

HOA BOARD ELECTIONS

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.--

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

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members. However, if a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the member upon written request to the association. The copies and notice described in this paragraph may be provided electronically to those owners who previously consented to receive notice electronically. The failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

(c) Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this section, a change in quorum requirements is not an alteration of voting interests. The merger or consolidation of one or more associations under a plan of merger or consolidation under part I of chapter 607 or chapter 617 is not a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

(d) The Legislature finds that the procurement of mortgagee consent to amendments that do not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the parcel owners and that there is a compelling state interest in enabling the members of an association to approve amendments to the association's governing

documents through legal means. Accordingly, and notwithstanding any provision of this paragraph to the contrary:

1. As to any mortgage recorded on or after July 1, 2013, any provision in the association's governing documents that requires the consent or joinder of some or all mortgagees of parcels or any other portion of the association's common areas to amend the association's governing documents or for any other matter is enforceable only as to amendments to the association's governing documents that adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

2. As to mortgages recorded before July 1, 2013, any existing provisions in the association's governing documents requiring mortgagee consent are enforceable.

3. In securing consent or joinder, the association is entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book and page on which the original mortgage was recorded. Once the association has identified the recorded mortgages of record, the association shall, in writing, request of each parcel owner whose parcel is encumbered by a mortgage of record any information that the owner has in his or her possession regarding the name and address of the person to whom mortgage payments are currently being made. Notice shall be sent to such person if the address provided in the original recorded mortgage document is different from the name and address of the mortgagee or assignee of the mortgage as shown by the public record. The association is deemed to have complied with this requirement by making the written request of the parcel owners required under this subparagraph. Any notices required to be sent to the mortgagees under this subparagraph shall be sent to all available addresses provided to the association.

4. Any notice to the mortgagees required under subparagraph 3. may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the date of mailing is deemed to have consented to the amendment.

5. For those amendments requiring mortgagee consent on or after July 1, 2013, in the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association recorded in the public records of the county in which the declaration is recorded.

6. Any amendment adopted without the required consent of a mortgagee is voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to the statute of limitations beginning 5 years after the date of discovery as to the amendments described in subparagraph 1. and 5 years after the date of recordation of the certificate of amendment for all other amendments. This subparagraph applies to all mortgages, regardless of the date of recordation of the mortgage.

(e) A proposal to amend the governing documents must contain the full text of the provision to be amended and may not be revised or amended by reference solely to the title or number. Proposed new language must be underlined, and proposed deleted language must be stricken. If the proposed change is so extensive that underlining and striking through language would hinder, rather than assist, the understanding of the proposed amendment, a notation must be inserted immediately preceding the proposed amendment in substantially the following form: "Substantial rewording. See governing documents for current text." An amendment to a governing document is effective when recorded in the public records of the county in which the community is located.

(f) An immaterial error or omission in the amendment process does not invalidate an otherwise properly adopted amendment.

(g) A notice required under this section must be mailed or delivered to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the parcel is located, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission.

(2) Parcel owners' meetings; Elections; Board Member Eligibility.—

1. An annual meeting of the parcel owners shall be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the association property.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 3.a., of his or her intention to become a candidate. If the staggered term of a board member does not expire until a later annual meeting, or if all members terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. If the bylaws permit staggered terms of no more than 2 years and upon approval of a majority of the total voting interests, the association board members may serve 2-year staggered terms. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a homeowners' association of more than 10 parcels, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one parcel or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Any parcel owner desiring to be a candidate for board membership must comply with sub-subparagraph 3.a.

and must be eligible to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who is delinquent in the payment of any fee, fine, or special or regular assessment as provided in paragraph (c), is not eligible for board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which that would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member of is ineligible for board membership due to having been convicted of a felony.

3. The members of the board shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each parcel owner entitled to a vote, a first notice of the date of the election. Any parcel owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all parcel owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A parcel owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. A parcel owner who violates this provision may be fined by the association in accordance with 720.305. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more

candidates file notices of intent to run or are nominated than board vacancies exist.

~~—b. Within 90 days after being elected or appointed to the board, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.~~

~~—c. Director or officer delinquencies.— A director or officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.~~

~~—d. Director or officer offenses.— A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer. However, if the charges are resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of his or her term of office, if any.~~

~~—(2)ANNUAL MEETING.— The association shall hold a meeting of its members annually for the transaction of any and all proper business at a time, date, and place stated in, or fixed in accordance with, the bylaws. The election of directors, if one is required to be held, must be held at, or in conjunction with, the annual meeting or as provided in the governing documents.~~

(3) SPECIAL MEETINGS.— Special meetings must be held when called by the board of directors or, unless a different percentage is stated in the governing documents, by at least 10 percent of the total voting interests of the association. Business conducted at a special meeting is limited to the purposes described in

the notice of the meeting.

(4) CONTENT OF NOTICE.— Unless law or the governing documents require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(5) NOTICE OF SPECIAL MEETINGS.—The bylaws shall provide for giving notice to members of all member meetings, and if they do not do so shall be deemed to provide the following: The association shall give all parcel owners and members actual notice of all membership meetings, which shall be mailed, delivered, or electronically transmitted to the members not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed upon execution among the official records of the association. In addition to mailing, delivering, or electronically transmitting the notice of any meeting, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the association. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

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

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

(8) PROXY VOTING.--

1. Members may not vote by general proxy, but may vote by limited proxies

substantially conforming to a limited proxy form adopted by the division. No voting interest or consent right allocated to a lot owned by the association shall be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with 720.303(6); for votes taken to waive the financial reporting requirements of s. 720.303(7); for votes taken to amend the declaration pursuant to subparagraph (1); for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the parcel owners. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this subparagraph, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association.

2. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the unit owner executing it.

~~The members have the right, unless otherwise provided in this subsection or in the governing documents, to vote in person or by proxy.~~

~~—(a) To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires 90 days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place.~~

~~—(b) If the governing documents permit voting by secret ballot by members who are not in attendance at a meeting of the members for the election of directors, such ballots must be placed in an inner envelope with no identifying markings and mailed or delivered to the association in an outer envelope bearing identifying information reflecting the name of the member, the lot or parcel for which the vote is being cast, and the signature of the lot or parcel owner casting that ballot. If the eligibility of the member to vote is confirmed and no other ballot has been submitted for that lot or parcel, the inner envelope shall be removed from the outer envelope bearing the identification information, placed with the ballots which were personally cast, and opened when the ballots are counted. If more than one ballot is submitted for a lot or parcel, the ballots for that lot or parcel shall be disqualified. Any vote by ballot received after the closing of the~~

~~balloting may not be considered.~~

~~—(9) (a) ELECTIONS AND BOARD VACANCIES.—Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. All members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held or, if the election process allows voting by absentee ballot, in advance of the balloting. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters.~~

~~—(b) A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association for more than 90 days is not eligible for board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. The validity of any action by the board is not affected if it is later determined that a member of the board is ineligible for board membership.~~

~~—(c) Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division. Such proceedings must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an 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 hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.~~

(9) RECORDING.—Any parcel owner may tape record or videotape meetings of the board of directors and meetings of the members. The board of directors of the association may adopt reasonable rules governing the taping of meetings of the board and the membership.