



Board Member Certification

Florida Condominium and Homeowner's Association Compliance with
§718.112 and §720.3033
2019 Edition



“An investment in knowledge pays the best interest.” -Benjamin Franklin

Budgets and Reserves



Budgets and Reserves

General

- ▶ Budget serves as the roadmap for the Board in making decisions in the upcoming year
- ▶ It is a plan of future costs and revenues
- ▶ The steps and documents related to the proposed and adopted final budget are Official Records of the Association and are required to be kept forever. These include:
 - ▶ The proposed budget
 - ▶ The adopted budget
 - ▶ Meeting notice of the budget and the affidavit of mailing such notice



Notice of the Budget 718 Condos

- ▶ 14 day notice of the budget meeting is required
- ▶ Notice must include a copy of the proposed budget
- ▶ Notice must include the reserve schedule showing a fully funded reserve
- ▶ Unless waived by the owners or required by the Declaration to obtain a membership vote in favor of the budget, the Board is obligated to adopt a fully funded budget. Cite: 718.112(2)



What is in the Budget?

718 Condos

- Estimated revenue
 - Assessments, Interest, Insurance Proceeds, other income
- Estimated expense
 - State Condo dues
 - Insurance Fidelity Bonds
 - Management expenses
 - Administrative expenses
 - Rent
 - Taxes



What is in the Budget? 718 Condos

- ▶ Security expenses
- ▶ Any other expenses that will occur in the new year that the board is aware of
 - ▶ For example, the new board campaigned on an elaborate holiday display and was elected on the “holiday display” campaign promise. It should be budgeted for.
- ▶ Legal counsel



Budget Technical 718 Condos


- ▶ Budget requires beginning and ending dates to be covered by the adopted budget, more commonly referred to as the fiscal year
- ▶ Total expenses inclusive of reserves
- ▶ Assessments per unit based upon that unit's proportionate ownership within the condominium
 - ▶ For example, 10 units in a condominium all are the same size with a proportionate interest, 10% of the budget each.
 - ▶ For Example, 10 units in a condominium, 10,000 sq. ft. unit space, 9 units have 7,500 square feet, 1 unit has 2,500 sq ft. the 1 unit should be responsible for 25% of the budget.



Budget Problems

718 Condos

- ▶ Budget causes an increase in the prior year's assessments by 115%, the unit owners may vote to consider a different budget, despite the Board's approval
- ▶ The calculation of the increase does not include contributions to reserves, non-regular expenses, or expenses that are the result of "betterment to the condominium property"
- ▶ How do the unit owners hold this budgetary revolution?
 - ▶ 10% of the membership petition the Board for consideration of an alternative budget no less than 21 days after adoption of the 115% budget
 - ▶ 14 day notice of this meeting is also required
 - ▶ Majority vote in favor of the alternative budget wins the day



The Big Ticket Items: Capital Expenditures, Deferred Maintenance, Reserves

- ▶ Capital expenditure is the purchase or replacement of an asset which has a useful life expectancy of 1 year or more
- ▶ Deferred maintenance is a repair done less than once a year, but which is critical in maintaining the useful life of an asset
- ▶ Reserves funds other than operating funds which are earmarked for either deferred maintenance or capital expenditures, items deemed mandatory under 718 and any other funds which are earmarked for certain use by governing documents



Did Someone Say Mandatory?

- ▶ Mandatory reserves in a condominium are:
 - ▶ Roof Replacement
 - ▶ Building Painting
 - ▶ Pavement Resurfacing
 - ▶ Deferred maintenance of capital expenditures exceeding \$10,000.00
- ▶ Mandatory reserves in an HOA are:
 - ▶ Whatever the Declaration says they are, may be zero



Reserve Schedule

- ▶ The reserve schedule dictates when and how reserves are expected to be needed and is required to be included in the proposed budget
- ▶ Reserve Schedule shows:
 - ▶ the total estimated life of the reserve items
 - ▶ Remaining estimated life in years
 - ▶ Estimated replacement or deferred maintenance costs
 - ▶ Anticipated balance of the reserve fund
- ▶ Reserves for limited common elements are exactly the same as reserves for regular common elements and apply to those items in the manner dictated by the Declaration

