

Continuing Education for Community Association Managers



NEW

Rule Change Reduces Required Total Continuing Education to Only 15-Hours! (61E14-4.001)

THIS EDITION INCLUDES:

- ◆ **Collections, Liens, and Foreclosures: Handling Delinquent Monies**
- ◆ **Birds, Bats, Bees, Bugs, and Beasts: Pest Control Services for Community Associations**
- ◆ **Policies & Procedures: Navigating Through Human Resources Issues**
- ◆ **Maintenance/Capital Expenditures: A Reserve Schedule Perspective**
- ◆ **2019 & 2020 CAM Legal Update**
(Legal Updates Combined into One 3-HR Course)



Rule Change Reduces Required Total Continuing Education to Only 15 Hours!

Dear Students,

The Community Association Managers Council has approved a change to F.A.C. 61E14-4.001 reducing the number of continuing education hours required to renew CAM licenses.

See the newly revised rule below which became effective August 15, 2019.

61E14-4.001 Continuing Education Renewal Requirements.

(1) All community association manager licensees must satisfactorily complete a minimum of 15 hours of continuing education per biennial renewal cycle. Each hour shall consist of 50 minutes of student involvement in approved classroom, correspondence, interactive, distance education or internet courses. No license shall be renewed unless the licensee has completed the required continuing education.

Good News!!!

This edition of our CAM Continuing Education book contains 15-Hours of **newly** approved continuing education courses needed to renew your CAM License!

Courses inside this edition include:

- ◆ 3HR - CAM Legal Update (2019 & 2020 Legal Updates combined)

PLUS FOUR NEW 3HR SPECIALTY COURSES:

- ◆ 3HR - Collections, Liens and Foreclosures: Handling Delinquent Monies
- ◆ 3HR - Birds, Bats, Bees, Bugs, and Beasts: Pest Control Services for Community Associations
- ◆ 3HR - Policies & Procedures: Navigating Through Human Resources Issues
- ◆ 3HR - Maintenance/Capital Expenditures: A Reserve Schedule Perspective

We hope you enjoy these new courses and would like to thank you for choosing Bert Rodgers Schools!



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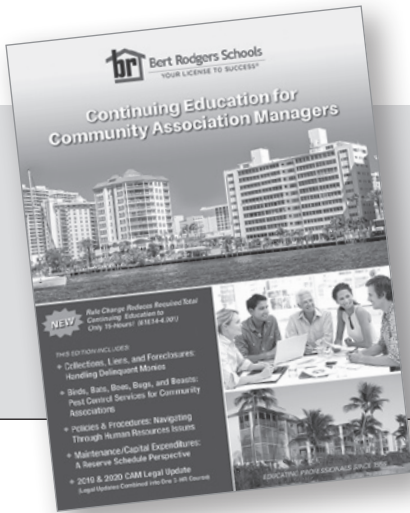
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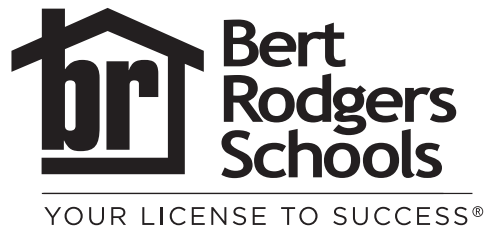
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Continuing Education for Community Association Managers

Edition 20



Everything you need is in this book and online!



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YOUR LICENSE TO SUCCESS®

Continuing Education Requirements For Florida Licensed Community Association Managers

Community Association Managers must complete 15 hours of continuing education during each 2-year license cycle. The license renewal deadline is September 30th of even years. Courses must be approved by the Regulatory Council for Community Association Managers.

Subject matter must include:

- 3 hours on new laws and rules presented as a Legal Update
- 3 hours on Insurance and Financial Management topics
- 3 hours on the Operation of the Community Association’s Physical Property
- 3 hours on Human Resource topics
- An additional 3 hours of instruction on topics directly related to the management or administration of community associations

Note: If your license became effective within 24 months of the current renewal deadline, you are not required to complete continuing education until the end of your next license period.

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NOTE: Our courses are also available online at www.BertRodgers.com

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Collections, Liens, and Foreclosures: Handling Delinquent Monies

Part I: Liability of Members to Pay Assessments

Part II: Identifying Delinquent Members

Part III: Development and Implementation of an Association Collection Policy

Part IV: Filing and Foreclosing Claims of Lien

Part V: Foreclosing the Claim of Lien

INTRODUCTION AND OVERVIEW

This course is designed to provide community association managers with an understanding of the process of identifying delinquent members (including financial institutions such as banks that have acquired membership) and collecting their outstanding balances. It explores the development and implementation of a uniform association collection process, including in-house procedures and the use of legal services. The course describes the statutory requirements that apply to community associations in the process of seeking to collect from delinquent members and/or lessees and for filing and foreclosing claims of liens. Upon successful completion of Collections, Liens, and Foreclosures, the student will receive four CAM CE credit hours in the category of Insurance and Financial Management (IFM) or Other (ELE).

As we know, associations require an adequate cash flow, primarily from assessments (both regular

and special), to satisfy their financial obligations, including paying bills and funding mandatory reserves. The failure to do so in a timely manner can result in legal action by service providers and lenders to collect outstanding balances, loss of credit worthiness, and unwillingness of vendors to provide essential services. In extreme cases the association can be forced into receivership.¹ If the receiver is unable to facilitate the association's return to sound financial health, the association, upon petition of its creditors and/or members, could be terminated or dissolved. Dissolution of an association under such adverse conditions can result in a significant financial loss to its members, as well as the loss of their residential or investment property. This course will explore the methods and best practices that community associations can implement to help prevent these dire consequences from occurring.

¹In law, receivership is the situation in which an institution or enterprise is being held by a receiver, a person placed in the custodial responsibility for the property of others, especially in cases where a company cannot meet its financial obligations or enters bankruptcy.

DEFINITIONS OF COMMON TERMS

Accounts receivable: money which is owed to an association by its members.

Bad debt: accounts receivable that will likely remain uncollectible and written off as a loss. An association will typically include an estimated amount (allowance) for bad debt as an expense in its annual budget.

Collection: a deliberate attempt by a community association to collect a financial obligation that has become past due.

Deed in lieu of foreclosure: a formal agreement, entered into by a mortgagor (borrower) and mortgagee (lender), in which the mortgagor deeds the collateral property (the home) back to the mortgagee (the lender) in exchange for the release of all obligations under the mortgage.

Estoppel certificate: a signed statement of a member's current balance or status in which the association asserts that the information is correct.

Financial obligation or debt: an obligation to pay money to another party.

Foreclosure: a legal process in which one party attempts to recover the balance of a loan from a borrower who has stopped making payments to the lender, by forcing the sale of the asset used as the collateral for the loan. An association may also initiate a legal action to foreclose a claim of lien against a delinquent member under certain circumstances.

Grace period: a period of time immediately following the deadline for an obligation during which a late fee, or other action that would have been taken as a result of failing to meet the deadline, is not levied, provided that the obligation is satisfied during the grace period.

Late fee: a fee levied by the association, based on its governing documents and limited to the maximum amount allowed by statute, on a member who has failed to pay an assessment or maintenance fee within the period of time required by the association. It is also known as an administrative late fee.

