B-75.008, Florida Administrative Code.

(c) In order to adopt different voting and election procedures in its bylaws pursuant to Section 719.106(1)(f)5., F.S., an association must obtain the affirmative vote of a majority of the total voting interests even if different amendatory procedures are contained in an association's bylaws. Such vote must be taken on or after June 14, 1995. The phrase "different voting and election procedures" as used in this rule and as used in Section 719.106(1)(f)5., Florida Statutes, refers to procedures used only for the election of board members.

(d) Balloting is not necessary to fill any vacancy unless there are two or more eligible candidates for that vacancy. In such a case, not later than the date of the scheduled election:

1. For a regular election the association shall call and hold a meeting of the membership to announce the names of the new board members, or shall notify the unit owners of the names of the new board members or that one or more board positions remain unfilled, as appropriate under the circumstances. In the alternative, the announcement may be made at the annual meeting.

2. For an election pursuant to subsection (13) of this rule to fill a vacancy, the association shall call and hold a meeting of the membership to announce the names of the new board members or, in the alternative, shall notify the unit owners of the names of the new board members or that one or more board positions remain unfilled, as appropriate under the circumstances.

(2) A regular or general election for purposes of this rule shall be an election to fill a vacancy caused by expiration of a term in office. A regular or general election shall occur at the time and place at which the annual meeting is scheduled to occur, regardless of whether a quorum is present. Other elections as may be required shall occur in conjunction with duly called meetings of the unit owners, regardless of whether a quorum is attained for the meeting.

(3) A board of administration shall not create or appoint any committee for the purpose of nominating a candidate or candidates for election to the board. A board may create or appoint a search committee which shall not have the authority to nominate any candidate, but may encourage qualified persons to become candidates for the board.

(4) The first notice of the date of the election, which is required to be mailed or delivered not less than 60 days before a scheduled election, must contain the name and correct mailing address of the association.

(5) A unit owner or other eligible person desiring to be a candidate for the board of administration shall give written notice to the association not less than 40 days before a scheduled election. Written notice shall be effective when received by the association. Written notice shall be accomplished in accordance with one or more of the following methods:

- (a) By certified mail, return receipt requested, directed to the association; or
- (b) By personal delivery to the association; or
- (c) By regular U.S. mail, facsimile, telegram, or other method of delivery to the association.

(6) Upon receipt by the association of any timely submitted written notice by personal delivery that a unit owner or other eligible person desires to be a candidate for the board of administration, the association shall issue a written receipt acknowledging delivery of the written notice. Candidates who timely submit a written notice by mail may wish to send the written notice by certified mail in order to obtain a written receipt.

(7) Upon the timely request of a candidate as set forth in this paragraph, the association shall include, with the second notice of election described in subsection (8) below, a copy of an information sheet which may describe the candidate's background, education, and qualifications as well as other factors deemed relevant by the candidate. The information contained therein shall not exceed one side of the sheet which shall be no larger than 8 1/2 inches by 11 inches. Any candidate desiring the association to mail or personally deliver copies of an information sheet to the eligible voters must furnish the information sheet to the association not less than 35 days before the election. If two or more candidates consent in writing, the association may consolidate into a single side of a page the candidate information sheets submitted by those candidates. No association shall edit, alter, or otherwise modify the content of the information sheet. The original copy provided by the candidate shall become part of the official records of the association.

(8) In accordance with the requirements of Section 719.106(1)(d), Florida Statutes, the association shall mail or deliver to the eligible voters at the addresses listed in the official records a second notice of the election, together with a ballot and any information sheets timely submitted by the candidates. The second notice and accompanying documents shall not contain any communication by the board which endorses, disapproves, or otherwise comments on any candidate. Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the voter, and the unit or unit numbers being voted, and shall contain a signature space for the voter. Once the ballot is filled out, the voter shall place the completed ballot in the inner smaller envelope and seal the envelope. The inner envelope shall be placed within the outer larger envelope, and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person is entitled to cast more than one ballot, the separate inner envelopes required may be enclosed within a single outer envelope. The voter shall sign the exterior of the outer envelope in the space provided for such signature. The envelope shall either be mailed or hand delivered to the association. Upon receipt by the association, no ballot may be rescinded or changed.

(9) The written ballot shall indicate in alphabetical order by surname, each and every unit owner or other eligible person who desires to be a candidate for the board of administration and who gave written notice to the association not less than 40 days before a scheduled election, unless such person has, prior to the mailing of the ballot, withdrawn his candidacy in writing. No ballot shall indicate which candidate or candidates are incumbents on the board. No write-in candidates shall be permitted. No ballot shall provide a space for the signature of or any other means of identifying a voter. Except where all voting interests in a cooperative are not entitled to one whole vote, (fractional voting), or where all voting interests are not entitled to vote for every candidate (class voting), all ballot forms utilized by a cooperative association, whether those mailed to voters or those cast at a meeting, shall be uniform in color and appearance. In the case of fractional voting, all ballot forms utilized for each fractional vote shall be uniform in color and appearance. And in class voting situations, within each separate class of voting interests all ballot forms shall be uniform in color and appearance.

(10) Envelopes containing ballots received by the association shall be retained and collected by the association and shall not be opened except in the manner and at the time provided herein.

(a) Any envelopes containing ballots shall be collected by the association and shall be transported to the location of the duly called meeting of the unit owners. The association shall have available at the meeting additional blank ballots for distribution to the eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope in the manner provided in subsection (8) of this rule. Each envelope and ballot shall be handled in the following manner. As the first order of business, ballots not yet cast shall be collected. The ballots and envelopes shall then be handled as stated below by an impartial committee as defined in paragraph (b) below, appointed by the board. The business of the meeting may continue during this process. The signature and unit identification on the outer envelope shall be checked against a list of qualified voters, unless previously validated as provided in paragraph (b) below. Any exterior envelope not signed by the eligible voter shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted. The voters shall be checked off on the list as having voted. Then, in the presence of any unit owners in attendance, and regardless of whether a quorum is present, all inner envelopes shall be first removed from the outer envelopes and shall be placed into a receptacle. Upon the commencement of the opening of the outer envelopes, the polls shall be closed, and no more ballots shall be accepted. The inner envelopes shall then be opened and the ballots shall be removed and counted in the presence of the unit owners. Any inner envelope containing more than one ballot shall be marked "Disregarded", or with words of similar import, and any ballots contained therein shall not be counted. All envelopes and ballots, whether disregarded or not, shall be retained with the official records of the association.

(b) Any association desiring to verify outer envelope information in advance of the meeting may do so as provided herein. An impartial committee designated by the board may, at a meeting noticed in the manner required for the noticing of board meetings, which shall be open to all unit owners and which shall be held on the date of the election, proceed as follows. For purposes of this rule, "impartial" shall mean a committee whose members do not include any of the following or their spouses:

1. Current board members;
2. Officers; and

### 3. Candidates for the board.

At the committee meeting, the signature and unit identification on the outer envelope shall be checked against the list of qualified voters. The voters shall be checked off on the list as having voted. Any exterior envelope not signed by the eligible voter shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted.

(c) If two or more candidates for the same position receive the same number of votes, which would result in one or more candidates not serving or serving a lesser period of time, the association shall, unless otherwise provided in the bylaws, conduct a runoff election in accordance with the procedures set forth herein. Within 7 days of the date of the election at which the tie vote occurred, the board shall mail or personally deliver to the voters, a notice of a runoff election. The only candidates eligible for the runoff election are the runoff candidates who received the tie vote at the previous election. The notice shall inform the voters of the date scheduled for the runoff election to occur, shall include a ballot conforming to the requirements of this rule, and shall include copies of any candidate information sheets previously submitted by those candidates to the association. The runoff election must be held not less than 21 days, nor more than 30 days, after the date of the election at which the tie vote occurred.

(11) Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write, may request the assistance of a member of the board of administration or other unit owner to assist in casting his vote. If the election is by voting machine, any such voter, before retiring to the voting booth, may have a member of the board of administration or other unit owner or representative, without suggestion or interference, identify the specific vacancy or vacancies and the candidates for each. If a voter requests the aid of any such individual, the two shall retire to the voting booth for the purpose of casting the vote according to the voter's choice.

(12) At a minimum, all voting machines shall meet the following requirements:

(a) Shall secure to the voter secrecy in the act of voting;

(b) Shall permit the voter to vote for as many persons and offices as he is lawfully entitled to vote for, but no more;

(c) Shall correctly register or record, and accurately count all votes cast for any and all persons;

(d) Shall be furnished with an electric light or proper substitute, which will give sufficient light to enable voters to read the ballots; and

(e) Shall be provided with a screen, hood, or curtain which shall be made and adjusted so as to conceal the voter and his actions while voting.

(13) Unless otherwise provided in the cooperative documents, any vacancy occurring on the board prior to the expiration of a term, except in the case of a vacancy caused by recall, may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may in its discretion hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of Section 719.106(1)(d)1., Florida Statutes, and this rule. A board member appointed or elected pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled.

*Specific Authority 719.106(1)(d)1. FS. Law Implemented 719.106(1)(d)1. FS. History—New 12-29-92, Formerly 7D-75.005, Amended 8-24-94, 11-15-95, 2-19-01.*

### **61B-75.006 Right to Recall and Replace a Board Member; Developers; Other Unit Owners; Class Voting.**

(1) Developer Representatives. When both a developer and other unit owners are entitled to representation on a board of administration pursuant to Section 719.301, Florida Statutes, the following provisions apply to recall and replacement of board members elected or appointed by a developer:

(a) Only units owned by the developer shall be counted to establish a quorum for a meeting to recall and replace a board member who was elected or appointed by that developer.

(b) The percentage of voting interests required to recall a board member who was elected or appointed by a developer is a majority of the total units owned by that developer.

(c) A board member who is elected or appointed by a developer may be recalled only by that developer.

(d) Only the developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected or appointed by that developer.

(2) Unit Owner Representatives. When both a developer and other units owners are entitled to representation on a board of administration pursuant to Section 719.301, Florida Statutes, the following provisions apply to recall and replacement of board members elected or appointed by unit owners other than a developer:

(a) Only units owned by unit owners other than a developer shall be counted to establish a quorum at a meeting to recall and replace a board member elected by unit owners other than a developer.

(b) The percentage of voting interests required to recall a board member elected by unit owners other than a developer, is a majority of the total units owned by unit owners other than a developer.

(c) A board member who is elected by unit owners other than a developer may be recalled only by unit owners rather than a developer.

(d) Only unit owners other than a developer may vote, in person or by limited proxy, to fill a vacancy on the board previously occupied by a board member elected by unit owners other than a developer.

(3) Class Voting. When the cooperative documents provide that a specific class of unit owners is entitled to elect a member or members to the board, the class of unit owners electing such member or members to the board shall constitute all the voting interests within the meaning of Section 719.106(1)(f), Florida Statutes, that may recall or remove such board member or members.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.106(1)(f) FS. History—New 12-29-92, Formerly 7D-75.006, Amended 11-15-95.*

**61B-75.007 Recall of One or More Members of a Board of Administration at a Unit Owner Meeting; Board Certification; Filling Vacancies.**

(1) Calling a Recall Meeting. Regardless of any provision to the contrary in the cooperative documents, 10 percent of the voting interests may call a meeting of the unit owners to recall one or more members of the board by the voting interests giving the notice specified in paragraphs (2)(a) and (b) below. As utilized in this rule, the phrase “cooperative documents” means the recorded articles of incorporation and bylaws of the association, and any amendments to each which are in effect, and any other documents establishing the cooperative.

(2) Noticing a Recall Meeting.

(a) Signature List. Prior to noticing a unit owner meeting to recall one or more members of the board, a list shall be circulated for the purpose of obtaining signatures of not less than ten percent of the voting interests. The signature list shall:

1. State that the purpose for obtaining signatures is to call a special unit owner meeting to recall one or more members of the board;

2. State that replacement board members shall be elected at the meeting if a majority or more of the existing board members are successfully recalled at the meeting; and,

3. Contain lines for the voting interest to fill in his unit number, signature and date of signature.

(b) Recall Meeting Notice. The recall meeting notice shall:

1. State that the purpose of the special unit owner meeting is to recall one or more members of the board and, if a majority or more of the board is subject to recall, the notice shall also state that an election to replace recalled board members will be conducted at the meeting;

2. List by name each board member sought to be recalled at the meeting, even if every board member is sought to be recalled;

3. Specify a person, other than a board member subject to recall at the meeting, who shall determine whether a quorum is present, call the recall meeting to order, preside, and proceed as provided in paragraph (3)(b) of this rule;

4. List at least as many eligible persons who are willing to be candidates for replacement board members as there are board members sought to be recalled, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement board members shall not be listed when a minority of the board is sought to be recalled, as the remaining members of the board may appoint replacements. In addition, the notice must state that nominations for replacement board members may be taken from the floor at the meeting;

5. Have attached to it a copy of the signature list referred to in paragraph (2)(a) above;

6. Be mailed or delivered to all unit owners at least 10 days prior to the recall meeting, if the association is incorporated, unless a different time for notice of the meeting is provided in the cooperative documents. If the association is unincorporated, notice shall be mailed or delivered according to the time requirements stated in the cooperative documents for sending unit owner meeting notices; and,

7. Be delivered to the board at least 10 days prior to the recall meeting, unless the cooperative documents provide a different notice requirement. The notice shall become an official record of the association upon actual receipt by the board.