<u>Account Name</u>	<u>EST</u>	<u>ESTM REPL</u>	<u>Y/E 2009</u>	<u>REMAIN FUNDS</u>	<u>REMAI</u>	<u>FULLY</u>	<u>PARTIAL</u>		
	<u>LIFE</u>	<u>COSTS</u>	<u>AMOUNT</u>	<u>NEEDED</u>	<u>EXPECT</u>	<u>FUNDED</u>	<u>MONTHLY</u>	<u>FUNDED</u>	
						<u>AMOUNT</u>		<u>AMOUNT</u>	
82100 Painting Reserve	7YRS	\$65,000	20,000	45,000	5	\$ 9,000	\$ 750	\$ 4,000	\$ 333
82200 Roofing Reserve	25YRS	\$125,000	45,000	80,000	23	\$ 3,478	\$ 290	\$ 2,500	\$ 208
82400 Pool Reserve	15YRS	\$18,000	6,000	12,000	12	\$ 1,000	\$ 83	\$ 800	\$ 67
82600 Major Repair Reser	1 YR					\$ 1,500	\$ 125	\$ 1,500	\$ 125
89000 Reserve Interest									
TOTALS		\$208,000	\$71,000	\$ 137,000		\$14,978	\$ 1,248	\$ 8,800	\$ 733



Give It To Me Straight

- ▶ Straight line accounting of reserve:
- ▶ (Anticipated replacement cost or deferred maintenance cost) – (anticipated beginning balance of reserve) = Remaining reserves needed.
- ▶ Remaining reserves needed \div remaining life = total amount needed for current year to fully fund.



Why don't we have a pool instead?

- ▶ Pooled reserves allow the association to have a single source of funds to pay for multiple reserves
- ▶ Like a personal bank account that you pay grocery, credit card and utility from, the Association has a single source of funds to pay the roof, roadways, etc.
- ▶ Useful when some expenses become larger than anticipated, or, the useful life was more optimistic than realistic
- ▶ Requires an affirmative vote of the majority of the membership



Reserves Continued

- ▶ Whether straight or pooled, the reserves must remain in a separate reserve account. They should not be commingled in the operating account
- ▶ It is imperative that any assessment that is earmarked as for reserves are deposited in the reserve account within 30 days of actual receipt
- ▶ Waiver of reserves is an option
- ▶ The vote for waiver of reserves requires the following message, printed larger than any other text on the proxy/ballot:
 - ▶ WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.



Unrestricted Expenses

- Reserves are not allowed to have unrestricted expense categories
- Operating may



Financial Reporting

- ▶ Condominiums are required to prepare a year end summary of the financials of the Association.
- ▶ The year end summary covers the fiscal year, and is due within 90 days after the conclusion of the fiscal year. 120 days after the end of the fiscal year the owners are required to be mailed to the owners at the address last furnished to the unit owner, or to hand deliver a copy of the same within 5 business days of a unit owner's written request for the same.
- ▶ HOAs are required to prepare the year end summary of the financials of the Association as well, the difference being they are required to provide notice to the members that the reports are available, and provide them in the same manner as an Official Records Inspection Request.



Financial Reports

- 1 of 2 types
 - Cash Receipt and Disbursements
 - Financial Statements
 - Compiled
 - Reviewed
 - Audited



What Type of Report Do We Require?

- Cash Receipts and Disbursements
 - Only available for 50 units or less or \$150,000 in revenue, or less
- Financial statements:
 - Compilation 50 units or more, with revenues of \$150,000-\$300,000
 - Reviewed 50 units or more, with revenues of \$300,000-\$500,000
 - FL CPA required
 - Audited 50 units or more, with revenues of \$500,000 or more
 - FL CPA required



Financial Statement Requirements

- Accountant or Auditor's professional report
- Balance Sheet
- Statement of Revenue and Expenses
- Statement of Changes in Fund Balances
- Statement of Cash Flows
- Notes on Financial statements
- Reserve Disclosure



Reserve Disclosure Criteria

- ▶ Minimum reserve disclosure includes:
 - ▶ Beginning balance of the reserve
 - ▶ Additions to the reserve account
 - ▶ Amount expended/transferred/removed from the reserve account
 - ▶ Ending balance
 - ▶ Annual funding




Year End Disclosure for Reserves

- ▶ Means of estimating reserves, date of estimate, allocation policy, if a waiver occurred, purposes of special assessments to unit owners and disposition of funds collected
- ▶ Method by which income and expenses were allocated on a per unit basis
- ▶ Revenue and expense total related to limited common elements when an Association responsibility



Is there any way to do a less cumbersome report?