Lien or claim of lien: the legal claim of one person² upon the property of another person to secure the payment of a debt or the satisfaction of an obligation. An association may place a lien on a unit or parcel for all unpaid assessments, and other monies due.

NSF or non-sufficient funds fee: a term used in the banking industry to indicate that a check cannot be honored because insufficient funds are available in the account on which the check was drawn. An NSF check is often referred to as a bad check, returned check, or bounced check. Typically, the bank levies the fee on the association and the association, in turn, levies the fee, in the exact or different amount, depending on its policy, on the member.

Past due: an amount of money owed past the payment due date.

Selective enforcement: a method of policy or rule enforcement that occurs when an association acts arbitrarily by enforcing some covenants, rules, or regulations but not enforcing others, or by basing the decision to enforce or not enforce a policy, covenant, rule, or regulation, upon the identity of the member.

Title: a legal document that establishes ownership of a piece of real estate.

²For legal purposes, "person" is a natural person or an artificial entity such as a corporation, company, partnership, firm, association or society.

I. LIABILITY OF MEMBERS TO PAY ASSESSMENTS

Condominium

A condominium unit owner, regardless of how the unit is titled or has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while they are the unit owner. Additionally, a unit owner is jointly and severally³ liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice⁴ to any right the owner may have to recover from the previous owner the amounts paid by the owner. The term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure.

The liability of a first mortgagee, such as a bank or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title, to the association, is limited to the **lesser** of the unit's unpaid common expenses and regular periodic assessments which accrued or came due during the **12 months** immediately preceding the acquisition of title and for which payment in full has not been received by the association **or one percent** of the original mortgage debt. This provision applies only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder⁵ of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee. This provision does not apply if the mortgage was recorded prior to April 1, 1992.

The person acquiring title is required to pay the amount

owed to the association within 30 days after transfer of title. Failure to pay the full amount when due entitles the association to record a claim of lien against the parcel and proceed in the manner as provided in the statute to collect the unpaid assessments.

Cooperative

A member, regardless of how title is acquired, including, without limitation, a purchaser at a judicial sale,⁶ is liable for all rents and assessments coming due while the member is in exclusive possession⁷ of a unit. In a voluntary transfer, such as a sale, the member in exclusive possession, is jointly and severally liable with the previous member for all unpaid rents and assessments against the previous member for their share of the common expenses up to the time of the transfer, without prejudice to the rights of the member in exclusive possession to recover from the previous member the amounts paid by the member. The liability for rents and assessments may not be avoided by waiver of the use or enjoyment of any common areas or by abandonment of the unit for which the rents and assessments are made. Rents and assessments not paid when due, bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per year. If the cooperative documents or bylaws provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of \$25 or 5 percent of each installment of the assessment for each time the payment is late.

The Cooperative Act is silent with regard to the liability of a first mortgagee, or its successor or assignee as a

³If two or more parties are jointly and severally liable for a tortious act, each party is independently liable for the full extent of the injuries stemming from the tortious act. Thus, if a plaintiff wins a money judgment against the parties collectively, the plaintiff may collect the full value of the judgment from any one of them. A tort or tortious act is a private wrong, independent of contract and committed against an individual, which gives rise to a legal liability and is adjudicated in a civil court.

⁴If a lawsuit is dismissed without prejudice, none of the rights or privileges of the individual involved is lost or waived. Dismissal without prejudice would leave the party an option to refile and is often a response to procedural or technical problems with the filing that the party could correct when filing again.

⁵Two or more persons sharing similar rights or liabilities who have joined together in a legal action.

⁶A sale of property to enforce a judgment for payment that a defendant does not or cannot fulfill. The plaintiff forces the sale by filing in court for an execution on property, which is a seizure of property by the court for the purpose of selling the property.

⁷The right of a tenant (owner/occupant) to exclude all other people from the property.

subsequent holder of the first mortgage who acquires title to a parcel by foreclosure or by deed in lieu of foreclosure, for the unpaid assessments that became due before the mortgagee's acquisition of title, to the association. In other words, the Act is silent as to whether the association must be paid in the same manner as condominiums, which, as described above, is the lesser of the unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association or one percent of the original mortgage debt, or any other amount. You should check with the association attorney if this situation arises in your association.

HOA

A parcel owner, regardless of how their title to property has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments that come due while they are the parcel owner. The parcel owner's liability for assessments may not be avoided by waiver or suspension of the use or enjoyment of any common area or by abandonment of the parcel upon which the assessments are made. A parcel owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the present parcel owner may have to recover any amounts paid by the present owner from the previous

owner. The term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present parcel owner's liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

The liability of a first mortgagee, or its successor or assignee as a subsequent holder of the first mortgage that acquires title to a parcel by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title, to the association, is the lesser of the parcel's unpaid common expenses and regular periodic or special assessments that accrued or came due during the **12 months** immediately preceding the acquisition of title and for which payment in full has not been received by the association **or one percent** of the original mortgage debt.

The limitations on first mortgagee liability apply only if the first mortgagee filed suit against the parcel owner and initially joined the association as a defendant in the mortgagee foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location that was known to or reasonably discoverable by the mortgagee.

II. IDENTIFYING DELINQUENT MEMBERS

Delinquent Member

For the purpose of this course, a delinquent member is a community association member who has a past due financial obligation to the association that has exceeded the grace period, in an amount defined by the association as requiring action to collect their outstanding debt. Delinquency may be defined differently by lenders or other financial or governmental institutions.

The Aging Report

To identify which members are delinquent at any given time requires the manager or other association official to review the association's aging report. The aging report is a periodic accounts receivable report that lists the amount owed by each member by a specified duration the money owed has been outstanding. The report is commonly formatted in columns with headings of Current, Over 30, Over 60, Over 90, Over 180 days, and Total.

If an association requires monthly payments of assessments, the report will show the amount owed for a member who has been delinquent for three months, under each of the 30-, 60-, and 90-day and total columns.

If the date of the report is after the expiration of grace period but prior to 31 days overdue, the unpaid amount, including the late fee (if authorized by the association's documents) will appear in the Current column.

The amount listed under the 90-day column heading would include the unpaid assessment plus a late fee, any interest charged on the outstanding balance, and possibly a fee imposed by the management company (if employed by the association) for preparing and sending a demand notice. The amount listed under the 60- or 90-day columns could also include legal fees and expenses charged by the association's attorney for preparing and mailing additional demand notices or other legal filings. The bottom row discloses the amount of the association's accounts receivable for each period and the total for all periods.

In addition to unpaid assessments, late and administrative fees, interest, and legal expenses,

the report could also include a bank charge to the association for an NSF check, the amount of any fines legally imposed on the member for failure to comply with the association's governing documents or rules, the cost of expenses incurred by the association in the process of performing services to the member's property to prevent damage to the common areas or another member's property, or any other legally incurred financial obligation of the member to the association.

Some aging reports provide codes or words that are used to inform management of the status of demand letters and legal actions for each delinquent member.

Let's review some of the accounts listed in **Exhibit 1, Aging Report** (below), to gain a greater understanding.