(3) Recall Meeting; Electing Replacements.

(a) Date for Recall Meeting. If the association is incorporated, a recall meeting shall be held not less than 10 days nor more than 60 days from the date the notice of the recall meeting is mailed or delivered, unless otherwise provided in the cooperative documents.

(b) Conducting the Recall Meeting. After determining that a quorum exists (proxies may be used to establish a quorum) and the meeting is called to order, the voting interests shall proceed, as follows:

1. A representative to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling unit owners in the event the board disputes the recall, shall be elected or designated by the presiding officer.

2. A person to record the minutes of the recall meeting, who shall not be a board member subject to recall at that meeting, shall be elected or designated by the presiding officer.

3. The requirements of this subsection do not prohibit the voting interests from electing one person to perform one or more of these functions.

(c) Recall Meeting Minutes. The minutes of the recall meeting shall:

1. Record the date and time the recall meeting was called to order and adjourned;

2. Record the name or names of the person or persons chosen as the presiding officer, the recorder of the official minutes and the unit owner representative’s name and address;

3. Record the vote count taken on each member of the board sought to be recalled;

4. State whether the recall was effective as to each member sought to be recalled;

5. Record the vote count taken on each candidate to replace the board members subject to recall and, if applicable, record the specific seat the person was elected to, in those cases where a majority or more of the existing board was subject to recall; and,

6. Be delivered to the board and, upon such delivery to the board, become an official record of the association.

(d) Separate Recall Vote. The voting interests shall vote to recall each board member separately, unless otherwise provided in the declaration or bylaws.

(e) Filling Vacancies. When the voting interests have recalled one or more board members at a unit owner meeting, the following provisions apply regarding the filling of vacancies on the board:

1. If less than a majority of the existing board is recalled at the meeting, no election of replacement board members shall be conducted at the unit owner meeting as the existing board may, in its discretion, fill these vacancies, subject to the provisions of Section 719.301, Florida Statutes and Rule 61B-75.006, Florida Administrative Code, by the affirmative vote of the remaining board members. In the alternative, if less than a majority of the existing board is recalled at the unit owner meeting, the board may call and conduct an election which meets the requirements of Section 719.106(1)(d)1., Florida Statutes and Rule 61B-75.005, Florida Administrative Code, to fill a vacancy or vacancies;

2. If a majority or more of the existing board is recalled at the meeting, an election, which is subject to the provisions of Section 719.301, Florida Statutes, and Rule 61B-75.005, Florida Administrative Code, shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote in person or by limited proxy, to elect replacement board members in an amount equal to the number of recalled board members.

(f) Taking office. When a majority or more of the board is recalled at a unit owner meeting, replacement board members shall take office:

1. Upon the expiration of five full business days after adjournment of the unit owner recall meeting, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days of the adjournment of the unit owner recall meeting; or,

2. Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or,

3. Upon certification of the recall by the board; or,

4. Upon certification of the recall by the arbitrator in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(g) After adjournment of the meeting to recall one or more members of the board of administration:

1. Any rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

2. Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(4) Substantial compliance with the provisions of subsections (1), (2), and (3) of this rule shall be required for the effective recall of a board member or members.

(5) Board Meeting Concerning a Recall at a Unit Owner Meeting; Filling Vacancies. The board shall properly notice the board meeting at which it will determine whether to certify the recall of one or more board members at a unit owner meeting. It shall be presumed that recall of one or more board members at a unit owner meeting shall not, in and of itself, constitute grounds for an emergency meeting of the board if the board has been provided notice of the recall meeting as provided in subparagraph (2)(b)7. of this rule.

(a) Certified Recall. If the recall of one or more board members at a unit owner meeting is certified by the board, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 719.301, Florida Statutes, and Rule 61B-75.006, Florida Administrative Code, regardless of whether the authority to fill vacancies in this manner is provided in the cooperative documents. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement member; if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by Section 719.106(1)(d)1., Florida Statutes and Rule 61B-75.005, Florida Administrative Code, in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected at the recall meeting shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the board. If the board votes not to certify the recall of one or more board members at a unit owner meeting for any reason, the following provisions apply:

1. The board shall, subject to the provisions of Chapter 61B-50, Florida Administrative Code, file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the recall of one or more members of the board.

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (5)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected at the recall meeting shall become effective upon mailing of the final order of arbitration. The term of office of any replacement board member shall expire in accordance with the provisions of subparagraph (5)(a)3. of this rule.

(6) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall by vote at a unit owner meeting are an official record of the association and shall record the following information:

(a) The date and time the board meeting is called to order and adjourned;

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(7) Failure to duly notice and hold the board meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of the adjournment of the unit owner recall meeting, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting.

(b) If a majority of the board is recalled, replacement board members elected at the unit owner meeting shall take office immediately upon expiration of the last day of five full business days after adjournment of the unit owner recall meeting, in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled, each recalled board member shall immediately return to the board all association records in his possession.

(8) Computation of five full business days. In computing the five full business days prescribed by Section 718.112(2)(k), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in Section 683.01, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in Section 683.01, Florida Statutes, shall be included.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.106(1)(f) FS. History—New 12-29-92, Formerly 7D-75.007, Amended 8-24-94, 11-15-95, 2-19-01.*

#### **61B-75.008 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.**

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more members of the board of administration shall:

(a) List by name each board member sought to be recalled;

(b) Provide spaces by the name of each board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained;

(c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement board members as there are board members subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement board members shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are board members sought to be recalled. A space shall be provided and designated for write-in votes;

(d) Provide a space for the person executing the written agreement to state his name, identify his unit, and indicate the date the written agreement is signed;

(e) Provide a signature line for the person executing the written agreement to affirm that he is authorized in the manner required by the cooperative documents to cast the vote for that unit;

(f) Designate a representative who shall open the written agreements, tally the votes, serve copies on the board and, in the event the board does not certify the recall by written agreement and files a petition for arbitration, receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the voting interests executing the written agreement;

(g) The written agreement or a copy shall be served on the board by certified mail or by personal service. Personal service shall be effected in accordance with the procedures set out in Chapter 48, Florida Statutes, and the procedures for service of subpoenas as set out in Rule 1.410(c), Florida Rules of Civil Procedure; and,

(h) Become an official record of the association upon service upon the board.

(2) Substantial compliance with the provisions of section (1) of this rule shall be required for an effective recall of a board member or members.

(3) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more member or members of the board shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled board member shall return to the board all association records in his possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 719.301, Florida Statutes and Rule 61B-75.006, Florida Administrative Code, regardless of whether the authority to fill the vacancies in this manner is provided in the cooperative documents. No recalled board member shall be appointed by the board to fill any vacancy on the board. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining board members or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement member; if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by Section 719.301, Florida Statutes, and Rule 61B-75.005, Florida Administrative Code, in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement board members elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. The board shall, subject to the provisions of Chapter 61B-50, Florida Administrative Code, file a petition for arbitration with the division (i.e., be received by the division within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

2. Any board member sought to be recalled shall, unless he resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than the majority of the board, the remaining board members may fill the vacancy or vacancies as provided in subparagraph (3)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected by written agreement of the voting interests shall become effective upon mailing of the final order of arbitration. The term of office of any replacement board member shall expire in accordance with the provisions of subparagraph (3)(a)3. of this rule.

(4) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall are an official record of the association and shall record:

(a) The time the board meeting is called to order and adjourned;

(b) Whether the recall is certified by the board;

(c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(d) If the recall was not certified, the specific reasons it was not certified.

(5) After service of a written agreement on the board:

(a) Any rescission of an individual unit owner vote or any additional unit owner votes received in regard to the recall shall be ineffective.

(b) Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(6) Taking office. When a majority or more of the board is recalled by written agreement, replacement board members shall take office:

(a) Upon the expiration of five full business days after service of the written agreement on the board, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days after service of the written agreement; or,

(b) Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or,

(c) Upon certification of the recall by the board; or,

(d) Upon certification of the recall by the arbitrator, in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(7) Failure to duly notice and hold a board meeting. If the board fails to duly notice and hold the board meeting to determine whether to certify the recall within five full business days of service of the written agreement, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of the five full business days after service of the written agreement on the board.

(b) If a majority of the board is recalled, replacement board members elected by the written agreement shall take office upon expiration of five full business days after service of the written agreement on the board in the manner specified in this rule.

(c) If the entire board is recalled, each recalled board member shall immediately return to the replacement board all association records in his possession. If less than the entire board is recalled, each recalled board member shall immediately return to the board all association records in his possession.

(8) Computation of five full business days. In computing the five full business days prescribed by Section 719.106(1)(f), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in Section 683.01, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in Section 683.01, Florida Statutes, shall be included.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.106(1)(f) FS. History--New 12-29-92, Formerly 7D-75.008, Amended 11-15-95, 2-19-01.*

## CHAPTER 61B-76 ACCOUNTING AND FINANCIAL REPORTING REQUIREMENTS; BUDGETS, GUARANTEES, AND RESERVES; FINANCIAL STATEMENTS AND REPORTS

61B-76.001	Definitions.
61B-76.002	Accounting Records. (Repealed)
61B-76.003	Budgets.
61B-76.004	Guarantees of Common Expenses Under Section 719.108(8)(a)2., F.S.
61B-76.005	Reserves.
61B-76.0051	Estimating Reserve Requirements. (Repealed)
61B-76.0052	Funding Requirements and Restrictions on Use. (Repealed)
61B-76.0053	Waiver of Reserves. (Repealed)
61B-76.006	Financial Reporting Requirements.
61B-76.0061	Financial Statements Required by Section 719.104(4)(b), Florida Statutes. (Repealed)
61B-76.0062	Transition Financial Statements; Turnover Audit.

### 61B-76.001 Definitions.

For the purposes of this chapter the following definitions shall apply:

(1) "Accounting records" include all of the books and records identified in Section 719.104(2)(a)9., Florida Statutes, and any other records that identify, measure, record, and/or communicate financial information whether the records are maintained electronically or otherwise.

(2) "Capital expenditure" means any expenditure of funds for:

(a) The purchase of an asset whose useful life is greater than one year in length;

(b) The replacement of an asset whose useful life is greater than one year in length; or

(c) The addition to an asset that extends the useful life of the previously existing asset for a period greater than one year in length.

(3) "Deferred maintenance" means any maintenance or repair that:

(a) Will be performed less frequently than yearly; and

(b) Will result in maintaining the useful life of an asset.

(4) "Funds" means money and negotiable instruments including for example, cash, checks, notes, and securities.

(5) "Reserves" means any funds, other than operating funds, that are restricted for deferred maintenance and capital expenditures, including the items required by Section 719.106(1)(j)2., Florida Statutes, and any other funds restricted as to use by the cooperative documents or the cooperative association. Funds that are not restricted as to use by Section 719.106(1)(j)2., Florida Statutes, the cooperative documents or by the association shall not be considered reserves within the meaning of this rule.

(6) "Turnover" means transfer of association control from developers to non-developer unit owners pursuant to Section 719.301, Florida Statutes.

*Specific Authority 719.501(1)(f), (j) F.S. Law Implemented 719.104(2)(a)9., 719.106(1)(j)2., 719.501(1)(j) F.S. History—New 12-20-95.*

### 61B-76.003 Budgets.

(1) Required elements for estimated operating budgets. The budget for each association shall:

(a) State the estimated common expenses or expenditures on at least an annual basis;

(b) Disclose the beginning and ending dates of the period covered by the budget;

(c) Show the total assessment for each unit type in the proportions or percentages of sharing common expenses provided in the cooperative documents on a monthly basis, or for any other period for which assessments will be due;

(d) Include all estimated common expenses or expenditures of the association including the categories set forth in Section 719.504(20)(c), Florida Statutes. If the estimated common expense for any category set forth in the statute is not applicable, the category shall be listed followed by an indication that the expense is not applicable;

(e) Include a schedule stating each reserve account for capital expenditures and deferred maintenance as a separate line item with the following minimum disclosures:

1. The total estimated useful life of the component;

2. The estimated remaining useful life of the component;

3. The estimated replacement cost or deferred maintenance expense of the component;

4. The estimated fund balance as of the beginning of the period for which the budget will be in effect; and

5. The developer's total funding obligation, when all units are sold, for each converter reserve account established pursuant to Section 719.618, Florida Statutes, if applicable.

(f) Include a separate schedule of any other reserve funds to be restricted by the association as a separate line item with the following minimum disclosures:

1. The intended use of the restricted funds; and

2. The estimated fund balance of the item as of the beginning of the period for which the budget will be in effect.

(2) Unrestricted expense categories. Expense categories that are not restricted as to use shall be stated in the operating portion of the budget rather than the reserve portion of the budget.