- ▶ A majority vote of the voting interests prior to the end of the fiscal year may vote in favor of a lowered level year end report
- ~~▶ Can only be done 3 years in a row~~
- ▶ Can only be cast by the developer for the first 2 years of the Association
- ▶ Developer pays for audits and review prior to turnover
- ▶ This does not waive the preparation of the year end financial report



*“People never lie so much as after a hunt,
during a war or before an election.”*

-Otto von Bismarck

Elections



The Campaign

- ▶ Notice:
 - ▶ 2 notices must be sent via mail, hand delivery or electronic transmittal if so agreed by the members
 - ▶ Notice #1 must be sent 60 days prior to the election date
 - ▶ It sets forth the name and address of the Association
 - ▶ It states that notices of intent to run must be submitted in writing to the Association no less than 40 days prior to the election
 - ▶ Notice #2 is a notice of election and annual meeting.
 - ▶ Mailed no less than 14 and no more than 34 days prior to election and annual meeting day
 - ▶ If the number of candidate submissions necessitates an election, this 2nd notice shall provide printed ballots for the candidates along with the envelopes for return



Nominating Committees

- ▶ Are no longer allowed
- ▶ Provisions in the Declaration or Bylaws are overwritten by the statute
- ▶ Any member who is otherwise a valid candidate may run for the Board



Much Ado About Nothing

- ▶ If the terms of the current Board which are expiring are equal to or greater than the candidates that submitted written intents to run, the candidates automatically are on the Board, no election required
- ▶ Therefore, prior to the second mailing, the Association should know who the next Board will be, if candidates do not exceed openings
- ▶ Remaining vacancies are appointed by the new Board, unless the Bylaws require a runoff or other means of creation of the new Board



Information Sheets

- ▶ Candidates may submit information sheets regarding their personal information 35 days prior to the election
- ▶ The sheet may be 1 page only
- ▶ It may contain pertinent information about the candidate, such as education and qualification
- ▶ Do not edit alter or modify the sheets prior to distribution
- ▶ The candidate sheet is considered an Official Record for the Association



Those Who Are Not Eligible to Run

- ▶ 10 unit association or less may not have co-owners of a unit on the Board unless the co-owners also own another unit in the Association
- ▶ A Convicted Felon without a right restoration for 5 years is not eligible
- ▶ A person who has been suspended or removed from the Board by the Division in the past is not eligible
- ▶ A person who is delinquent in any monetary obligation due to the Association is not eligible



Form of the Ballot

- ▶ Ballot shall list all eligible candidates, alphabetically by last name
- ▶ Incumbent candidates may not be declared incumbent
- ▶ No Write ins
- ▶ No voter signature space
- ▶ No discernable difference in color or appearance for the ballots (they are meant to be anonymous)
- ▶ Each owner receives:
 - ▶ an outer, pre-addressed envelope to Association, containing a space for the name, unit ID and signature of the unit owner
 - ▶ an inner, blank envelope
 - ▶ a ballot



Voting

- ▶ The owner marks the ballot
- ▶ Closes the unmarked inner envelope with the ballot inside. An owner of multiple units may include multiple inner envelopes in one outer envelope.
- ▶ Signs and identifies the outer envelope
- ▶ Sends the whole envelope to the Association
- ▶ Individuals needing assistance due to disability may request Association or unit owner assistance in vote casting
- ▶ Once received no ballot is rescinded or changed
- ▶ Ballots are opened at the election meeting only
- ▶ Only 20 percent of eligible voters must cast ballots in order to deem the election valid
- ▶ Ballots and inner outer envelopes must be available at the meeting for personal votes



The Vote Counters

- ▶ Votes must be counted by an impartial committee appointed by the Board
- ▶ No Board members or their spouses, no candidates or their spouses
- ▶ Signature and unit ID is checked against the voter list, checking off those that vote as they go along
- ▶ Defects causing a rejection of the outer envelope are: unsigned outer envelope, double votes, missing identification



The Vote Counters

- ▶ After all the outer envelopes are checked off/discarded the outer envelopes are opened
- ▶ The inner envelopes are opened and the ballots are counted
- ▶ More than 1 ballot in any inner envelope spoils the bunch
- ▶ Tabulation of the votes concludes with the candidates with the most votes winning the director seats in order
- ▶ All ballots and envelopes, discarded or not, are maintained as record of the Association for 1 year
- ▶ Tie = Runoff in no more than 21 days and no less than 30 days