Account 102, Velez, has an outstanding balance due of \$3,750. The amount in the current column represents the monthly assessment of \$1,200, due on November 1, plus a \$50 late fee imposed after the expiration of the 15-day grace period on November 15 (the association's board had adopted a 15-day grace period). The amount is posted in the current column because

Exhibit 1, Aging Report

**Droopy Palms Condominium Association
Aged Owners Balances as of 11/30/20XX**

Acct #	Unit #	Name	Current	Over 30	Over 60	Over 90	Over 180	Total	Status
102	102	Velez	1,250	1,250	1,250	0	0	3,750	DL
104	104	Johnson	0	0	1,250	1,250	0	2,500	ADL
208	208	Torricelli	1,250	1,250	1,250	1,250	7,500	12,500	L, BF
406	406	Droopy Palms	1,250	1,250	1,250	1,250	15,000	20,000	
604	604	Robideaux	0	0	50	0	0	50	
702	702	Cho	0	1,000	50	0	0	1,050	F
808	808	Varrick Theatre	1,250	1,250	1,250	1,250	6,250	11,250	BR
901	901	First Ave. Bank	1,250	14,400	0	0	0	15,650	BA, Transfer of title-10/15/20XX
1007	901	Gonzalez	1,250	1,250	1,250	1,250	0	5,000	S
1204	901	O'Brien	1,250	1,250	1,250	1,250	0	5,000	PP
1206	901	Denis	0	-100	0	0	0	-100	
Total			8,750	22,800	8,850	7,500	28,750	66,750	

Codes:

ACC Acceleration of Assessments
ADL Attorney Demand Letter
AF Association Foreclosure Filed

BA Bank Acquired Property
BF Bank Foreclosure Filed
BR Petition in Bankruptcy
DL Association Demand Letter

F Fine
L Association Lien Filed
PP Payment Plan
S Sale Pending

it is not yet over 30 days outstanding. On December 1, that amount will appear in the "Over 30" column. The total column is the sum of the current amount due plus the amount over 30 days and over 60 days, representing the amount of each monthly assessment and late fee. The account's status is DL indicating that the association has sent a demand letter to the member.

Account 104, Johnson, has an outstanding balance due of \$2,500. The report shows that the member has paid their assessment for the current month (November), and for October. This is evident since there are zeroes in the Current and Over 30 columns. However, the member didn't pay their September and August assessments and the association's attorney has sent a demand letter (Code ADL, Attorney Demand Letter).

Account 208, Torricelli, is past due in the amount of \$12,500, representing ten months of assessments and late fees. The status column shows that the association's attorney has filed a claim of lien (Code L) and that the bank holding the member's mortgage has filed a foreclosure action (BF) because the member has become delinquent.

Account 406 is owned by the association. The outstanding balance includes the amount owned by the previous owner plus any maintenance fees that come due during the period the association owns the unit. The unit was acquired, at auction, subsequent to the foreclosure on the property initiated by the association. Logically, the association is not required to pay maintenance fees to itself. The amount owed remains as a receivable, until written off as a bad debt, or until the sale of the unit. If sold, the amount of bad debt to be written off, if any, will depend on the amount of the sale price negotiated with the purchaser, less sale related expenses.

Account 604, Robideaux, is past due \$50, the result of an unpaid late fee imposed in September.

Account 702, Cho, is past due \$1,050, from an unpaid fine (Code F) levied in October, and an unpaid late fee on the outstanding balance levied in September.

Account 901, First Avenue Bank, has an outstanding balance of \$15,650. The bank foreclosed on the property in November (Code BA, date of transfer of title - October 15, 20XX). The Condominium Act provides that the bank is limited to paying the association the lesser of twelve months of assessments or one

percent of the original mortgage. The amount due in the report represents twelve months of assessments plus the unpaid November assessment and late fee. The report does not reflect the first mortgage amount, so Droopy Palms cannot yet determine the amount it should receive. Note that, once the bank acquires title, it is required to pay assessments in the same manner as other members.

Account 1206, Denis, has a credit balance of \$100 from an overpayment of their October assessment.

Managers should review each aging report with the president, treasurer, or other board designated person to identify members who require demand letters or legal action. Prior to referring members for legal action, the manager should obtain written authorization from the appropriate board member.

The aging report is an extremely useful tool, not only to identify the status of delinquent members, but also to provide information to management of trends in the association's receivables. Managers can input the totals of each period's aging report on to a spreadsheet which can be viewed on a monthly or other regular basis to determine the amount and age of the association's receivables. Any significant increase in receivables should result in an evaluation as to whether collection policies require stricter enforcement or changes.

Managers and board members need to be mindful of the cardinal rule of debt collection, the older the debt, the more difficult and expensive it is to collect. Hence the term aging report. Uncollected debts are aging, they are getting older. The Benjamin Franklin quote "an ounce of prevention is worth a pound of cure" applies. The ounce of prevention is early identification and intervention. The pound of cure is legal expenses and/or litigation, which are certain, although the full recovery of the patient (the association) is not.

Receivables that are a year old or older are often classified as bad debt and written off as an expense to the association on its income and expense statement.

The aging report should serve to remind the CAM and the Board to act quickly and decisively to minimize the number of delinquent members and the amount of its accounts receivable.

III. DEVELOPMENT AND IMPLEMENTATION OF AN ASSOCIATION COLLECTION POLICY

Associations are best served when they have, and comply with, a uniform written collection policy that guides management with respect to in-house communication with delinquent members, levying fees, initiating collection proceedings, authorizing legal action, suspending member rights, accelerating assessments, and collecting from a member's renter.

BIAS, DISCRIMINATION, AND SELECTIVE ENFORCEMENT

Lack of such a policy can result in arbitrary decisions based upon the personal bias or relationship of an association official towards a specific delinquent member or by how the official is feeling at the time. Decisions based upon relationship, personal bias, or whim are subject to being legally challenged on the grounds of selective enforcement. Selective enforcement against a member based upon race, creed, age, color, national origin, religion, sex, marital status, familial status (having children) or physical or mental disability is illegal and can result in both civil and criminal penalties.

Creating the Policy

First and foremost, the policy must be lawful. It cannot conflict with any federal or state statute or regulation.

The Condominium Act provides that "The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws." The Cooperative Act provides that "The manner of collecting from the unit owners their shares of the common expenses shall be stated." The Cooperative Act does not describe where it shall be stated but, for our purposes, let us assume its somewhere in the association's documents or rules. The HOA Act does not include a provision referencing the authority for the manner of collection.

Consequently, some elements of an association's collection policy may be included in its formal

documents. If not included in the documents, the Board (or the members if required by the documents) must adopt policies at properly noticed meetings in which quorum requirements have been met. The members should be informed, in writing, of all policies adopted at such meetings. The Board must ensure, prior to adoption of collection related policies, through consultation with its legal counsel, that any proposed resolutions are not in conflict with state and federal laws. Additionally, the Board should periodically consult with its attorney to determine whether the collection related provisions of its association documents require amendments to conform with such laws.

Communicating the Policy

Management can excerpt the collection related sections of the documents and combine them with policies passed by the Board (or members) to create an association collection policies document or booklet to be distributed to members and placed on the association's website and/or its in-house television channel. The document can also be included in the informational package provided to new members and reviewed at an orientation session.

Reminder: Effective January 1, 2019, all condominiums with 150 or more units must have a website, as required by the Condominium Act.