(3) Record keeping requirements for budgets. The minutes of the association shall reflect the adoption of the budget and a copy of the proposed and adopted budgets shall be maintained as part of the financial records of the association.

*Specific Authority 719.501(1)(f), (j) FS. Law Implemented 719.106(1)(e), (j), 719.107(2), 719.501(1)(j) FS. History—New 12-20-95.*

#### **61B-76.004 Guarantees of Common Expenses Under Section 719.108(8)(a)2., F.S.**

(1) Establishment of the guarantee. If a guarantee is not included in the purchase contracts, cooperative documents, or prospectus, any agreement establishing a guarantee shall be effective only upon the approval of a majority of the voting interests of the unit owners other than the developer. Approval shall be expressed at a meeting of the unit owners, voting in person or by limited proxy; or by agreement in writing without a meeting if provided in the bylaws. Such guarantee shall meet the requirements of this rule.

(2) Guarantee period. The period of time for the guarantee shall be indicated by a specific beginning and ending date or event.

(a) The ending date or event shall be the same for all of the unit owners of a cooperative including the unit owners in different phases of phase cooperatives;

(b) The guarantee may provide for different intervals of time during a guarantee period with different dollar amounts for each such interval; and

(c) The guarantee may provide that after the initial stated period, the developer has an option to extend the guarantee for one or more additional stated periods. The extension of a guarantee is limited to extending the ending date or event; therefore, the developer does not have the option of changing the level of assessments guaranteed.

(3) Maximum level of assessments. The stated dollar amount of the guarantee shall be an exact dollar amount for each type of unit identified in the cooperative documents. Regardless of the stated dollar amount of the guarantee, assessments charged to a unit owner shall not exceed the maximum obligation of the unit owner based on the total amount of the adopted budget and the unit owner's proportion or percentage of sharing common expenses.

(4) Cash funding requirements during the guarantee. The cash payments required from the guarantor during the guarantee period shall be determined as follows:

(a) If at any time during the guarantee period the funds collected from unit owner assessments at the guaranteed level are not sufficient to provide payment, on a timely basis, of all common expenses, including the full funding of reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due; and

(b) No revenues or capital contributions other than regular periodic assessments, and cash payments by the guarantor as provided in subsection (4)(a) of this rule, shall be utilized for the payment of common expenses during the guarantee period. This restriction includes items such as interest revenue, vending revenue, laundry revenue, other non-assessment revenue and capital contributions.

(5) Calculation of guarantor's final obligation. The guarantor's total financial obligation to the association at the end of the guarantee period shall be determined on the accrual basis using the following formula:

(a) The guarantor shall fund the total common expenses incurred during the guarantee period; less

(b) The total regular periodic assessments charged to the unit owners other than the guarantor during the guarantee period regardless of whether the actual level charged was less than the maximum guaranteed amount.

*Specific Authority 719.501(1)(f), (j) FS. Law Implemented 719.108(8), 719.501(1)(j) FS. History—New 12-20-95.*

#### **61B-76.005 Reserves.**

(1) Reserves required by statute. Reserves, required by Section 719.106(1)(j), Florida Statutes, for capital expenditures and deferred maintenance including roofing, painting, paving, and any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000, shall be included in the budget. For the purpose of determining whether the deferred maintenance expense or replacement cost of an item exceeds \$10,000, the association may consider each asset of the association separately. Alternatively, the association may group similar or related assets together. For example, an association responsible for the maintenance of two swimming pools, each of which will separately require \$6,000 of total deferred maintenance, may establish a pool reserve, but is not required to do so.

(2) Commingling operating and reserve funds. Associations that collect operating and reserve assessments as a single payment shall not be considered to have commingled the funds provided the reserve portion of the payment is transferred to a separate reserve account, or accounts, within 30 calendar days from the date such funds were deposited.

(3) Calculating reserves required by statute. Reserves for deferred maintenance and capital expenditures required by Section 719.106(1)(j), Florida Statutes, shall be calculated using a formula that will provide funds equal to the total estimated deferred maintenance expense or total estimated replacement cost for an asset over the remaining useful life of the asset. The amount of the current year contribution to each reserve component shall be the sum of the following calculation:

(a) The total amount necessary, if any, to bring a negative component balance to zero; and

(b) The total estimated deferred maintenance expense or total estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period for which the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the asset. The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may consider factors such as inflation and earnings on invested funds.

(4) Estimating reserves that are not required by statute. Reserves that are not required by Section 719.106(1)(j), Florida Statutes, are not required to be based on any specific formula.

(5) Estimating non-converter reserves when the developer is funding converter reserves. For the purpose of estimating non-converter reserves, the estimated fund balance of the non-converter reserve account related to any asset for which the developer has established converter reserves pursuant to Section 719.618, Florida Statutes, shall be the sum of:

(a) The developer's total funding obligation, when all units are sold, for the converter reserve account pursuant to Section 719.618, Florida Statutes; and

(b) The estimated fund balance of the non-converter reserve account, excluding the developer's converter obligation, as of the beginning of the period for which the budget will be in effect.

(6) Timely funding. Reserves included in the adopted budget are common expenses and must be fully funded unless properly waived or reduced. Reserves shall be funded in at least the same frequency that assessments are due from the unit owners (e.g., monthly or quarterly).

(7) Restrictions on use. Expenditure of unallocated interest income earned on reserve funds is restricted to any of the capital expenditures, deferred maintenance or other items for which reserve accounts have been established.

(8) Annual vote required to waive reserves. Any vote to waive or reduce reserves for capital expenditures and deferred maintenance required by Section 719.106(1)(j)2., F.S., shall be effective for only one annual budget.

(9) Developer Voting Restrictions. Prior to turnover the developer may cast votes to waive or reduce reserves during the association's first two fiscal years only, beginning with the date of the incorporation of the cooperative association. During any period that the developer is precluded from casting its votes to waive or reduce the funding of reserves, the approval of a majority of the non-developer voting interest at a duly called meeting of the association shall be required in order to waive or reduce the funding of reserves.

*Specific Authority 719.501(1)(f), (j) FS. Law Implemented 719.106(1)(j)2., 3., 719.501(1)(j), 719.618(1) FS. History—New 12-20-95, Amended 1-19-97.*

#### **61B-76.006 Financial Reporting Requirements.**

(1) Basis of accounting. The financial statements required by this rule, and Section 719.301(4), Florida Statutes, as well as financial statements voluntarily prepared in lieu of a financial report as provided in Section 719.104(4), Florida Statutes, shall be prepared on the accrual basis using fund accounting in accordance with generally accepted accounting principles. Reviewed financial statements shall be reviewed in accordance with standards for accounting and review services and audited financial statements shall be audited in accordance with generally accepted auditing standards. Reviews and audits of an association's financial statements shall be performed by an independent certified public accountant licensed by the Florida Board of Accountancy. As used in this rule the terms "generally accepted accounting principles," "standards for accounting and review services," and "generally accepted auditing standards" shall have the same meaning as set forth in Chapter 61H1-20, Florida Administrative Code.

(2) Components. The financial statements required by Sections 719.104(4)(b) and 719.301(4)(c), Florida Statutes, shall at a minimum include the following components:

- (a) Accountant's or Auditor's Report;
- (b) Balance Sheet;
- (c) Statement of Revenues and Expenses;
- (d) Statement of Changes in Fund Balances;
- (e) Statement of Cash Flows, direct method; and
- (f) Notes to Financial Statements.

(3) Disclosure requirements. The financial statements required by Sections 719.104(4)(b) and 719.301(4)(c), Florida Statutes, shall contain the following disclosures within the financial statements, notes, or supplementary information:

(a) The following reserve disclosures shall be made regardless of whether reserves have been waived for the fiscal period covered by the financial statements:

1. The beginning balance in each reserve account as of the beginning of the fiscal period covered by the financial statements;
2. The amount of assessments and other additions to each reserve account including authorized transfers from other reserve accounts;
3. The amount expended or removed from each reserve account, including authorized transfers to other reserve accounts;
4. The ending balance in each reserve account as of the end of the fiscal period covered by the financial statements;

5. The manner by which reserve items were estimated, the date the estimates were last made, the cooperative association's policies for allocating reserve fund interest, and whether reserves have been waived during the period covered by the financial statements; and,

6. If the developer has established converter reserves pursuant to Section 719.618(1), Florida Statutes, each converter reserve account shall be identified and include the disclosures required by this rule.

(b) The method by which income and expenses were allocated to the unit owners;

(c) The specific purpose or purposes of any special assessments to unit owners pursuant to Section 719.108(9), Florida Statutes, and the amount of each special assessment and the disposition of the funds collected; and

(d) If a guarantee pursuant to Section 719.108(8), Florida Statutes, existed at any time during the fiscal year, the financial statements shall disclose the following:

1. The period of time covered by the guarantee;

2. The amount of common expenses incurred during the guarantee period;

3. The amount of assessments charged to the non-developer unit owners during the guarantee period;

4. The amount of the developer's payments pursuant to the guarantee; and

5. Any financial obligation due to or from the developer resulting from the guarantee.

(4) Developer assessments. All financial reports and financial statements required by Chapter 719, Florida Statutes, shall disclose the assessment revenues from the developer separately from that of the non-developer unit owners.

(5) Financial reports required by Section 719.104(4)(a), Florida Statutes. The financial report required by Section 719.104(4)(a), Florida Statutes, shall meet the following requirements:

(a) The report shall be prepared on a cash basis;

(b) The report shall include the receipts and expenditures listed in Section 719.104(4)(a), Florida Statutes; and

(c) The report shall contain the reserve disclosures required by Rule 61B-76.006(3)(a), Florida Administrative Code.

(6) Timing.

(a) Financial reports prepared pursuant to Section 719.104(4), Florida Statutes, as well as financial statements voluntarily prepared in lieu of a financial report as provided in Section 719.104(4), Florida Statutes, shall be mailed or delivered by the association to the unit owners within 60 days following the end of the fiscal or calendar year to which the statements relate or annually on such date as is otherwise provided in the association bylaws.

(b) Financial statements required by Rule 61B-76.006(8), Florida Administrative Code, shall be mailed or delivered by the association to the unit owners within 90 days following the end of the fiscal or calendar year to which the statements relate or annually on such date as is otherwise provided in the association bylaws.

(c) Financial statements required by Section 719.301(4)(c), Florida Statutes, shall be delivered by the developer to the association not more than 90 days after the date of the meeting at which the non-developer unit owners first elected a majority of the board of administration.

(7) Financial statements voluntarily prepared by the association in lieu of a financial report as provided in Section 719.104(4), Florida Statutes, may either be compiled, reviewed or audited. Financial statements required by Rule 61B-76.006(8), Florida Administrative Code, shall be compiled, reviewed or audited as provided by that rule.

(8) Financial statements prepared in lieu of financial reports. Rather than providing the financial report specified in Section 719.104(4)(a), Florida Statutes, associations operating more than 50 cooperative units and having annual revenues of more than \$100,000.00 shall prepare and distribute to the unit owners a complete set of association financial statements meeting the requirements of this rule, unless this requirement is waived according to Section 719.104(4)(b), Florida Statutes. The financial statements shall be compiled, reviewed, or audited depending on the total amount of annual revenues earned by the association as follows:

(a) Associations having annual revenues in excess of \$100,000.00 but less than \$200,000.00 shall, at a minimum, prepare compiled financial statements;

(b) Associations having annual revenues of at least \$200,000.00 but less than \$400,000.00 shall, at a minimum prepare reviewed financial statements; and

(c) Associations having annual revenues of \$400,000.00 or more shall prepare audited financial statements.

(9) Waiver of reporting requirements. The waiver of the requirement to provide compiled, reviewed, or audited financial statements is valid for one year only, and includes any vote to modify the association's obligations under this rule by allowing it to provide reviewed or compiled financial statements rather than audited financial statements or to provide compiled financial statements rather than reviewed financial statements.

(a) If the requirement for audited, reviewed, or compiled financial statements is waived the minimum report required shall be a financial report complying with Section 719.104(4)(a), Florida Statutes, and Rule 61B-76.006(5), Florida Administrative Code;

(b) Prior to turnover the developer may cast votes to waive the audit requirement of subsection (8)(c) of this rule during the association's first two fiscal years only, beginning with the date of the incorporation of the association; and

(c) The minutes of the association shall reflect the number of votes cast by the membership to waive the requirement for audited, reviewed, or compiled financial statements and the type of financial reporting that the association will be preparing and disseminating to the membership.

(10) Association not precluded from exceeding standards. Nothing herein precludes an association from exceeding the requirements of this rule by requiring that compiled, reviewed, or audited financial statements be prepared rather than a financial report of actual receipts and expenditures, or that financial statements be reviewed or audited rather than compiled, or be audited rather than reviewed.