Alternative Election Procedures

- ▶ The Bylaws of the Association may dictate, or be amended to dictate, alternative voting procedures



Terms of the Elected

- ▶ Board terms shall expire at the next annual meeting
- ▶ Exceptions to expiration are Bylaws that allow for 2 year terms.
- ▶ They can be staggered or simply 2 year straight terms
- ▶ Limitation on service for more than 8 consecutive years, unless, 2/3's of the membership vote you in, a/k/a the FDR exception



Post Election

- Challenges to the election must be raised in 60 days
- After 60 days the election is presumed valid without notice of contest
- Within 90 days newly elected members must attend a certification class, or submit a certification in writing that he or she understands the governing documents and will faithfully discharge his or her fiduciary duty
- Certification is not required for subsequent terms
- Failure to do either creates a suspension of the Board member until they comply



Electronic Voting

- ▶ Electronic voting via internet based voting systems may be utilized
- ▶ Each owner must consent to the online voting
- ▶ The Association must provide the owner a method of authentication of identity, a method of secret balloting, a method of confirmation of communication with the systems, a method of storage of the votes for review and counting, an official record must be generated, and the votes must be secure up to the date of the election
- ▶ Owners must have a vote receipt, date time or submission and ID
- ▶ Multiple services have begun to be offered for electronic voting that facilitate these requirements



“Nearly all men can stand adversity, but if you want to test a man's character, give him power.” -Abraham Lincoln

Board Power and Duties



Fiduciary Duty

- ▶ Directors and officers owe a fiduciary duty to the members of the Association
- ▶ A fiduciary duty means that the interest of the Association are always held ahead of the personal interests of the individual director
- ▶ The directors must discharge their duties in good faith
- ▶ The directors are held to the ordinarily prudent person standard and in the manner they reasonably believe to be in the best interest of the Association



Powers of the Association

- ▶ Enter into contracts
- ▶ Sue or be sued with regard to exercise of its powers
- ▶ Institute, settle or appeal actions on behalf of the unit owners concerning matter of common interest
- ▶ Make and collect assessments
- ▶ Lease Common Elements
- ▶ Maintain Common Elements
- ▶ Repair and Replace Common Elements
- ▶ Acquire Title to Real and Personal Property



More Powers of the Association

- ▶ Purchase land and recreational leases upon membership approval
- ▶ Inspect units and adjoining Common Elements
- ▶ Make repairs to the Common Elements adjoining a unit
- ▶ Repair and remediate mold, mildew and other deterioration in an abandoned unit
- ▶ Turn on the utilities in an abandoned unit
- ▶ Take steps to preserve, maintain and protect a unit and adjoining Common Elements



Acquisition and Maintenance of Units

- ▶ Unless outright restricted in the governing documents, the Association may purchase units in the condominium and lease, sell, mortgage, or otherwise convey them
- ▶ The Association has a statutory right to purchase units at a foreclosure sale
- ▶ The Association may enter abandoned units and repair the unit, as well as seek receivership of the unit from a court
- ▶ To be deemed abandoned the unit must either be subject to a foreclosure action with no tenant appearance for 4 continuous weeks, or, no tenant residence in the unit for 2 consecutive months without prior written notice to the Association
- ▶ Once established as abandoned, the court may appoint a receiver which allows for the leasing of the abandoned unit and offset of expenditures




Tenancy Review

- ▶ With approval language set forth in the Declaration, the Association may charge an application fee of \$100 per applicant
 - ▶ husband/wife or parent/dependent child are considered 1 applicant
- ▶ The Association may require leases to adhere to strict guidelines related to criteria for approval such as felon/sex offender rejection, delinquent owner rejection and a handful of other criteria, if explicit in the Declaration
- ▶ The Association may require leases contribute 1 month of rent into escrow for damage to common elements, if provided by the Declaration



Rules and Regulations

- ▶ The Board may adopt Rules and Regulations regarding the use of the Common Elements consistent with such language as is present with the Declaration
- ▶ This adoption frequently includes Rules and Regulations regarding:
 - ▶ Parking
 - ▶ Pool and Recreation Facility
 - ▶ Hours of Common Element usage
 - ▶ Seasonal and annual displays
 - ▶ Means of submitting requests for Board answers to questions of unit owners



“The biggest mistake regarding record keeping is not writing things down or not remembering where you wrote it down.” -David Mellem

Official Records Obligations and Duties



Official Records: What are they?