Elements of the Policy

An effective collection policy includes:

- Date payments are due, grace period, and date payments are officially late
- Identification of the criteria requiring collection action to be initiated
- Description and date of initiation of any in-house correspondence with the member
- Description and date of initiation of any management firm (if applicable) correspondence with the member

- Identification, date of imposition, and quantification of any fees levied on the delinquent member
- Process to suspend certain rights of delinquent members
- Criteria to accelerate assessments of delinquent member
- Determination to collect from delinquent member's renter
- Criteria for referral to an attorney to send a demand letter
- Criteria for authorization for the association's attorney to file a claim of lien
- Criteria for authorization for the association's attorney to foreclose the lien
- Consideration of, request for, and implementation of payment plan.

Due Dates

The date regular assessments are due is determined by either the association's formal documents or by vote of the Board of Directors (unless the documents require a vote of the membership). Due dates for the payment of special assessments are determined by either the Board or the membership, as provided for in the formal documents. Due dates for the payment of fines and other outstanding monies are determined by the Board.

The Grace Period

It is important to keep in mind that if payment of an assessment is not received by the due date, the member is late in meeting their financial obligation. Most associations have grace periods, typically ranging from 5 to 30 days, established either by the formal documents or by the Board or membership. During that period, if the member is late, no formal action is taken by the association to collect the overdue amount. However, if the member does not pay before the grace period expires and is subject to an interest penalty, the penalty will often be calculated from the due date, not the date the grace period expired.

INFORMAL COMMUNICATION

It is not uncommon during the grace period for the manager or an officer to contact a member and remind them that they need to pay before the grace period expires to avoid a late fee or other negative consequence. If such a practice exists, management should ensure that it is applied uniformly and not to selected members.

The Demand Letter

An important element to be included in an association's collection policy is a clear written description of the event that triggers the initial actions to collect an outstanding debt. One might assume that the expiration of the grace period would function as such a trigger. Typically, the expiration of the grace period results in the imposition of a late fee, but may or may not result in a demand letter to the delinquent member. An effective collection policy should include a policy describing the date or time frame within which a standardized demand letter is sent to the delinquent member. For example, "The association shall send a demand letter to the member or member's representative within five business days of the expiration of the grace period." The period can be longer or shorter, depending upon the association's cash flow status, the demands on staff, or other factors. The policy should designate the entity responsible for the creation and mailing of the demand letter. If the association employs a management or accounting firm, the policy should clarify whether the firm or the association is the designated party. If the association is performing the task internally, the policy should designate the title or position of the person so designated.

The demand letter itself should be brief, include a description of the amount due, the date in which it must be received by the association or its agent, and the consequences of failure to pay the full amount owed, including any late or other fees to be imposed upon expiration of the due date stated in the letter.

Associations vary greatly in the type of demand letters they send to delinquent members. The following demand letter is typical of an association that is concerned with its cash flow and level of receivables.

Example of a demand letter

**Droopy Palms Condominium Association, Inc.
1800 Kumquat Drive
Carefree, FL 33828**

February 17, 20XX

Ms. Cecilia Spendthrift
1162 Overdrawn Rd.
Debt Is Good, CA 46211

RE: Acct. 1232, 1758 Banana Lane, Carefree, FL 33828

Dear Ms. Spendthrift:

Your maintenance fee, due on February 1 and late on February 16, has not been received by the association. The balance due, including a \$50.00 late fee, is \$1,250.00.

Please ensure that payment in full is received by the association no later than March 1, 20XX. Failure to comply will result in your account being forwarded to the association's attorney for legal action. If such action becomes necessary, you will be responsible for all legal and other collection related expenses incurred by the association. A current statement of your account is attached.

Please make your check payable to Carefree Condominium Association, Inc. Your account number must be included on the check to assure the account is properly credited.

The association's mailing address is:

1800 Kumquat Drive, Suite 125
Attention: Accounts Receivable
Carefree, FL 33828

Your cooperation is greatly appreciated.

Sincerely,
Sam "The Collector" Baxter
Manager, Accounts Receivable

c: Association Treasurer
Community Association Manager

Other associations may choose a gentler approach, especially if their policy requires more than one letter be sent before referring the delinquent member to their attorney.

Failure to Comply with Terms of Demand Letter

The policy should include a description of the action required by management if the delinquent member fails to pay the amount due in full or part.

Application of Payments

Some members will pay the amount of the past due assessment but fail to pay the amount of the late fee. The Condominium, Cooperative, and HOA Acts each include a provision describing the order of application of a payment to a member's outstanding balance. The order is as follows:

1. Interest
2. Late fees
3. Fees to the management firm (administrative fee)
4. Attorney's fees and court costs
5. Assessments (regular and special).

The Acts are silent regarding the order of application of a payment towards an outstanding fine or a

Did You Know?

Retainer agreements with attorneys specify the method of payment for collection of outstanding debts. Many attorneys do not charge an upfront fee for demand letters, oral and written correspondence, and claims of lien. Under this method, the attorney takes their fee and expenses from the money they collect from the delinquent member, up until the time they initiate foreclosure proceedings, at which point they typically charge an hourly fee. Other attorneys charge an hourly fee for service or a flat fee for each type of service provided.

service charge. We recommend you consult with the association attorney.

Late Fees

Since the late fee has priority over the assessment, the member that pays the amount of the assessment but not the amount of the late fee has an outstanding assessment balance. Some associations charge a late fee on any outstanding assessment balance, even those as low as \$25 or \$50, each payment period that the balance exists in the member's account.

If the association intends to charge a late fee on the same outstanding balance each payment period, and/or if the association intends to charge a late fee for small amounts, its written collection policy should include descriptive statements. Late fees for condominiums, cooperatives, and HOAs are limited, by statute, to \$25 or 5 percent of the assessment amount, whichever is greater, if the association's documents include a provision for the levying of a late fee. The documents may or may not describe the amount of the fee. If the documents permit a late fee, but are silent on the amount, the Board (or the members if the documents so provide) can adopt an amount not to exceed the statutory limit.

Interest Charges

The Acts also limit the charging of interest to an annual maximum of 18 percent simple interest, unless a lower rate is stated in the documents.

Acceleration of Assessments

The Condominium, Cooperative, and HOA Acts grant the association the right to accelerate assessments of a member delinquent in payment of common expenses.⁸ This means that the association, upon the failure of a member to pay an assessment on time, can declare all of the remaining budget year's assessments due and payable on the date a claim of lien is filed. This right is commonly employed with members who are frequently delinquent and require legal action to collect their outstanding balances. The collection policy should describe the criteria upon which acceleration of

⁸All expenses properly incurred by the association.

assessments is to be used. An example is as follows:

Assessments of any member who is referred to an attorney for collection of past due amounts more than once in any budget year are to be accelerated, unless the referral occurred subsequent to the final periodic assessment of the budget year.

Since assessments can only be accelerated for the remainder of the budget year, it makes no sense to initiate such action if the triggering event occurs at the end of the year. The policy described above works well for associations that collect assessments on a quarterly basis. For those that collect on a monthly basis, allowance should be made for the time it takes for the association's attorney to file a claim of lien. A more appropriate policy might provide for acceleration no later than the ninth month of the budget year.