*Specific Authority 719.501(1)(f), (j) FS. Law Implemented 719.104(4), 719.501(1)(j) FS. History—New 12-20-95, Amended 1-19-97.*

**61B-76.0062 Transition Financial Statements; Turnover Audit.**

(1) Period covered. The audit required by Section 719.301(4)(c), Florida Statutes, applies to all transfers of association control from developers to unit owners pursuant to Section 719.301(4), Florida Statutes. The audit shall cover a period beginning with the date of incorporation of the association, or from the end of the fiscal period covered by the last audit if all fiscal periods have been audited, and ending with the date of the transfer of association control to unit owners other than the developer. Nothing herein precludes the developer from exceeding the requirements of this rule by engaging a certified public accountant to audit the entire period of developer control rather than from the period covered by the last audit.

(2) Additional disclosure requirements for turnover audits. The financial statements, notes, or supplementary information shall present the revenues and expenses separately for each fiscal year and any interim periods included in the audit. The notes to the financial statements shall contain the following disclosures:

(a) A statement that the financial statements were prepared pursuant to Section 719.301(4)(c), Florida Statutes;

(b) A statement of total cash payments made by the developer to the association;

(c) If the developer claims to have paid common expenses of the association that do not appear on the books and records of the association, the amount and purpose of each such expenditure shall be identified separately; and

(d) If a guarantee pursuant to Section 719.108(8), Florida Statutes, existed at any time during the period covered by the audit, the financial statements shall disclose the following:

1. The period of time covered by the guarantee;
2. The amount of common expenses incurred during the guarantee period;
3. The amount of assessments charged to the non-developer unit owners during the guarantee period;
4. The amount of the developer's payments pursuant to the guarantee; and
5. Any financial obligation due to or from the developer resulting from the guarantee.

*Specific Authority 719.501(1)(f), (j) FS. Law Implemented 719.301(4)(c), 719.501(1)(j) FS. History—New 12-20-95.*

## CHAPTER 61B-77 RESOLUTION GUIDELINES FOR COOPERATIVE DEVELOPERS

- 61B-77.001 Definitions and Purpose.  
61B-77.002 Educational Resolution.  
61B-77.003 Enforcement Resolution and Civil Penalties.

### 61B-77.001 Definitions and Purpose.

(1) Definitions. For the purposes of this rule chapter, the following definitions shall apply:

(a) “Accepted Complaint” means a complaint received by the division containing sufficient documentation and addressing a subject within the jurisdiction of the division, pursuant to Section 719.501(1), F.S.

(b) “Affirmative or corrective action” means putting remedial procedures in place to ensure that the violation does not recur, making any injured person whole as to the harm suffered in relation to the violation, or taking any other appropriate measures to redress the harm caused.

(c) “Bad check” means any worthless check, draft, or order of payment identified under Section 68.065, F.S.

(d) “Developer,” for purposes of these guidelines, shall have the same meaning as stated in Section 719.103(13), F.S.

(2) Purpose. The purpose of the resolution guidelines is to implement the division’s responsibility to ensure compliance with the provisions of Chapter 719, F.S., and the division’s administrative rules. For those statutory or rule violations identified as minor in these rules, the division will first and foremost attempt to seek compliance through an educational resolution. For repeated statutory or rule violations, where the violations have not been corrected or otherwise resolved by the developer, or for violations identified as major in these rules, the division will seek statutory or rule compliance through an enforcement resolution. The guidelines detail the educational and enforcement procedures the division will use to seek statutory or rule compliance. The guidelines are also intended to implement the division’s statutory authority to give reasonable and meaningful notice to persons regulated by Chapter 719, F.S., and the administrative rules of the range of penalties that normally will be imposed, if an enforcement resolution is taken by the division. Finally, the rules are intended, pursuant to statutory mandate, to distinguish between minor and major violations based upon the potential harm that the violation may cause.

(3) The division shall apply these guidelines against the developer pursuant to the division’s authority in Section 719.301(5), F.S. Therefore, the developer is responsible for the cost of affirmative or corrective action, or assessed penalties imposed under these guidelines, regardless of whether turnover has occurred. The developer shall not pass the cost of affirmative or corrective action or penalties on to the unit owners.

(4) These penalty guidelines are promulgated pursuant to the division’s authority in Section 719.501(1)(d), (f), and (k), F.S. This rule chapter does not preclude the division from imposing affirmative or corrective action pursuant to Section 719.501(1)(d)2., F.S. Nothing in this rule chapter shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Rules 61B-77.001, 61B-77.002, and 61B-77.003, F.A.C., are necessary to explicate the division’s education and enforcement policy. This rule chapter is not intended to cover, or be applied to, willful and knowing violations of Chapter 719, F.S., or the administrative rules by an officer or association board member, pursuant to Section 719.501(1)(d)4., F.S. Such violations shall be strictly governed by the provisions of Section 719.501(1)(d)4., Florida Statutes. This rule chapter is not intended to cover, or be applied to violations of Chapter 719, F.S. or the administrative rules by a unit owner controlled association. Such violations shall be strictly governed by the provisions of Chapter 61B-78, F.A.C.

*Specific Authority 719.501(1)(d)4., (f) FS. Law Implemented 719.501(1)(d)4., (k) FS. History—New 6-4-98.*

### 61B-77.002 Educational Resolution.

An initial accepted complaint, directed at a developer and involving a possible violation identified as minor in these guidelines, will be resolved as follows:

If based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the developer. The Warning Letter will give the developer 15 business days in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator’s name so that the developer may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the developer to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will lead to further investigation. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the educational resolution.

*Specific Authority 719.501(1)(d)4., (f) FS. Law Implemented 719.501(1)(d)4., (k) FS. History—New 6-4-98.*

### 61B-77.003 Enforcement Resolution and Civil Penalties.

(1) The division will seek compliance through an enforcement resolution for repeated minor violations, for the failure to correct or address a violation or provide unit owner redress as requested by the division, or for a major violation. These guidelines list aggravating and mitigating factors that will reduce or increase the penalty amounts within the specified range and those circumstances that justify a departure from the range. No aggravating factors will be applied to increase a penalty for a single

violation above the statutory maximum of \$5,000. The guidelines in this rule chapter are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in this rule chapter shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order.

(2) General Provisions.

(a) Rule Not All-Inclusive. This rule chapter contains illustrative violations. It does not, and is not intended to, encompass all possible violations of statute or division rule that might be committed by a developer. The absence of any violation from this rule chapter shall in no way be construed to indicate that the violation does not cause substantial harm or is not subject to a penalty. In any instance where the violation is not listed in this rule chapter, the penalty will be determined by consideration of:

1. The closest analogous violation, if any, that is listed in this rule chapter; and
2. The mitigating or aggravating factors listed in this rule chapter.

(b) Violations Included. This rule chapter applies to all statutory and rule violations subject to a penalty authorized by Chapter 719, F.S.

(c) Rule Establishes Norm. These guidelines do not supersede the division's authority to order a developer to cease and desist from any unlawful practice, or order other affirmative action in situations where the imposition of administrative penalties is not adequate. For example, notwithstanding the specification of relatively smaller penalties for particular violations, the division will suspend the imposition of a penalty and impose other remedies where aggravating or mitigating factors warrant it. If an enforcement resolution is utilized, the total penalty to be assessed shall be calculated according to these guidelines or \$500, whichever amount is greater.

(d) Description of Violations. Although the violations in Rule 61B-77.003, F.A.C., include specific references to statutes and administrative rules, the violations are described in general language and are not necessarily stated in the same language that would be used to formally allege a violation in a specific case. If any statutory or rule citation in Rule 61B-77.003, F.A.C., is changed, then the use of the previous statutory citation will not invalidate this rule chapter.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining penalties for violations listed in this rule chapter. The factors are not necessarily listed in order of importance, and they shall be applied against each single count of the listed violation.

(a) Aggravating Factors:

1. Filing or causing to be filed any materially incorrect document in response to any division request or subpoena.
2. Financial loss to parties or persons affected by the violation.
3. Financial gain to parties or persons who perpetrated the violation.
4. The same violation was committed after a Notice of Deficiency was issued.
5. The disciplinary history of the developer, including such action resulting in settlement or pending resolution.
6. The violation caused substantial harm, or has the potential to cause substantial harm to cooperative residents or other persons.
7. Undue delay in initiating or completing, or failure to take affirmative or corrective action after the developer received the division's written notification of the violation.
8. The violation had occurred for a long period of time.
9. The violation was repeated within a short period of time.
10. The developer impeded the division's investigation or authority.
11. The investigation involved the issuance of a notice to show cause or other proceeding.

(b) Mitigating Factors:

1. Reliance on written professional or expert counsel and advice.
2. Acts of God or nature.
3. The violation caused no harm to cooperative residents or other persons.
4. The developer took affirmative or corrective action before it received the division's written notification of the violation.
5. The developer expeditiously took affirmative or corrective action after it received the division's written notification of the violation.
6. The developer cooperated with the division during the investigation.
7. The investigation was concluded through consent proceedings.

(4) The provisions of this rule chapter shall not be construed so as to prohibit or limit any other civil or criminal prosecution that may be brought.

(5) The imposition of a penalty does not preclude the division from imposing additional sanctions or remedies provided under Chapter 719, F.S.

(6) In addition to the penalties established in this rule chapter, the division reserves the right to seek to recover any other costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages allowed by law. Additionally, the division reserves the right to seek to recover any costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages imposed by law if a developer submits a bad check to the division.

(7) Penalties.

(a) Minor Violations. The following violations shall be considered minor due to their lower potential for consumer harm. If an enforcement resolution is utilized, the division shall impose a civil penalty between \$1 and \$5, per unit, for each minor violation. The penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$500, whichever amount is greater. Finally, in no event shall a penalty of more than \$5,000 be imposed for a single violation. The following are identified as minor violations:

Category	Statute or Rule Cite	Description of Conduct/Violation
Board	719.104(8)(b), FS.	Improper use of secret ballot, or use of proxy, by board members at a board meeting.
Board	719.106(1)(a)2., FS.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
Board	719.106(1)(b)1., FS.	Improper quorum at unit owner meeting.
Board	719.106(1)(b)2., FS.	Failure of proxy to contain required elements.
Board	719.106(1)(c), FS.	Failure to properly notice and conduct board of administration or committee meetings: notice failed to indicate assessment would be considered; failure to maintain affidavit by person who gave notice of special assessment meeting; failure to ratify emergency action at next meeting; failure to adopt a rule regarding posting of notices; failure to notice meeting; non-emergency action taken at board meeting, not on agenda; no meeting agenda; failure to allow unit owners to speak at meeting; failure to permit a unit owner to tape record or video tape meeting; failure to allow unit owners to attend meeting.
Board	719.106(1)(d), FS.	Failure to provide notice of the annual meeting not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings.
Board	719.106(1)(d)2., FS.	Failure to hold a unit owner meeting to obtain unit owners' approval when written agreements are not authorized.
Board	719.106(1)(h), FS.	Failure of amendment to bylaws to contain full text showing underlined or language; etc.
Board	719.106(1)(i), FS.	Failure to have the authority in the cooperative documents when levying transfer fees or security deposits.
Board	719.108(3), FS.	Failure to have the authority in the cooperative documents when levying late fees.
Board	719.3026(1), FS.	Failure to obtain competitive bids on contracts that exceed five percent of the association's budget.
Board	719.303(3), FS.	Failure to have the authority in the cooperative documents when levying fines. Failure to provide proper notice of fines.
Board	61B-75.005(13), FAC.	Failure to fill vacancy properly.

Budgets	719.106(1)(e)1., FS.	Failure to timely notice budget meeting. Failure to timely deliver proposed budget.
Budgets	719.106(1)(e)2., FS.	Failure of board to call a unit owners' meeting to consider alternate budget.
Budgets	719.106(1)(j)1., FS.	Failure to include applicable line items in proposed budget.
Budgets	719.504(20), FS. 61B-76.003(1)(b), FAC.	Failure to disclose the beginning and ending dates of the period covered by the proposed budget.
Budgets	61B-76.003(1)(c), FAC.	Failure to disclose periodic assessments for each unit in proposed budget.
Budgets	61B-76.003(1)(e), (f), FAC. 61B-76.005(1), FAC.	Failure to provide for funding of one or more reserve fund categories in the proposed budget.
Elections	719.106(1)(d)1., FS. 61B-75.005(3), FAC	Improper nomination procedures in election.
Elections	719.106(1)(d)1., FS. 61B-75.005(5), FAC.	Including a candidate who did not provide timely notice of candidacy.
Elections	61B-75.005(6), FAC.	Failure to provide candidate a receipt for written notice of intent to be a candidate.
Elections	61B-75.005(8), (10), FAC.	Counting ballots not cast in inner and outer envelopes. Failure to provide space for name and signature on outer envelope.
Elections	61B-75.005(10)(c), FAC.	Failure to timely hold runoff election.
Records	719.104(2)(a)2., FS.	Failure to maintain the cooperative documents.
Records	719.104(2)(a)5., FS.	Failure to maintain a current unit owner roster. Failure of roster to include all elements.
Records	719.104(2)(a)12., FS. 719.104(2)(c), FS.	Failure to maintain a copy of the question and answer sheet.
Records	719.104(2)(a)13., FS.	Failure to maintain other association records related to the operation of the association.
Records	719.104(2)(b), (c), FS.	Failure to provide access to records.
Records	719.104(8)(b), FS.	Failure of minutes to reflect how board members voted at board meeting. Failure to record a vote or an abstention in the minutes for each board member present at the board meeting.
Records	61B-76.003(3), FAC.	Failure of budget meeting minutes to reflect adoption of the proposed budget.
Reporting	719.104(4)(a), FS. 61B-76.006(6)(a), FAC.	Failure to timely provide the annual financial report.
Reporting	61B-76.006(3)(a)5., FAC.	Failure to disclose in the year-end financial statements the manner by which reserve items were estimated and/or the date the estimates were last made.
Reporting	61B-76.006(3)(b), (c), FAC.	Improper disclosure in the year-end financial statements of method of allocating revenues and expenses. Improper special assessment disclosures in the year-end financial statements.
Reporting	61B-76.006(4), FAC.	Failure to show developer assessments separately from non-developer owners in the year-end financial statements or annual financial report.
Reporting	61B-76.006(5)(c), FAC.	Failure to include the required reserve fund disclosures in the annual financial report.
Reporting	61B-76.0062(2)(b), FAC.	Failure to include in the turnover financial

statements a statement of total cash payments made by the developer to the association.