- Official records are listed at 718.111(12) and 720.303(4)
- List in total:
 - 1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. [718.301](#)(4).
 - 2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.
 - 3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.
 - 4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.
 - 5. A copy of the current rules of the association.
 - 6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.



Official Records Continued

- ▶ 7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.
- ▶ 8. All current insurance policies of the association and condominiums operated by the association.
- ▶ 9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.
- ▶ 10. Bills of sale or transfer for all property owned by the association.


Official Records Continued

- ▶ 11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. [718.501\(1\)\(d\)](#). The accounting records must include, but are not limited to:
 - ▶ a. Accurate, itemized, and detailed records of all receipts and expenditures.
 - ▶ b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.
 - ▶ c. All audits, reviews, accounting statements, and financial reports of the association or condominium.
 - ▶ d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.
- ▶ 12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b)



Official Records Continued

- 13. All rental records if the association is acting as agent for the rental of condominium units.
- 14. A copy of the current question and answer sheet as described in s. [718.504](#).
- 15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.
- 16. A copy of the inspection report as described in s. [718.301](#)(4)(p).
- 17. Bids for materials, equipment, or services.



How long do we have to lug this box around?

- ▶ Official Records are required to be maintained in state for 7 years minimum
- ▶ They are made available to a unit owner
 - ▶ within 45 miles of the property, or,
 - ▶ In the county where the property is located



What Does an Inspection Look Like?

- ▶ An owner, or their authorized representative, makes a request to the Association to inspect the records
- ▶ If the Association adopts reasonable Rules and Regulations before the request it can detail the number times in a month, time frames for inspection, specificity of the request and quality of life details related to record inspection requests
- ▶ The Association must make available the requested records within 10 business days of receipt of the request
- ▶ Unit owners have the right to make or obtain copies of the official records
- ▶ The Association may charge actual costs for copies



What Does an Inspection Look Like?

- ▶ Pro Tip: Keep a representative of the Association in the room during the inspection
- ▶ In 2019 Official Records may be available online or to be viewed and printed “on a computer screen”
- ▶ Owners may use a smart phone, scanner, or otherwise make an electronic copy of the documents without using the Association’s electronics



More About That Computer Screen

- ▶ By January 2019 an association managing a condominium of 150 or more units shall post digital copies of the following on its website:
 - ▶ The Declaration.
 - ▶ The Bylaws and Articles
 - ▶ The Rules
 - ▶ All executory contracts or documents to which the Association is a party
 - ▶ All bids in excess of \$500.00
 - ▶ The Annual Budget
 - ▶ The Financial Report
 - ▶ Director certifications
 - ▶ Any Contract that is between the association and the director, officer or corporation.
Conflict of interest type documents



More About That Computer Screen

- ▶ Notices of any unit owner meeting and the agenda of the meeting 14 days in advance
- ▶ Any document to be considered at the aforementioned unit owner meeting
- ▶ Notice of any Board meeting with agenda, posted no later than the date required for the meeting
- ▶ The Association may not post anything on the Association website that is not allowed to be accessible to owners...
 - ▶ But if it does, there is currently no liability for doing so under the statute



Failure to Allow Inspection

- ▶ Failure to provide records within 10 working days after receipt of a written request creates a rebuttable presumption that the Association failed to comply with the statute
- ▶ Damages of \$50 per day up to 10 days may apply
- ▶ The DBPR is the entity that resolves disputes related to Official Records requests and can even lead to arbitration




What Is Not Included In the Records?

- ▶ Attorney client privileged documents. Records prepared by or at the direction of the Association's attorney.
 - ▶ This is limited though to matters which are legal conclusions, strategies or legal theories, prepared for civil, administrative, or criminal litigation
- ▶ Personnel records are not reviewable
 - ▶ This includes payroll information, health, discipline and insurance documents
- ▶ Medical Records of Unit Owner, SS numbers, Drivers Licenses, Credit cards, email addresses and fax numbers (unless consent to receive notice by this method is provided by the owner), emergency contact information
- ▶ Addresses other than the notice address
- ▶ Security measures and passwords, software and operating systems used to manipulate data, not the data itself



Owner Rosters

- ▶ The Association may publish a unit owner directory at the direction of the Board
- ▶ This directory can include names, addresses and phone number
- ▶ Any owner may opt out, but must do so in writing



“Everything is going to be fine in the end. If it's not, it's not the end.” - Volkswisheit

➔ Stick around for the most common legal traps that new boards fall into: 7 Deadly Sins