Collection from Delinquent Members' Renters⁹

The Condominium, Cooperative, and HOA Acts provide the legal authority for the association to make a written demand to the lessee of a delinquent member, that the lessee must pay the association the rental payments due from the member, their landlord.

The association is required to mail the lessee a written notice of its demand and send a copy to the member. The lessee must begin these payments immediately and continue until the outstanding balance has been paid in full, the lessee discontinues the lease, or the member pays the outstanding balance. If the renter complies with the association's written demand, they are legally immune¹⁰ from any claim of nonpayment of rent by the member.

If the lessee has paid rent to the member prior to receiving the demand letter, they must provide written evidence of the payment to the association within 14 days of their receipt of the written demand. The lessee must make all subsequent rent payments to the

association until released from their obligation by the association, or by discontinuing their tenancy.¹¹

The renter must pay any increases in the amount of the rent if the association notifies them, in writing, at least ten days before the rent is due. The lessee's liability¹² to the association may not exceed the rent due to their landlord.

The delinquent member must provide the lessee a credit against rents due in the amount of the monies paid to the association.

The statutes exclude the association from any requirement to maintain a unit or parcel owned by a delinquent member, even if receiving rental payments from the member's tenant.

F.S. 83.40, the Residential Landlord and Tenant Act, empowers the association to sue for eviction if the lessee fails to make a required payment.

It is recommended that the association adopt a policy that requires it to initiate action to collect rent from tenants of delinquent members after a specific period of non-payment and a specified minimum amount past due.

Suspension of Right to Use Recreational and Other Common Areas

The Condominium, Cooperative, and HOA Acts empower, but do not require, an association to suspend the rights of the member, and their tenants, guests, and invitees to use the recreational and other common areas once the member is delinquent in any amount in excess of 90 days.

An affirmative vote of the Board at a properly noticed and quorumed meeting is required to suspend a member's use rights. The member, and if appropriate, the occupant, licensee, or invitee must be notified of the suspension by mail or hand delivery. The Condominium and HOA Acts provides for the suspension of rights to all units or parcels owned by

⁹The terms renter, lessee, and tenant are used interchangeably.

¹⁰A legal status wherein an individual or entity cannot be held liable for a violation of the law to facilitate societal aims that outweigh the value of imposing liability in such cases. Such legal immunity may be from criminal prosecution or from civil liability (being subject of lawsuit) or both.

¹¹A tenant is a person who occupies land or property rented from a landlord. Tenancy is possession of land or property as a tenant.

¹²The state of being responsible for something, especially by law.

the member, even if only one unit or parcel account is overdue. The suspension ends upon full payment of all outstanding monies.

If the association intends to require the Board to consider suspending the rights of delinquent members to use recreational and other common areas, a statement to that effect should be included in its written collection policy.

Suspension of Right to Vote

The Condominium, Cooperative, and HOA Acts empower, but do not require, an association to suspend the voting rights of members who are delinquent in their financial obligations to the association in excess of 90 days. The Condominium Act applies to members who are delinquent in excess of \$1,000. The Cooperative and HOA Acts applies to members who are delinquent in any amount. An affirmative vote of the Board at a properly noticed and quorumed meeting is required to impose a suspension of a member's voting rights. The Acts specifically exclude suspension for failure to pay any monetary amounts to the association from appeal to a compliance (fines) committee. This decision rests solely with the Board.

If the association intends to suspend the voting rights of delinquent members, it must include a statement to that effect in its written collection policy.

Referral to Attorney

The collection policy should clearly identify the association's criteria to refer a delinquent account to the association's attorney. The policy should include a description of the minimum outstanding debt for which legal action will be initiated and the duration of time from an in-house or management firm

demand letter deadline within which the action will be initiated. It should also identify the position of the person or persons who can authorize the referral and the position of the person or persons responsible for communicating the authorization to the association's attorney. Once again, consistent and uniform compliance with the written policy is necessary to avoid selective enforcement, bias, and/or illegal discrimination.

Payment Plans

Delinquent members sometimes request that the association grant them a payment plan to gradually pay down their outstanding debt. Typically, these members have had claims of lien and/or foreclosure actions filed against their units or parcels. In these situations, if the association is willing to negotiate with these members, a uniform policy is mostly unfeasible. Each member's financial situation is different, and determining the payment amount, as well as the regularity of payments and their duration, must be based upon the individual circumstances of the delinquent member.

However, a policy could be created that limits the number of times the association may grant a member a payment plan, as well as its power to revoke the plan upon the member's failure to conform to its terms. Payment plans typically require the member to pay future assessments on time and in full, as well as paying a set amount of the outstanding balance for a set amount of periodic payment periods.

Associations that are reluctant to foreclose on a member's property often determine that a partial payment is better than none and grant, after negotiating a mutually acceptable plan, a member's request to pay their debt over a period of time.

IV. FILING AND FORECLOSING CLAIMS OF LIENS

The Condominium and Cooperative Acts provide that a member's unit or parcel serves as collateral for assessments that are due to the association. The HOA Act provides that, when authorized by the documents, the parcel serves as collateral for assessments. An association may place a lien on a unit or parcel for all unpaid assessments, and other monies due, as provided by statute and its documents. Florida statutes provide specific requirements for a community association to follow in placing and foreclosing a claim of lien against a member's unit or parcel.

Notice of Intent to Lien

Prior to filing a claim of lien against a member's unit or parcel, the Acts require that the member be given written notice of the association's intent.

The Condominium Act requires the association to deliver to the member, by registered or certified mail, return receipt requested, and by first-class United States mail, at their last address as reflected in the records of the association if the address is within the United States, and at the address of the unit if the owner's address, as reflected in the records of the association, is not the unit address, a notice of intent to file a claim of lien, **30 days** prior to filing the claim of lien. Delivery of the notice is considered to be given upon being mailed as described above.

The Cooperative Act also requires the association to deliver a notice of intent to lien a minimum of **30 days** prior to filing a claim of lien. The notice must be delivered as follows:

- If the member's most recent address is the address of the member's unit, the notice must also be sent by certified mail, return receipt requested.
- If the member's most recent address is in the United States but is not the member's unit address, the notice must be sent by registered or certified mail, return receipt requested, to the member at their most recent address.

- If the member's most recent address is not in the United States, the notice must be sent by United States first-class mail to the member at their most recent address.

As in the Condominium Act, delivery of the notice is considered to be given upon being mailed as described above.

The notice must be in substantially the same form as is required for condominium associations.

A Notice of Intent to Lien must be in substantially the following form:

NOTICE OF INTENT TO RECORD A CLAIM OF LIEN

RE: Unit ____ of (name of association)

The following amounts are currently due on your account to (name of association), and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due (dates) \$____. Late fee, if applicable \$____. Interest through (dates)* \$____. Certified mail charges \$____. Other costs \$____. TOTAL OUTSTANDING \$____.

***Interest accrues at the rate of ____ percent per annum.**

Unlike condominiums and HOAs, a fine may not become a lien against a cooperative unit.

The HOA Act requires the association to provide a delinquent member with a written notice or demand for past due assessments as well as any other amounts owed to the association, including, but not limited to, any attorney's fees and actual costs associated with the preparation and delivery of the written demand, pursuant to its governing documents, a minimum of

45 days from the date the notice is deposited in the mail, before filing a claim of lien. The notice is required to be in substantially the same form as required in the Condominium and Cooperative Acts.