(b) Major Violations. The following violations shall be considered major due to their increased potential for consumer harm. If an enforcement resolution is utilized, the penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$500, whichever amount is greater. Finally, in no event shall a penalty of more than \$5,000 be imposed for a single violation. The penalties are set forth in categories 1, 2, and 3, for each violation as follows:

Category 1: \$10 – \$18 per unit.

Category 2: \$20 – \$50 per unit.

Category 3: \$100 – \$300 for each unit offered/created; deposit or contract.

Category	Statute or Rule Cite	Description of Conduct/Violation	Suggested Penalty
Accounting Records	719.104(2)(a)9., FS.	Insufficient detail in the accounting records. Failure to maintain sufficient accounting records.	2
Assessing	719.106(1)(g), FS.	Failure to assess at sufficient amounts.	1
Assessing	719.107(2), FS.	Failure to assess based upon proportionate share or as stated in the cooperative documents.	2
Assessing	719.108(1), (8), FS.	Failure by developer to pay assessments or to pay in timely manner.	2
Board	719.106, FS.	Failure to follow method of amendment.	2
Board	719.106(1)(a)1., FS.	Improper compensation of officers or directors.	1
Board	719.106(1)(d), FS.	Failure to hold annual meeting.	2
Board	719.106(1)(k), FS.	Failure to maintain adequate fidelity bonding for all persons who control or distribute association funds.	2
Board	719.501(2)(a), FS.	Failure to pay annual fees to the division.	2
Budgets	719.106(1)(e), FS.	Failure to propose/adopt budget for a given year.	2
Budgets	61B-76.003(1)(e), (f), FAC.	Failure to include reserve schedule in the proposed budget.	1
Commingle	719.104(7), FS.	Commingling association funds with non-association funds.	2
Commingle	719.104(7), FS. 61B-76.005(2), FAC.	Commingling reserve funds with operating funds.	1
Common Expenses	719.107(1), FS.	Using association funds for other than common expenses.	2
Converter Reserves	719.618(1), FS.	Failure to calculate converter reserves properly.	2
Converter Reserves	719.618(2)(a), FS.	Failure to fund converter reserves in a timely manner.	2
Converter Reserves	719.618(3), FS.	Improper use of converter reserves.	1
Converter Reserves	61B-76.003(1)(e)5., FAC. 61B-76.006(3)(a)6., FAC. 61B-76.006(5)(c), FAC.	Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report.	1
Development	719.202(1), FS.	Developer using an alternative assurance, such as a Letter of Credit or Surety Bond, in	3

		lieu of an escrow account, without the prior approval of the Director.	
Development	719.202(1) or (6), FS.	Failure to establish an escrow account or place funds therein.	3
Development	719.301(1), (2), (4), FS.	Failure to transfer association control.	2
Development	719.403(1), (2), FS.	Failure to follow proper method to amend cooperative documents to alter phase development plan.	3
Development	719.403(1), FS.	Continuing to develop phases after expiration of phase deadline.	3
Development	719.502(2)(a), FS.	Accepting deposits prior to filing reservation and escrow agreements with the division.	3
Development	719.502(2)(a), FS.	Offering sales contracts prior to initial filing with division and acceptance for form.	3
Development	61B-79.001(2)(a), (3), FAC. 719.502(3), FS.	Offering sales contracts on units within a phase prior to filing phase documents with the division.	3
Development	719.502(3), FS.	Failure to file amendments to documents previously filed with the division.	1
Development	61B-79.003(2), FAC. 719.503(1)(a), FS.	Using sales contracts without required disclosures.	3
Development	61B-79.004(9), FAC. 719.503(1)(b), FS.	Failure to provide documents to purchasers.	3
Development	61B-79.001(3), FAC.	Closing on sales of units prior to filing with division and acceptance for content.	3
Elections	719.106(1)(d), FS. 719.301(1), (2), FS. 61B-75.005(2), FAC.	Failure to hold election to permit participation on board by non-developer owners. Failure to permit participation on board by non-developer owners after 15 percent of units have been sold.	2
Elections	719.106(1)(d)1., FS. 61B-75.005(4), FAC.	Failure to provide, or timely provide, first notice of election.	1
Elections	719.106(1)(d)1., FS. 61B-75.005(7), (8), FAC.	Failure to provide, or timely provide, second notice of election or omitting materials such as ballots, envelopes, and candidate information sheets.	1
Elections	719.106(1)(d)1., FS.	Failure to use ballots or voting machines.	2
Elections	719.106(1)(d)1., FS. 61B-75.005(9), FAC.	Failure to include all timely submitted names of eligible candidates on the ballot.	1
Elections	61B-75.005(10)(a), (b), FAC.	Counting ineligible ballots. Not counting ballots in the presence of unit owners.	1
Elections	61B-75.005(10)(c), FAC.	Failure to hold runoff election.	2
Final Order	719.501(1)(d)4., FS.	Failure to comply with final order of the division.	2
Guarantee	719.108(8), FS. 61B-76.004(1), FAC	Guarantee not properly established.	2
Guarantee	719.108(8)(a), FS. 61B-76.004(3), FAC	Improperly assessing unit owners.	2
Guarantee	719.108(8)(a), FS. 61B-76.004(5), FAC	Guarantee deficit not funded	2
Guarantee	61B-76.004(2), FAC.	Guarantee period unclear/not specified, not properly extended.	2
Guarantee	61B-76.004(4)(a), FAC.	Not providing sufficient cash/resources to provide payment on a timely basis of all common expenses including full funding	2

		of reserves.	
Guarantee	61B-76.004(4)(b), FAC. 61B-76.004(5), FAC.	Amount owed by the guarantor for the guarantee period not properly calculated.	2
Records	719.104(2)(a)10., FS.	Failure to maintain election materials for one year.	1
Records	719.104(2)(a)4., FS.	Failure to maintain minutes of meetings.	1
Records	719.104(2)(b), FS.	Failure to maintain records within Florida.	2
Records	719.301(4), FS.	Failure to deliver one or more association records upon transfer of association control.	2
Reporting	719.104(4)(a), FS.	Failure to provide the annual financial report.	2
Reporting	719.104(4)(b), FS.	Failure to provide year-end financial statements in a timely manner.	1
Reporting	61B-76.006(6)(b), FAC. 719.104(4)(b), FS.	Failure to provide year-end financial statements.	2
Reporting	61B-76.006(8), FAC. 719.104(4)(b), FS. 61B-76.006(9)(b), FAC.	Prior to turnover of control of the association, developer was included in vote to waive audit requirement after the first two years of operation.	2
Reporting	719.301(4)(c), FS. 61B-76.006(6)(c), FAC.	Failure to provide turnover financial statements in a timely manner.	1
Reporting	719.301(4)(c), FS. 61B-76.0062(1), FAC.	Failure to provide turnover financial statements. Turnover financial statements not audited. Failure of turnover financial statements to cover entire period.	2
Reporting	61B-76.006(1), FAC.	Failure to prepare year-end financial statements using fund accounting. Failure to prepare year-end financial statements on accrual basis.	1
Reporting	61B-76.006(1), FAC.	Failure to prepare year-end financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Failure to have reviewed or audited year-end financial statements prepared by a Florida licensed CPA.	2
Reporting	61B-76.006(2), FAC.	Failure to include one or more components of the year-end financial statements (incomplete).	1
Reporting	61B-76.006(3)(a)1.-4., FAC. 61B-76.006(5)(c), FAC.	Failure to make significant reserve fund disclosures in the year-end financial statements or annual financial report.	1
Reporting	61B-76.006(3)(d), FAC. 61B-76.0062(2)(d), FAC.	Guarantee disclosures incomplete in, or missing from, turnover financial statements or year-end financial statements.	1
Reporting	61B-76.006(5)(a), (b), FAC.	Failure to prepare the annual financial report on a cash basis. Failure to include in the annual financial report specified receipt or expenditure line items.	1
Reporting	61B-76.006(8), FAC.	Providing lower level of reporting for year-end financial statements than required.	2
Reporting	61B-76.0062(2), FAC.	Failure of turnover financial statements to present revenues and expenses for each fiscal year and interim period.	2
Reporting	61B-76.0062(2)(a)-(c), FAC.	Turnover financial statements omit	2

		disclosure of common expenses paid by the developer.	
Reserves	719.106(1)(j)2., FS. 61B-76.005(3), FAC	Failure to calculate reserve funds properly.	1
Reserves	719.106(1)(j)2., FS. 61B-76.005(6), FAC.	Failure to fund reserves in a timely manner. Failure to fully fund reserves.	1
Reserves	719.106(1)(j)2., FS. 61B-76.005(6), (8), FAC.	Failure to follow proper method to waive or reduce reserve funding.	1
Reserves	719.106(1)(j)2., FS. 61B-76.005(9), FAC.	Prior to turnover of control of the association, developer included in vote to waive/reduce reserve funding after first two years of operation.	1
Reserves	719.106(1)(j)3., FS. 61B-76.005(7), FAC.	Failure to obtain unit owner approval prior to using reserve funds for other purposes.	2
Special Assessment	719.108(9), FS.	Failure to use special assessment funds for intended purposes.	1

*Specific Authority 719.501(1)(f), 719.501(1)(d)4. FS. Law Implemented 719.501(1)(d)4., 719.501(1)(k) FS. History–New 6-4-98.*

## CHAPTER 61B-78 ASSOCIATION FEE AND MAILING ADDRESS; COOPERATIVE RESOLUTION GUIDELINES FOR UNIT OWNER CONTROLLED ASSOCIATIONS

61B-78.001	Association Fee; Mailing Address; Retrofitting.
61B-78.002	Definitions and Purpose.
61B-78.003	Educational Resolution.
61B-78.004	Enforcement Resolution and Civil Penalties.

### **61B-78.001 Association Fee; Mailing Address; Retrofitting.**

(1) The annual fee shall be paid as follows:

(a) The division shall mail to the association an annual fee statement. However, the failure to receive the annual fee statement shall not relieve the association of the obligation to pay the fee.

(b) The check or money order in payment of the annual fees shall be accompanied by the annual fee statement.

(c) The postmark date shall constitute the date of payment.

(d) If the documents are amended during the year to alter the number of units, the association shall pay the annual fee on the highest number of units during the year.

(2) The association shall, within 30 days of a change of address, notify the division in writing of its new mailing address.

(3) Each association that votes to forego retrofitting of the common areas or units of a residential cooperative with a fire sprinkler system or other engineered life safety system or handrails and guardrails by the affirmative vote of two-thirds of all voting interests in the affected cooperative, shall report the voting results and certification information for each affected cooperative to the division on DBPR Form CP 6000-1, RETROFITTING REPORT FOR COOPERATIVES, incorporated herein by reference and effective 11-30-04. The form may be obtained by writing the division at 1940 North Monroe Street, Tallahassee, Florida 32399-1030. If retrofitting has been undertaken by a residential cooperative, the association shall report the per-unit cost of such work to the division using DBPR Form CP 6000-1, RETROFITTING REPORT FOR COOPERATIVES. The division shall prepare separate reports of information obtained from associations relating to the waiver of a fire sprinkler system or the waiver of handrails and guardrails and deliver the reports to the Division of State Fire Marshal of the Department of Financial Services no later than August 1 of each year. DBPR Form CP 6000-1, RETROFITTING REPORT FOR COOPERATIVES must be filed with the division within 60 days of recordation of the retrofitting waiver certificate in the public records where the cooperative is located or upon commencement of the retrofitting project.

(4)(a) As provided for by Section 719.1055, F.S., any vote to waive a retrofitting requirement shall be held at a duly called meeting of the membership, with members voting live and in person, or may be conducted without a membership meeting by written consents, or may be conducted by a combination of the two with the association counting written consents received along with votes cast live and in person at a duly called meeting of the membership. Effective October 1, 2004, retrofitting requirements related to a fire sprinkler system may also be waived by the use of limited proxies cast at a duly called meeting of the membership.