The notice is required to be sent by registered or certified mail, return receipt requested, and is to be delivered as follows:

- By first-class United States mail to the parcel owner at their last address as reflected in the records of the association, if the address is within the United States, and to the parcel owner subject to the demand at the address of the parcel if the owner's address as reflected in the records of the association is not the parcel address.
- If the address reflected in the records is outside the United States, then sending the notice to that address and to the parcel address by first class United States mail is sufficient.
- If the member resides outside of the United States, the HOA is required to send the notice only to the member's out-of-country address and parcel address by United States first-class mail.

The Claim of Lien

To be valid, a claim of lien must state:

- the description of the unit or parcel
- the name of the record owner¹³
- the name and address of the association
- the amount due
- the due dates

Before the lien is recorded, it must be signed by an officer or agent of the association, notarized, and signed by two witnesses. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment,¹⁴ as well as interest, and late fees. In condominiums and HOAs, a lien

also secures all reasonable costs and attorney fees incurred by the association in the process of collection. In a cooperative, if authorized by its documents, the lien also secures reasonable attorney fees incurred by the association incident to the collection of the rents and assessments or enforcement of the lien. Upon payment in full, the person or entity making the payment is entitled to documentation that the lien has been released.

Effective Period of Lien

The Condominium Act provides that the lien is effective for one year after the claim of lien¹⁵ was recorded unless, within that time, an action to enforce the lien is commenced. The one-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay¹⁶ resulting from a bankruptcy petition filed by a unit or parcel owner or any other person claiming an interest in the parcel.

A cooperative must begin action to enforce the lien within one year of the date it filed the lien. The one-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the member or any other person claiming an interest in the parcel.

An HOA has five years in which to enforce the lien.

Notice of Contest of Lien

The Condominium, Cooperative, and HOA Acts provide that an owner or the owner's agent or attorney may contest a recorded lien against their unit or parcel by filing a "Notice of Contest of Lien" with the clerk of the court. The notice must substantially be in the following form:

NOTICE OF CONTEST OF LIEN

TO: (Name and address of association)

¹³The entity named in the public records as the owner (titleholder) of a particular property. Also referred to as owner of record or stockholder/shareholder of record.

¹⁴The written determination of a lawsuit by the judge who presided at trial (or heard a successful motion to dismiss or a stipulation for judgment), which renders (makes) rulings on all issues and completes the case unless it is appealed to a higher court. It is also called a final decree or final decision.

¹⁵Usually, to obtain a court judgment in favor of the plaintiff

¹⁶Suspension or postponement of judicial proceedings

You are notified that the undersigned contests the claim of lien filed by you on __, (year) , and recorded in Official Records Book __ at Page __, of the public records of __ County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this __ day of __, (year).

Signed: (Owner or Attorney)

The clerk must record the notice of the contest and mail a copy to the association at its official address, by certified mail, return receipt. The association is considered served upon mailing of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien. If the association does not take action within the 90-day period, the lien is void. The 90-day period shall be extended for any period that the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the member or by any other person claiming an interest in the unit or parcel.

Release of Lien

Once a lien is satisfied,¹⁷ the association files a Release of Lien form in substantially the form in the box.

The forms for cooperatives and HOAs are the same except references to condominium are changed to either cooperative or HOA, as appropriate.

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of \$___, hereby waives and releases its lien and right to claim a lien for unpaid assessments through __, (year), recorded in the Official Records Book __ at Page __, of the public records of __ County, Florida, for the following described real property:

UNIT NO. __ OF (NAME OF CONDOMINIUM), A CONDOMINIUM AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK __, PAGE __, OF THE PUBLIC RECORDS OF __ COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID CONDOMINIUM.

(Signature of Authorized Agent) (Signature of Witness) (Print Name) (Print Name)

(Signature of Witness) (Print Name)

Sworn to (or affirmed) and subscribed before me this __ day of __, (year), by (name of person making statement). (Signature of Notary Public) (Print, type, or stamp commissioned name of Notary Public) Personally Known __ OR Produced __ as identification.

¹⁷Satisfaction of a lien is a legal record by which a party, in whose favor a judgment was rendered, declares that they have been satisfied and paid.

V. FORECLOSING THE CLAIM OF LIEN

Making the Decision to Foreclose and Acquire the Property

It is important for an association's board of directors to understand the ramifications of a decision to foreclose on and acquire a unit or parcel. If a bank or other third party is holding a mortgage on the property, and the association forecloses and acquires the property, it becomes liable for the amount of the lien or liens, if more than one mortgage or lien has been filed by other creditors of the previous member.

There may also be a tax lien on the property. A tax lien is imposed by law upon a property to secure the payment of taxes. It may be imposed for delinquent taxes owed on real property or personal property, or as a result of failure to pay income taxes or other taxes. It can be purchased by an investor and interest can be earned. If the property is sold, then the investor would recover their invested money, plus interest due after the lien was purchased. If the property is not sold, the tax lien holder has priority over all other lienholders to own the property. A tax lien certificate is a certificate of claim against property that has a lien placed upon it as a result of unpaid property taxes. The certificate enables the investor to collect unpaid taxes plus the prevailing rate of interest applicable to such certificates, which can range from 8 percent to more than 30 percent, depending on the jurisdiction.

Typically, an association decides to foreclose on a property because it intends to acquire the property for investment purposes, including leasing the unit or parcel to offset the loss of assessment income, and perhaps making a profit if the rental payment exceeds expenses. If there are no mortgages or liens,¹⁸ it is relatively simple to foreclose and acquire the property, given that there are no higher bidders at the auction.¹⁹ The association could then renovate the property and either sell it, as soon as possible, or hold it with the objective of making a substantial profit on the sale

at some future date. The Board may also rent the property during its period of ownership. One of the pitfalls in acquiring a foreclosed property may be a lack of knowledge of its condition. Associations have not uncommonly foreclosed and acquired a unit or parcel only to find that it is in extreme disrepair, missing appliances, bathtubs and sinks, with mold infested walls and ceilings. The Board must then decide whether to assume the cost of renovation or seek to sell the property in its current condition at a lesser amount.

A mortgaged property is more problematic. The Board must assume that the bank intends, at some point, to foreclose its lien. If the association spends money to renovate the unit for the purpose of renting or investment, it would only make it more beneficial for the bank to foreclose on the appreciated property. Typically, associations with liens on mortgaged properties will not foreclose their lien and simply wait for the bank or finance company to foreclose. In this manner, a condominium or HOA is ensured of receiving the minimum amount of money established by statute from the bank subsequent to foreclosure. Another possibility is the property could be sold by the member, typically as a short sale,²⁰ and the association could receive substantially more than its legal minimum or even, although unlikely, gain full reimbursement of the outstanding balance due. Although it may not appear advantageous to an association to foreclose on a mortgaged property, some boards have opted to do so. Some boards choose to foreclose because they are outraged that a delinquent member and their family continues to reside at the residence without paying their assessments.

Foreclosing the Lien Condominium

A condominium association may bring an action to foreclose a lien for assessments in the manner a

¹⁸Some members who are delinquent in paying their mortgage or mortgages continue to pay their assessment fees to the association.