(b) The written consent form utilized by the association must contain a space for the authorized voter to sign and must identify the unit owned. Voting by written consent may be utilized by an association regardless of whether the cooperative documents specifically permit voting by written consent.

(c) There is no limitation on the number of times an association may conduct a vote to waive a retrofitting requirement. However, in order to be effective, the affirmative vote of not less than two-thirds of the total voting interests must be obtained, and a certificate attesting to such vote must be recorded in the public records, not later than December 31, 2014.

(d) In the case of an association that operates more than one cooperative, in order for a waiver to be effective as to a particular cooperative and the buildings located within that cooperative, two-thirds of the total voting interests of that cooperative must affirmatively vote in favor of waiving the retrofitting requirements.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.1055(5), (6), 719.501(1), (2) FS. History--New 2-17-98, Amended 1-28-04, 11-30-04.*

### **61B-78.002 Definitions and Purpose.**

(1) Definitions. For the purposes of Rules 61B-78.002, 61B-78.003, and 61B-78.004, F.A.C., the following definitions shall apply:

(a) "Accepted complaint" means a complaint received by the division containing sufficient documentation and addressing a subject within the jurisdiction of the division, pursuant to Section 719.501(1), F.S.

(b) "Affirmative or corrective action" means putting remedial procedures in place to ensure that the violation does not recur, making any injured person whole as to the harm suffered in relation to the violation, or taking any other appropriate measures to redress the harm caused.

(c) "Alleged repeated violation" means any accepted complaint for the same or substantially similar recurring conduct received by the division within two years from the resolution of a previous complaint regarding that conduct.

(d) "Association," for purposes of these guidelines, shall have the same meaning as stated in Section 719.103(2), F.S.

(e) "Bad check" means any worthless check, draft, or order of payment identified under Section 68.065, F.S.

(2) Purpose. The purpose of the resolution guidelines is to implement the division's responsibility to ensure compliance with the provisions of Chapter 719, F.S., and the division's administrative rules. The division recognizes that unit owner controlled associations are comprised of volunteer members who, in most circumstances, are lay people without specialized knowledge of the complex statutory and administrative rule structure of Chapter 719, F.S. Based upon this understanding, the division, as set forth in these rules, will first and foremost attempt to seek statutory and rule compliance through an educational resolution. For repeated statutory or rule violations, where the violations have not been corrected or otherwise resolved by the association, the division will seek statutory or rule compliance through an enforcement resolution. The guidelines detail the educational and enforcement procedures the division will use to seek statutory or rule compliance. The guidelines are also intended to implement the division's statutory authority to give reasonable and meaningful notice to persons regulated by Chapter 719, F.S., and the administrative rules of the range of penalties that normally will be imposed, if an enforcement resolution is taken by the division. Finally, the rules are intended, pursuant to statutory mandate, to distinguish between minor and major violations based upon the potential harm that the violation may cause.

(3) These penalty guidelines are promulgated pursuant to the division's authority in Section 719.501(1)(d), (f), and (k), F.S. These rules do not preclude the division from imposing affirmative or corrective action pursuant to Section 719.501(1)(d)2., F.S. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Rules 61B-78.002, 61B-78.003, and 61B-78.004, F.A.C., are necessary to explicate the division's education and enforcement policy. These rules are not intended to cover, or be applied to, willful and knowing violations of Chapter 719, F.S., or the administrative rules by an officer or association board member, pursuant to Section 719.501(1)(d)4., F.S. Such violations shall be strictly governed by the provisions of Section 719.501(1)(d)4., F.S. These rules are not intended to cover, or be applied to, violations of Chapter 719, F.S., or the administrative rules by a cooperative developer as defined by Section 719.103(13), F.S. Such violations shall be strictly governed by the provisions of Chapter 61B-77, F.A.C., and Section 719.301(5), F.S.

*Specific Authority 719.501(1)(d)4., (f) FS. Law Implemented 719.501(1)(d)4., (k) FS. History--New 6-4-98.*

#### **61B-78.003 Educational Resolution.**

(1) The educational resolution process, as detailed in these rules, is only applicable to unit owner controlled associations.

(2) Alleged Initial Violation. An initial accepted complaint, directed at an association and involving a possible violation identified as minor in these guidelines, will be resolved as follows:

The division will review the matter and will contact the association board by letter or telephone regarding the complaint. The division will provide educational materials or guidance to the association board to assist it with addressing the subject matter of the complaint and provide the association with the opportunity to respond. The division will notify the complainant of the educational resolution and the division's complaint file will be closed.

(3) Alleged Repeated Violations. A subsequent accepted complaint, directed at the same association involving a possible violation identified as minor in these guidelines, will be resolved as follows:

If based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the association. The Warning Letter will give the association a reasonable period of time in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator's name so that the association may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the association to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will lead to further investigation. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the educational resolution, or if applicable, alternative dispute resolution options.

(4) Alleged Major Violations. An initial accepted complaint, directed at an association and involving a possible violation identified as major in these guidelines, will be resolved as follows:

If based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the association. The Warning Letter will give the association a reasonable period of time in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator's name so that the association may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the association to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, will lead to further investigation. The Warning Letter shall not be considered final agency action. The division will notify the complainant of the educational resolution, or if applicable, alternative dispute resolution options.

*Specific Authority 719.501(1)(d)4., (f) FS. Law Implemented 719.501(1)(d)4., (k) FS. History--New 6-4-98.*

#### **61B-78.004 Enforcement Resolution and Civil Penalties.**

(1) The division will seek compliance through an enforcement resolution for repeated minor or major violations, or for the failure to correct or address a violation or provide unit owner redress as requested by the division. These guidelines list aggravating and mitigating factors that will reduce or increase the listed penalty amounts within the specified range and those circumstances

that justify a departure from the range. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of \$5,000. The guidelines in this rule section are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order.

(2) General Provisions.

(a) Rule Not All-Inclusive. This rule section contains illustrative violations. It does not, and is not intended to, encompass all possible violations of statute or division rule that might be committed by an association. The absence of any violation from this rule section shall in no way be construed to indicate that the violation does not cause substantial harm or is not subject to a penalty. In any instance where the violation is not listed in this rule section, the penalty will be determined by consideration of:

1. The closest analogous violation, if any, that is listed in this rule section; and
2. The mitigating or aggravating factors listed in this rule section.

(b) Violations Included. This rule section applies to all statutory and rule violations subject to a penalty authorized by Chapter 719, F.S.

(c) Rule Establishes Norm. These guidelines do not supersede the division's authority to order an association to cease and desist from any unlawful practice, or order other affirmative action in situations where the imposition of administrative penalties is not adequate. For example, notwithstanding the specification of relatively smaller penalties for particular violations, the division will suspend the imposition of a penalty and impose other remedies where aggravating or mitigating factors warrant it. If an enforcement resolution is utilized, the total penalty to be assessed shall be calculated according to these guidelines or \$100, whichever amount is greater.

(d) Description of Violations. Although the violations in Rule 61B-78.004, F.A.C., include specific references to statutes and administrative rules, the violations are described in general language and are not necessarily stated in the same language that would be used to formally allege a violation in a specific case. If any statutory or rule citation in Rule 61B-78.004, F.A.C., is changed, then the use of the previous statutory citation will not invalidate this rule section.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining penalties for violations listed in this rule section. The factors are not necessarily listed in order of importance, and they shall be applied against each single count of the listed violation.

(a) Aggravating Factors:

1. Filing or causing to be filed any materially incorrect document in response to any division request or subpoena.
2. Financial loss to parties or persons affected by the violation.
3. Financial gain to parties or persons who perpetrated the violation.
4. The disciplinary history of the association, including such action resulting in an enforcement resolution as detailed in Rule 61B-78.004, F.A.C., or Section 719.501, F.S.
5. The violation caused substantial harm, or has the potential to cause substantial harm, to cooperative residents or other persons.
6. Undue delay in initiating or completing, or failure to take, affirmative or corrective action after the association received the division's written notification of the violation.
7. The violation had occurred for a long period of time.
8. The violation was repeated within a short period of time.
9. The association impeded the division's investigation or authority.
10. The investigation involved the issuance of a notice to show cause or other proceeding.

(b) Mitigating Factors:

1. Whether current members of the association board have sought and received educational training, other than information provided pursuant to Rule 61B-78.003, F.A.C., on the requirements of Chapter 719, F.S., within the past two years.
2. Reliance on written professional or expert counsel and advice.
3. Acts of God or nature.
4. The violation caused no harm to cooperative residents or other persons.
5. The association took affirmative or corrective action before it received the division's written notification of the violation.
6. The association expeditiously took affirmative or corrective action after it received the division's written notification of the violation.
7. The association cooperated with the division during the investigation.
8. The investigation was concluded through consent proceedings.

(4) The provisions of this rule section shall not be construed so as to prohibit or limit any other civil or criminal prosecution that may be brought.

(5) The imposition of a penalty does not preclude the division from imposing additional sanctions or remedies provided under Chapter 719, F.S.

(6) In addition to the penalties established in this rule section, the division reserves the right to seek to recover any other costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages allowed by law. Additionally, the division reserves the right to seek to recover any costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages imposed by law if an association submits a bad check to the division.

(7) Penalties.

(a) Minor Violations. The following violations shall be considered minor due to their lower potential for consumer harm. If an enforcement resolution is utilized, the division shall impose a civil penalty between \$1 and \$5, per unit, for each minor violation. The penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$100, whichever amount is greater. Finally, in no event shall a penalty of more than \$2,500 be imposed for a single violation. The following are identified as minor violations:

Category	Statute or Rule Cite	Description of Conduct/Violation
Board	719.104(8)(b), F.S.	Improper use of secret ballot, or use of proxy, by board members at a board meeting.
Board	719.106(1)(a)2., F.S.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
Board	719.106(1)(b)1., F.S.	Improper quorum at unit owner meeting.
Board	719.106(1)(b)2., F.S.	Failure of proxy to contain required elements.
Board	719.106(1)(c), F.S.	Failure to properly notice and conduct board of administration or committee meetings: notice failed to indicate assessment would be considered; failure to maintain affidavit by person who gave notice of special assessment meeting; failure to ratify emergency action at next meeting; failure to adopt a rule regarding posting of notices; failure to notice meeting; non-emergency action taken at board meeting, not on agenda; no meeting agenda; failure to allow unit owners to speak at meeting; failure to permit a unit owner to tape record or video tape meeting; failure to allow unit owners to attend meeting.
Board	719.106(1)(d), F.S.	Failure to provide notice of the annual meeting not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings.
Board	719.106(1)(d)2., F.S.	Failure to hold a unit owner meeting to obtain unit owners' approval when written agreements are not authorized.
Board	719.106(1)(h), F.S.	Failure of amendment to bylaws to contain full text showing underlined or language; etc.
Board	719.106(1)(i), F.S.	Failure to have the authority in the cooperative documents when levying transfer fees or security deposits.
Board	719.108(3), F.S.	Failure to have the authority in the cooperative documents when levying late fees.
Board	719.3026(1), F.S.	Failure to obtain competitive bids on contracts that exceed five percent of the association's

Board	719.303(3), F.S.	budget. Failure to have the authority in the cooperative documents when levying fines. Failure to provide proper notice of fines.
Board	61B-75.005(13), F.A.C.	Failure to fill vacancy properly.
Budgets	719.106(1)(e)1., F.S.	Failure to timely notice budget meeting. Failure to timely deliver proposed budget.
Budgets	719.106(1)(e)2., F.S.	Failure of board to call a unit owners' meeting to consider alternate budget.
Budgets	719.106(1)(j)1., F.S.	Failure to include applicable line items in proposed budget.
Budgets	61B-76.003(1)(b), F.A.C.	Failure to disclose the beginning and ending dates of the period covered by the proposed budget.
Budgets	61B-76.003(1)(c), F.A.C.	Failure to disclose periodic assessments for each unit type in proposed budget.
Budgets	61B-76.003(1)(e), (f), F.A.C.	Failure to provide for funding of one or more reserve fund categories in the proposed budget.
Elections	61B-76.005(1), F.A.C.	Improper nomination procedures in election.
Elections	719.106(1)(d)1., F.S.	
Elections	61B-75.005(3), FAC	
Elections	719.106(1)(d)1., F.S.	Including a candidate who did not provide timely notice of candidacy.
Elections	61B-75.005(5), F.A.C.	Failure to provide candidate a receipt for written notice of intent to be a candidate.
Elections	61B-75.005(6), F.A.C.	
Elections	61B-75.005(8), (10), F.A.C.	Counting ballots not cast in inner and outer envelopes. Failure to provide space for name and signature on outer envelope.
Elections	61B-75.005(10)(c), F.A.C.	Failure to timely hold runoff election.
Records	719.104(2)(a)2., F.S.	Failure to maintain the cooperative documents.
Records	719.104(2)(a)5., F.S.	Failure to maintain a current unit owner roster.
Records	719.104(2)(a)12., F.S.	Failure of roster to include all elements.
Records	719.104(2)(c), F.S.	Failure to maintain a copy of the question and answer sheet.
Records	719.104(2)(a)13., F.S.	Failure to maintain other association records related to the operation of the association.
Records	719.104(2)(b), (c), F.S.	Failure to provide access to records.
Records	719.104(8)(b), F.S.	Failure of minutes to reflect how board members voted at board meeting. Failure to record a vote or an abstention in the minutes for each board member present at the board meeting.
Records	61B-76.003(3), F.A.C.	Failure of budget meeting minutes to reflect adoption of the proposed budget.
Reporting	719.104(4)(a), F.S.	Failure to timely provide the annual financial report.
Reporting	61B-76.006(6)(a), F.A.C.	
Reporting	61B-76.006(3)(a)5., F.A.C.	Failure to disclose in the year-end financial statements the manner by which reserve items were estimated and/or the date the estimates were last made.
Reporting	61B-76.006(3)(b), (c), F.A.C.	Improper disclosure in the year-end financial statements of method of allocating revenues and expenses. Improper special assessment disclosures in the year-end financial statements.
Reporting	61B-76.006(5)(c), F.A.C.	Failure to include the required reserve fund disclosures in the annual financial report.

(b) Major Violations. The following violations shall be considered major due to their increased potential for consumer harm. If an enforcement resolution is utilized, the penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total penalty to be assessed shall be calculated according to these guidelines or \$100, whichever amount is greater. Finally, in no event shall a penalty of more than \$5,000 be imposed for a single violation. The penalties are set forth in categories 1 and 2, for each violation as follows:

Category 1: \$6 – \$10 per unit.

Category 2: \$12 – \$20 per unit.

Category	Statute or Rule Cite	Description of Conduct/Violation	Suggested Penalty
Accounting Records	719.104(2)(a)9., F.S.	Insufficient detail in the accounting records Failure to maintain sufficient accounting records.	2
Assessing	719.106(1)(g), F.S.	Failure to assess at sufficient amounts.	1
Assessing	719.107(2), F.S.	Failure to assess based upon proportionate share or as stated in the cooperative documents.	2
Board	719.106, F.S.	Failure to follow method of amendment.	2
Board	719.106(1)(a)1., F.S.	Improper compensation of officers or directors.	1
Board	719.106(1)(d), F.S.	Failure to hold annual meeting.	2
Board	719.106(1)(k), F.S.	Failure to maintain adequate fidelity bonding for all persons who control or distribute association funds.	2
Board	719.501(2)(a), F.S.	Failure to pay annual fees to the division.	2
Budgets	719.106(1)(e), F.S.	Failure to propose/adopt budget for a given year.	2
Budgets	61B-76.003(1)(e), (f), F.A.C.	Failure to include reserve schedule in the proposed budget.	1
Commingling	719.104(7), F.S.	Commingling association funds with non-association funds.	2
Commingling	719.104(7), F.S. 61B-76.005(2), F.A.C.	Commingling reserve funds with operating funds.	1
Common Expenses	719.107(1), F.S.	Using association funds for other than common expenses.	2
Converter Reserves	719.618(3)(b), F.S.	Improper use of converter reserves.	1
Converter Reserves	61B-76.003(1)(e)5., F.A.C. 61B-76.006(3)(a)6., F.A.C. 61B-76.006(5)(c), F.A.C.	Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report.	1
Elections	719.106(1)(d), F.S. 61B-75.005(2), FAC	Failure to hold election	2
Elections	719.106(1)(d)1., F.S. 61B-75.005(4), F.A.C.	Failure to provide, or timely provide, first notice of election.	1
Elections	719.106(1)(d)1., F.S. 61B-75.005(7), (8), F.A.C.	Failure to provide, or timely provide, second notice of election or omitting materials such as ballots, envelopes, and candidate information sheets.	1
Elections	719.106(1)(d)1., F.S.	Failure to use ballots or voting machines.	2
Elections	719.106(1)(d)1., F.S. 61B-75.005(9), F.A.C.	Failure to include all timely submitted names of eligible candidates on the ballot.	1
Elections	61B-75.005(10)(a), (b), F.A.C.	Counting ineligible ballots. Not counting	1

Elections	61B-75.005(10)(c), F.A.C.	ballots in the presence of unit owners.	2
Final Order	719.501(1)(d)4., F.S.	Failure to hold runoff election.	2
Records	719.104(2)(a)10., F.S.	Failure to comply with final order of the division.	2
Records	719.104(2)(a)4., F.S.	Failure to maintain election materials for one year.	1
Records	719.104(2)(b), F.S.	Failure to maintain minutes of meetings.	1
Reporting	719.104(4)(a), F.S.	Failure to maintain records within Florida.	2
Reporting	719.104(4)(a), F.S.	Failure to provide the annual financial report.	2
Reporting	719.104(4)(b), F.S.	Failure to provide year-end financial statements in a timely manner.	1
Reporting	61B-76.006(6)(b), F.A.C.	Failure to provide year-end financial statements.	2
Reporting	719.104(4)(b), F.S.	Failure to prepare year-end financial statements using fund accounting.	1
Reporting	61B-76.006(8), F.A.C.	Failure to prepare year-end financial statements on accrual basis.	1
Reporting	61B-76.006(1), F.A.C.	Failure to prepare year-end financial statements in accordance with Generally Accepted Accounting Principles (GAAP).	2
Reporting	61B-76.006(1), F.A.C.	Failure to have reviewed or audited year-end financial statements prepared by a Florida licensed CPA.	2
Reporting	61B-76.006(2), F.A.C.	Failure to include one or more components of the year-end financial statements (incomplete).	1
Reporting	61B-76.006(3)(a)1.-4., F.A.C.	Failure to make significant reserve fund disclosures in the year-end financial statements or annual financial report.	1
Reporting	61B-76.006(5)(c), F.A.C.	Failure to prepare the annual financial report on a cash basis.	1
Reporting	61B-76.006(5)(a), (b), F.A.C.	Failure to include in the annual financial report specified receipt or expenditure line items.	1
Reporting	61B-76.006(8), F.A.C.	Providing lower level of reporting for year-end financial statements than required.	2
Reserves	719.106(1)(j)2., F.S.	Failure to calculate reserve funds properly.	1
Reserves	61B-76.005(3), FAC		
Reserves	719.106(1)(j)2., F.S.	Failure to fund reserves in a timely manner.	1
Reserves	61B-76.005(6), F.A.C.	Failure to fully fund reserves.	1
Reserves	719.106(1)(j)2., F.S.	Failure to follow proper method to waive or reduce reserve funding.	1
Reserves	61B-76.005(6), (8), F.A.C.		
Reserves	719.106(1)(j)3., F.S.	Failure to obtain unit owner approval prior to using reserve funds for other purposes.	2
Reserves	61B-76.005(7), F.A.C.		
Special Assessment	719.108(9), F.S.	Failure to use special assessment funds for intended purposes.	1

*Specific Authority 719.501(1)(f), 719.501(1)(d)4. FS. Law Implemented 719.501(1)(d)4., 719.501(1)(k) FS. History–New 6-4-98.*

## CHAPTER 61B-79 FILINGS

61B-79.001	Developer, Filing.
61B-79.002	Procedure for Filing and Examination of Documents.
61B-79.003	Filing and Examination of Amendments to Documents.
61B-79.004	Contracts.
61B-79.005	Plot and Floor Plans.

### **61B-79.001 Developer, Filing.**

(1) In determining whether a developer has offered a contract for sale or lease pursuant to Section 719.502(2), F.S., it shall be relevant although not dispositive, whether and the extent to which the developer advertised, induced, solicited, or attempted to encourage any person to acquire an interest in a cooperative unit, either proposed or existing, if undertaken for gain or profit.

(2)(a) Except in the case of a reservation program, a developer of a residential cooperative shall file with the division one copy of each document required by Sections 719.503 and 719.504, F.S. The filing shall occur at the time the cooperative is created, or prior to any offering of a cooperative unit to the public, whichever occurs first. As to conversions from mobile home parks to cooperatives, the association must file with the division as provided in Section 723.079(10), F.S.

(b) A developer shall file, prior to offering, either pursuant to a reservation agreement or contract for purchase, proof of the developer's ownership, contractual, or leasehold interest in the land upon which the cooperative is to be developed. For purposes of this Rule, the division shall accept a signed written statement from the developer or the developer's attorney describing the developer's interest in the land upon which the cooperative is to be developed. The signature of the developer or the developer's attorney constitutes a certificate that they have read the statement and, to the best of their knowledge, information, and belief formed after reasonable inquiry, the statement accurately describes the developer's interest in the land.

(3) Upon receipt of a developer's filing, the division will review the filing pursuant to these Rules. When a filing is determined to be in correct form pursuant to Rule 61B-79.002, F.A.C., offerings to the public may be made pursuant to the statute and these Rules. Until the developer prepares and delivers to a purchaser and to the division documents that comply with the Cooperative Act and these Rules and the division notifies the developer that the filing is proper or is presumed proper pursuant to Rule 61B-79.002, F.A.C., the developer shall not close on any contract for sale or contract for a lease period of more than five years.

(4) Each developer shall submit with its filing a completed Frequently Asked Questions and Answers Sheet substantially conforming to DBPR Form CO 6000-33-037, FREQUENTLY ASKED QUESTIONS AND ANSWERS SHEET FOR COOPERATIVE ASSOCIATIONS, incorporated herein by reference and effective 1/98. (This form, as well as all forms referenced in these Rules, may be obtained by writing the Bureau of Condominiums at the Department of Business and Professional Regulation, 1940 North Monroe Street, Northwood Centre, Tallahassee, Florida 32399-1033.) The answers to the questions may be summary in nature, in which case the answers shall refer to identified portions of the cooperative documents.

(5) Any document required to be delivered to a prospective buyer or lessee pursuant to Section 719.503 or 719.504, F.S., which describes the developer's (or other person's) right to retain control of the association shall recite the provisions of Sections 719.301(1)(a)-(e), F.S., regarding turnover of control of the association. This disclosure requirement shall not prohibit a developer from providing in the document for turnover to the unit owners other than the developer at an earlier point than the maximum time period set forth in Section 719.301, F.S.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.502, 719.503, 719.504 FS. History—New 1-8-98.*

### **61B-79.002 Procedure for Filing and Examination of Documents.**

(1) Filing.

(a) Documents submitted to the division for filing shall be securely bound and fastened between firm covers. Documents which are too bulky for binding may be submitted with the filing unbound.

(b) Each filing shall contain in the forepart a Table of Contents which lists the documents in the filing, in the order in which they appear.

(c) Each document shall be tabbed and labeled on the right side. Each label shall identify the document by appropriate word, phrase or abbreviation.

(d) Each filing shall be submitted in an expandable file folder approximately 14 3/4" by 9 1/2" in size. Filing Statements and the Filing Checklist referenced in this Rule shall be submitted with the documents and need not be submitted to purchasers.

(e) There shall be submitted with each filing a Filing Checklist which substantially conforms to DBPR Form CO 6000-33-029, FILING CHECKLIST, incorporated herein by reference and effective 1/98.

(f) A developer who contracts to sell a cooperative parcel when the construction, furnishing and landscaping of the cooperative property submitted to cooperative ownership have not been substantially completed or renovation of property converted to cooperative ownership has not been substantially completed in accordance with the plans, specifications or representations made by the developer, shall file with the division a copy of a fully executed escrow agreement for contract deposits pursuant to Section

719.202, Florida Statutes. An escrow agreement is deemed to be fully executed by the inclusion of the dates of execution and the appropriate signatures. An escrow agreement is the agreement between the developer and the escrow agent establishing the escrow account.

(2) Examination.

(a) Upon receipt of a filing, the division will determine whether the filing is in correct form. The filing is considered to be in correct form when:

1. All forms and documents, properly completed, tabbed, labeled and assembled in accordance with these Rules, are included;

2. The DEVELOPER/COOPERATIVE FILING STATEMENT, DBPR Form CO 6000-33-024, incorporated herein by reference and effective 1/98, has been completed properly; and

3. The correct filing fee has been received by the division, pursuant to Section 719.502(3), F.S.

(b) When the filing is found to be in correct form, the division will examine the content of the filing to determine its sufficiency under the Cooperative Act and these Rules. After receipt of the documents in correct form, the division shall notify the developer or its agent by mail of any deficiencies in the content or that the filing is proper for filing purposes. Failure to notify the developer or its agent of any deficiencies shall not preclude the determination of deficiencies at a later date nor shall it relieve the developer of any responsibility under the law.

(c) The developer shall correct any form or content deficiencies noted by the division. The developer shall identify all new language and all deleted language, by providing a coded copy of the new documents identifying new language with underlining and striking through deleted material.

(d) The division shall notify the developer or its agent after the receipt of documents correcting noted deficiencies of the acceptability of the corrections.

(e) In no event shall proper filing with the division be construed as approval of the offering by the division and no document or offering shall indicate that the division has in any manner approved the offering.

(3) Time periods for review and correction of filings.

(a) Reservation program filing. Within 20 days from receipt of the developer's filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. The developer shall have 20 days from the date of the division's notification of deficiencies in the filing to correct any deficiencies noted by the division. The division shall have 20 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(b) Cooperative filing. Within 45 days from receipt of the developer's filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. The developer shall have 45 days from the date of the division's notification of deficiencies in the filing to correct any deficiencies noted by the division. The division shall have 30 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(c) Amendment filing. Within 35 days from receipt of the developer's filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. The developer shall have 20 days from the date of the division's notification of deficiencies in the filing to correct any deficiencies noted by the division. The division shall have 20 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(d) Notice of intended conversion filing. Within 20 days from receipt of the developer's filing, the division shall notify the developer or its agent by mail of any filing deficiencies or that the filing is accepted. The developer shall have 20 days from the date of the division's notification of deficiencies in the filing to correct any deficiencies noted by the division. The division shall have 20 days from the receipt of corrected documents to notify the developer of further filing deficiencies or of the acceptability of the corrections.

(e) If the division fails to notify the developer within the time periods specified in this rule, the filing shall be considered proper for purposes of Section 719.502(1)(a), F.S., but shall not exempt the developer from compliance with all other provisions of the Cooperative Act or preclude any purchaser remedies afforded by the Act.

(f) If the developer does not correct deficiencies within the specified time period and does not timely request an extension of time, the division shall reject the filing and no further offers may be made. The developer will not be granted more than four (4) extensions in a particular filing. If a filing is rejected, the developer, when subject to the requirements of Section 719.202, F.S., shall, within 45 days of issuance of the final order of rejection, provide the division with a complete accounting of any deposits collected pursuant to the rejected documents. The developer shall also, immediately and in writing, notify all purchasers under contract of the rejection and shall offer immediate refund of deposits collected, as well as interest as appropriate, under the contracts. A complete refiling of the documents pursuant to the requirements of Chapter 719, F.S., and these rules, including the payment of filing fees, will be required prior to any additional offerings.

*Specific Authority 719.501(1)(f), 719.502(1)(b), 719.621 FS. Law Implemented 719.202, 719.502, 719.503, 719.504, 719.505, 719.506, 719.608 FS. History--New 1-8-98, Amended 2-7-06.*

### **61B-79.003 Filing and Examination of Amendments to Documents.**

(1) "Amendment" means any change to documents, whether technical or substantive, regardless of the procedure by which the change is made.

(2)(a) Every developer of a cooperative who holds a unit for sale in a cooperative shall submit to the division any amendments to documents or items on file with the division and deliver to the purchaser pursuant to Rule 61B-79.004, Florida Administrative Code, all amendments prior to closing, but in no event, later than 10 days after the amendment.

(b) Upon filing an amendment to documents or items which have been accepted by the division, the developer shall pay to the division a filing fee of \$100 per filing. A developer may include within each filing, multiple amendments relating to a single cooperative in which case a filing fee of only \$100 shall be charged. However, there shall be no charge for filing a Certificate of Incorporation.

(c) Payment of fees shall be by check or money order made payable to Division of Florida Land Sales, Condominiums, and Mobile Homes.

(3) The developer shall submit with the amendments the following information on a separate cover sheet:

(a) Name and physical location of the cooperative to which amendments apply;

(b) Developer's name and mailing address;

(c) Division Identification Number;

(d) Identification of document to which amendment applies;

(e) Book, page number and county where recorded, if applicable;

(f) A statement summarizing each amendment; and

(g) All new and deleted language shall be shown by providing a coded copy of the new documents identifying new language with underlining and striking through material to be deleted from the documents.

(4) The division may require that documents or items be revised to include amendments if said revision is deemed necessary by the division for full and adequate disclosure.

(5) Upon receipt of an amendment, the division will examine the material to determine its sufficiency under the Cooperative Act and these Rules. After receipt of the documents, the division shall notify the developer or its agent by mail of any deficiencies in the content or that the amendment is proper for filing purposes. Failure to notify the developer or its agent of any deficiencies shall not preclude the determination of deficiencies at a later date nor shall it relieve the developer of any responsibility under the law.

(6) The developer shall correct the deficiencies noted by the division.

(7) The division shall notify the developer or its agent after the receipt of documents correcting noted deficiencies of the acceptability of the corrections.

(8) In no event shall proper filing with the division be construed as approval of the amendment by the division. No documents or offering materials shall indicate the division has in any manner approved the materials.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.502, 719.503 FS. History--New 1-8-98.*

#### **61B-79.004 Contracts.**

(1) In determining whether a developer has closed on a contract for sale or lease for purposes of this Rule, it shall be relevant although not dispositive, whether and the extent to which the developer delivered to the purchaser evidence of ownership in the association and a lease or other muniment of title or possession; or whether a lease has been executed by all parties.

(2) The developer shall not close for 15 days following the execution of the agreement and delivery of the documents to the buyer as evidenced by the signed Receipt for Documents unless the buyer is informed of the 15-day voidability period and agrees to close prior to the expiration of the 15 days. The developer shall retain in his records proof of purchaser's agreement to close prior to the expiration of said voidability period. Said proof shall be retained for a period of 5 years after the date of the closing of the transaction.

(3) At the time amendments are delivered to purchasers or lessees, pursuant to Rule 61B-79.003, Florida Administrative Code, the developer shall provide to those who have not closed a written statement that if any of the above-referenced amendments materially alter or modify the offering in a manner which is adverse to the purchaser, the purchaser or lessee shall have a 15-day voidability period.

(4) At the time of closing a sale or lease for a period of more than 5 years, the developer shall notify the purchaser or lessee in writing stating that the developer has provided the purchaser or lessee all amendments to items delivered to the purchaser or lessee pursuant to Chapter 719, Florida Statutes.

(5) After the buyer or lessee for a term of more than 5 years has received all of the items required by Chapter 719, Florida Statutes, and these Rules of the division as evidenced by the signed Receipt for Cooperative Documents, he may extend the time of closing for a period not to exceed 15 days if closing was scheduled less than 15 days after execution of contract and receipt of the documents.

(6) If a contract is properly terminated by the buyer or lessee, as described in this Rule, the developer shall refund to the proposed buyer or lessee any deposit made, together with any interest in accordance with Section 719.202, Florida Statutes.

(7) In the sale or lease of a unit which has been occupied by someone other than the buyer, a statement that the unit has been occupied must be included in the contract.

(8) If a contract is for the lease of a unit for a term of more than 5 years, the contract shall include as an exhibit a copy of the proposed lease.

(9) Only contracts conforming to the requirements of this Rule and the provisions of Section 719.503, Florida Statutes, may be utilized by a developer in connection with the offering and sale, or lease for a term of more than five years, of a unit pursuant to the requirements of Section 719.502, Florida Statutes. A contract shall not limit the purchaser's remedy, for the developer's willful non-performance under the contract, to a return of the purchaser's deposit or a return of the purchaser's deposit plus interest.

(10) Every developer who enters into a contract for the sale of a residential cooperative unit or for the lease of a residential cooperative unit for a lease period of more than five years shall obtain from the purchaser or lessee a receipt acknowledging that he has been provided the required documents by the developer. The developer shall itemize all items which are applicable and are to be delivered to the purchaser. Those items to be delivered shall be those documents required by the Division for filing during the examination period, pursuant to Sections 719.503 and 719.504, Florida Statutes. A copy of the receipt form shall be submitted to the Division at the time of filing. The developer shall provide the purchaser or lessee with a copy of the signed receipt, upon request. The developer shall retain a copy of the signed receipt for a period of five years after the date of closing of the transaction, maintained in the official business records of the developer. Said receipt shall include but does not have to be limited to the items listed below in paragraphs (a)-(c):

(a) The name and address of the cooperative.

(b) An acknowledgment signed by the purchaser or lessee which lists the documents which have been received by the purchaser or lessee, or as to plan and specifications, made available for inspection.

(c) The following statement:

THE PURCHASE AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THE PURCHASE AGREEMENT BY THE BUYER AND RECEIPT BY THE BUYER OF ALL OF THE DOCUMENTS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER. THE AGREEMENT IS ALSO VOIDABLE BY THE BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE DOCUMENTS REQUIRED. BUYER'S RIGHT TO VOID THE PURCHASE AGREEMENT SHALL TERMINATE AT CLOSING.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.202, 719.502, 719.503, 719.504 FS. History--New 1-8-98.*

#### **61B-79.005 Plot and Floor Plans.**

(1) Every plot plan shall be a legible, scaled drafted map and shall indicate the following:

(a) Name of the cooperative;

(b) Scale, date and north arrow;

(c) Ingress and egress;

(d) The use and approximate size, location, and height of all existing and/or proposed buildings and other structures;

(e) Common areas;

(f) Limited common areas;

(g) Easements;

(h) Parking areas;

(i) The party who prepared the map.

(2) Each item depicted on the plot plan shall be identified as existing or proposed.

(3) Every filing shall include, if applicable, a floor plan for each type of unit. For the purposes of disclosure provided to purchasers and filed with the division pursuant to Sections 719.502, 719.503 and 719.504, Florida Statutes, the floor plan shall be legible, and shall, at a minimum, show:

(a) The perimeter boundaries of the unit and the approximate dimensions of such boundaries.

(b) The walls separating each room within the unit and the approximate dimensions of each room.

(c) The approximate location of all doorways.

(d) The dimension requirements of this Rule may be achieved with a plan drawn to scale with the scale depicted on the plan.

*Specific Authority 719.501(1)(f) FS. Law Implemented 719.504 FS. History--New 1-8-98.*

## CHAPTER 61B-80 THE ARBITRATION RULES OF PROCEDURE GOVERNING RECALL AND ELECTION DISPUTES IN HOMEOWNERS' ASSOCIATIONS

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61B-80.121	Final Orders and Appeals.
61B-80.122	Technical Corrections; Rehearing.
61B-80.123	Motions for Attorney's Fees and Costs.

### **61B-80.101 Scope, Organization, Procedure, Forms, and Title.**

(1) This chapter shall be entitled "The Arbitration Rules of Procedure Governing Recall and Election Disputes in Homeowners' Associations" and shall govern the arbitration of election disputes and recall disputes arising in a homeowners' associations governed by Chapter 720, F.S. For purposes of these rules "homeowners" means "members" and "parcel owners" who are voting members of the association as those terms are defined by Section 720.301, F.S. This chapter applies to all recall and election arbitration proceedings held pursuant to Section 720.303, 720.306, or 720.311, F.S.; these provisions shall only apply to election and recall disputes that exist on or after October 1, 2004. The provisions of Chapter 61B-45 and Chapter 61B-50, F.A.C., are incorporated herein by reference to the extent those chapters are consistent with these rules. These rules also apply to all arbitration proceedings referred to the division and conducted after mediation pursuant to subsection 720.311(2)(b), F.S.

(2) All petitions and other papers filed with the division for election or recall arbitration pursuant to Section 720.303, 720.306, or 720.311, F.S., and these rules, shall be filed at the official headquarters of the Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes, Director's Office, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1030, except that a petition or other pleading may be filed with the division via telefax at (850) 921-5446. All forms referenced in these rules may be obtained online at: <http://www.myflorida.com/dbpr/>.

(3) In order to file a petition for recall arbitration, a petitioner must use DBPR FORM HOA 6000-4, MANDATORY BINDING ARBITRATION FORM PETITION-RECALL DISPUTE, incorporated herein by reference and effective 2-3-05. In order to file a petition for election arbitration, a petitioner must use DBPR FORM HOA 6000-3, MANDATORY BINDING ARBITRATION FORM PETITION-ELECTION DISPUTE, incorporated by reference and effective 2-3-05. In order for someone who is not a member of the Florida Bar to represent a party in a proceeding, the person must file a completed DBPR FORM HOA 6000-6, HOA QUALIFIED REPRESENTATIVE APPLICATION, incorporated herein by reference and effective 2-3-05. An answer to a petition for arbitration for recall or election dispute arbitration must be filed using DBPR FORM HOA 6000-9, HOA ANSWER TO PETITION, incorporated herein by reference and effective 2-3-05. A request for an expedited determination of whether jurisdiction exists to hear a particular dispute shall be filed on DBPR FORM HOA 6000-7, REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION, incorporated herein by reference and effective 2-3-05.

*Specific Authority* 718.1255(4)(i), 718.112(2)(j)5., 720.303(10)(d), 720.306(9), 720.311(1) FS. *Law Implemented* 720.303(10), 720.306(9), 720.311(1) FS. *History*-New 2-3-05.

### **61B-80.102 Filing for Recall Dispute Arbitration.**

(1) Where the homeowners attempt to recall one or more directors of a board of a homeowners' association by written agreement, ballot, or vote taken at a meeting, the board of directors shall initiate a recall arbitration by filing a petition for recall arbitration with the division as provided by this rule. Where the homeowners attempt to recall one or more directors of a board at a