¹⁹A foreclosure auction is an event wherein foreclosed properties are being offered for sale and where interested buyers can bid for the properties they want.

²⁰A sale of real estate that generates proceeds that are less than the amount owed on the property

mortgage of real property is foreclosed and may also bring an action to recover a money judgment²¹ for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments. No foreclosure judgment may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. The notice must be in substantially the form in the box below.

If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association cannot recover attorney's fees or costs.

DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the (type of assessment) assessment to (name of association). The association intends to foreclose the lien and collect the unpaid amount within 30 days of this letter being provided to you.

You owe the interest accruing from (month/year) to the present. As of the date of this letter, the total amount due with interest is \$__. All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to (insert name, addresses, and telephone numbers of association representative).

The notice must be given by delivery to the unit owner, or by certified or registered mail, return receipt requested, addressed to the unit owner at their last

known address. Upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements are satisfied if the unit owner records a notice of contest of lien as described above. The notice requirements do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court, if the rights of the association would be affected by such foreclosure, and if actual, constructive²² or substitute²³ service of process has been made on the unit owner.

If the unit owner remains in possession of the unit after a foreclosure judgment has been entered, the court, in its discretion, may require the unit owner to pay a reasonable rental for the unit. If the unit is rented or leased during the pendency²⁴ of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver are required to be paid by the party which does not prevail in the foreclosure action.

The association has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage, or convey it.

A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

Cooperative

Liens for rents and assessments may be foreclosed by a lawsuit brought in the name of the association, in like manner as a foreclosure of a mortgage on real property. In any foreclosure, the member is required to pay a reasonable rental for the cooperative parcel, if provided in the cooperative documents, and the plaintiff in the foreclosure is entitled to the appointment of a receiver to collect the rent. The association has the power,

²¹A court order that awards the plaintiff a sum of money

²²Constructive service is notice delivered through publication in a newspaper.

²³Substituted service is personal delivery to the residence of the respondent or notice given to an agent of the respondent.

²⁴The state or time of being pending, undecided, or undetermined, as of a lawsuit awaiting settlement

unless prohibited by the cooperative documents, to bid on the cooperative parcel at the foreclosure sale and to acquire and hold, lease, mortgage, or convey it. A lawsuit to recover a money judgment for unpaid rents and assessments may be maintained without waiving the lien securing them.

HOA

An HOA must provide 45 days' written notice of intent to foreclose. If, after service of a summons²⁵ on a complaint to foreclose a lien, the parcel is not the subject of a mortgage foreclosure or a notice of tax certificate sale, the parcel owner is not a debtor in bankruptcy proceedings, or the trial of, or trial docket²⁶ for the lien foreclosure action is not set to begin within 30 days, the parcel owner may serve and file with the court a qualifying offer (described below) at any time before the entry of a foreclosure judgment. The parcel owner must provide a copy of the filed qualifying offer to the association's attorney by hand delivery obtaining a written receipt, or by certified mail, return receipt requested.

A qualifying offer means a written offer to pay all amounts secured by the lien of the association plus amounts accruing during the pendency²⁷ of the offer. A qualifying offer must be substantially in the form provided in the HOA Act and must be notarized. The member may make only one qualifying offer during the pendency of a foreclosure action. If a parcel becomes the subject of a mortgage foreclosure or a notice of tax certificate sale while a qualifying offer is pending, the association can elect to void the qualifying offer. If the parcel owner becomes a debtor in bankruptcy proceedings while a qualifying offer is pending, the qualifying offer becomes void.

The member's filing of the qualifying offer with the court stays the foreclosure action for the period stated in the qualifying offer. That is, the HOA cannot take further action to foreclose, nor can it charge any legal fees during the period of the stay other than the costs

of a mortgage foreclosure, a bankruptcy proceeding, or other debt proceeding. The stay may not exceed 60 days following the date it was served and no sooner than 30 days before the date of trial, arbitration, or the beginning of the trial docket, whichever occurs first. This permits the member to pay the qualifying offer to the association plus any amounts accruing during the pendency of the offer.

If the member fails to adhere to the terms of the qualifying offer, the association can immediately move to foreclose. At foreclosure, if the association has adhered to all procedures, the association may collect reasonable attorney's fees and court costs. By statute, an HOA may purchase the lot or home at foreclosure.

Expediting Bank Foreclosure

Banks holding first mortgages of delinquent association members are often slow, from the association's viewpoint, to file for foreclosure and to seek final judgement. The longer the foreclosure proceedings continue, the more the delinquent member owes the association for unpaid assessments, late fees, and legal expenses.

The Condominium Act includes a provision that permits associations, in some cases, to move stalled mortgage foreclosure cases by filing for an expedited order to show cause. An order to show cause is a type of court order that requires one or more of the parties to a case to justify, explain, or prove something to the court. Courts commonly use orders to show cause when the judge needs more information before deciding whether or not to issue an order requested by one of the parties. In cases involving an association seeking a bank foreclosure on a delinquent member's property, the association is asking the judge to request justification for the bank's failure to seek a final judgement.

If a junior lienholder²⁸ (including a condominium, cooperative or homeowners' association) requests an order to show cause to be entered, the judge is

²⁵A summons is a paper issued by a court informing a person that a complaint has been filed against them. It may be served by a sheriff or other authorized person for service of process, called a process server.

²⁶A calendar or list of cases for trial.

²⁷Period from which the foreclosure has been filed until it is settled. In this case, it may refer to the acceptance of the owner's offer by the association and the owner's payment of all monies due.

²⁸An obligation, such as a second mortgage, that is subordinate in right or lien priority to an existing lien on the same realty. A junior lienholder has the right to initiate foreclosure, but the senior lienholder is paid first.

required to immediately review the request and the court file in chambers and without a hearing.

If it can be proven that a bank is deliberately stalling the foreclosure, attorneys for the association can ask for a motion to compel and have the court make the foreclosure immediate.

SUMMARY

It is the intent of this course that managers understand and appreciate the following concepts, practices, and requirements discussed in the text:

- Associations require an adequate cash flow, primarily from assessments to satisfy their financial obligations, including paying bills and funding mandatory reserves.
- The failure to ensure an adequate cash flow can result in legal action by service providers and lenders to collect outstanding balances, loss of credit worthiness, and unwillingness of vendors to provide essential services. In extreme cases the association can be forced into receivership and/or dissolution of the association.
- The older the debt the more difficult it is to collect.
- Community association members are legally liable for all assessments which come due during the period they own (condominiums and HOAs) or have exclusive possession (cooperatives) of their units or parcels. They are also jointly and severally liable with the previous member for all unpaid assessments that came due up to the time of transfer of title.
- The liability of a first mortgagee, such as a bank, that acquires title by foreclosure or deed in lieu of foreclosure is limited by the Condominium and HOA Acts.
- The aging report is an extremely useful tool, not only to identify the status of delinquent members, but also to provide information to management of trends in the association's receivables.
- Associations are best served when they have, and comply with, a uniform written collection policy that guides management with respect to in-house communication with delinquent members, levying fees, initiating collection proceedings, authorizing legal action, suspending member rights, accelerating assessments, and collecting from a member's renter.
- The collection policy cannot conflict with any federal or state statute or regulation.
- The collection policy should be assembled into a document or booklet and distributed and/or made available to members.
- The initial demand letter should be brief, include a description of the amount due, the date in which it must be received by the association or its agent, and the consequences of failure to pay the full amount owed, including any late or other fees to be imposed upon expiration of the due date stated in the letter.
- The Condominium, Cooperative and HOA Acts provide that a member's unit or parcel serves as collateral for assessments that are due to the association. An association may place a lien on a unit or parcel for all unpaid assessments, and other monies due, as provided by statute and its documents. Florida statutes provide specific requirements for a community association to follow in placing and foreclosing a claim of lien against a member's unit or parcel.
- Florida Statutes require community associations to use, in a substantially similar form, the form described in the applicable statute, to file a notice of intent to record a claim of lien, the release of lien, and to foreclose a lien.
- Members have a right to contest a lien, using a form substantially similar to the form described in the applicable statute.
- Associations must provide, depending upon the statute, the delinquent member with a specific number of days written notice prior to filing a claim of lien and an action to foreclose.
- Associations should consider the pitfalls associated with foreclosing on and acquiring a property that has an existing first mortgage.
- Within ten business days after receiving a written or electronic request from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, the association is required to issue an estoppel certificate containing information and in substantially the same form as described in the statutes.
- The Condominium Act provides a means to expedite a bank foreclosure.



Collections, Liens, and Foreclosures

FINAL EXAMINATION

1. Which of the following is true of a condominium unit owner's liability?

- a. A unit owner is jointly and severally liable with the successor unit owner for all unpaid assessments that came due up to the time of transfer of title.
- b. A unit owner is liable for all assessments which come due while they are the unit owner only if their title has been acquired by purchase at a foreclosure sale.
- c. A unit owner's liability is with prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.
- d. A unit owner is liable for all assessments which come due while they are the unit owner if their title has been acquired by deed in lieu of foreclosure.

Source: *Liability of Members to Pay Assessments/Condominium*

2. Which of the following is true based on Droopy Palm's Aging Report?

- a. Account 406 owes \$20,000 and is in the process of foreclosure initiated by the association.
- b. Account 604 is past due \$50, the result of an unpaid late fee imposed in September.
- c. Account 901 must pay the association its total amount owed of \$15,650.
- d. Account 1206 is delinquent over 30 days in the amount of \$100.

Source: *The Aging Report*

3. Which of the following is not an element of an effective collection policy?

- a. Compliance with the treasurer's directive to begin collection proceedings against a dissident member.
- b. Criteria for referral to an attorney to send a demand letter.
- c. Identification, date of imposition, and quantification of any fees levied on the delinquent member.
- d. Criteria for referral to an attorney to send a demand letter.

Source: *Development and Implementation of an Association Collection Policy/Elements of the Policy*

4. Which of the following is true of the grace period?

- a. It typically ranges from 5 to 30 months.
- b. It is established either by the formal documents or by the treasurer.
- c. During the grace period, if the member is late, no formal action is taken by the association to collect the overdue amount.
- d. If the member does not pay before the grace period expires and is subject to an interest penalty, the penalty will often be calculated from the expiration of the grace period.

Source: *Development and Implementation of an Association Collection Policy/The Grace Period*

5. Which of the following is the correct order of application of payments to a member's outstanding balance?

- a. interest, late fees, fees to the management firm, attorney's fees, and assessments
- b. assessments, attorney's fees, fees to the management firm, late fees, and interest
- c. attorney's fees, assessments, late fees, interest, and fees to the management firm
- d. social club dues, fines, service charges, assessments, and contributions to the manager's retirement fund

Source: Development and Implementation of an Association Collection Policy/Application of Payments

6. Which of the following is true of a community association's rights to collect rent due to a delinquent member's renter?

- a. The Commercial Landlord and Tenant Act empowers the association to sue for eviction if the lessee fails to make a required payment.
- b. If the lessee has paid rent to the member prior to receiving the demand letter, they must provide written evidence of the payment to the association within fourteen days of receipt of the written demand.
- c. The lessor must begin these payments immediately and continue until the outstanding balance has been paid in full, the lessor discontinues the lease, or the lessee pays the outstanding balance.
- d. The delinquent member must provide the lessee a debit against rents due in the amount of the monies paid to the association.

Source: Development and Implementation of an Association Collection Policy/Collection from Delinquent Member's Renters

7. Which of the following is not true of a claim of lien?

- a. It must be signed by the president or treasurer of the association, notarized, and signed by two witnesses.
- b. It secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest, and late fees.
- c. It must include the description of the unit or parcel, the name of the record owner, the name and address of the association, the amount due and the due dates.
- d. In condominiums and HOAs, it secures all reasonable costs and attorney fees incurred by the association in the process of collection.

Source: Filing and Foreclosing Claims of Lien/The Claim of Lien

8. Which of the following statements is true of the effective period for a claim of lien?

- a. The Condominium Act provides that the lien is effective for one year after the claim of lien was rescinded unless, within that time, an action to enforce the lien is commenced.
- b. A cooperative must begin action to enforce the lien within one year of the date it filed the lien. The one-year period is automatically extended for any length of time during which the association files an action to terminate the association.
- c. An HOA has three years in which to enforce the lien.
- d. The effective period for a condominium or cooperative is automatically extended for any length of time during which it is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by a unit or parcel owner or any other person claiming an interest in the parcel.

Source: Filing and Foreclosing Claims of Lien/Effective Period of Lien

9. Which of the following statements is true of foreclosing a lien in a condominium?

- a. Within ten business days after receiving a written or electronic request from the association, the court shall issue a foreclosure notice to the unit owner.
- b. Each association must designate on its website a person or entity with a street or email address for the unit owner to contact when they receive a notice of foreclosure.
- c. The foreclosure notice must be provided by hand delivery, regular mail, or email to the unit owner within 30 days of filing a foreclosure with the courts.
- d. A condominium may bring an action to foreclose a lien for assessments in the manner a mortgage is foreclosed.

Source: Foreclosing the Lien/Condominium

10. Which of the following statements is true related to foreclosing a HOA's claim of lien?

- a. An HOA must provide 30 days' written notice of intent to foreclose.
- b. If, after service of a summons on a complaint to foreclose a lien, the parcel is not the subject of a mortgage foreclosure or a notice of tax certificate sale, the parcel owner is not a debtor in bankruptcy proceedings, or the trial of, or trial docket for the lien foreclosure action is not set to begin within 45 days, the parcel owner may serve and file with the court a qualifying offer at any time before the entry of a foreclosure judgment.
- c. A qualifying offer means a written offer to pay all amounts secured by the lien of the association plus amounts accruing during the pendency of the offer.
- d. The parcel owner must provide a copy of the filed qualifying offer to the association's attorney by U.S first class mail, obtaining a written receipt, or by certified mail, return receipt requested.

Source: Foreclosing the Lien/HOA





Birds, Bats, Bees, Bugs, and Beasts: Pest Control Services for Community Associations

Part I: Definitions

Part II: Common Pest Control Problems

Part III: Statutes

Introduction and Overview

This course is designed to provide the community association manager with information relating to pest animals that commonly inhabit residential, service related, and recreational structures and areas of community associations. The course discusses effective and legal methods to prevent, mitigate and/or eliminate such animals. It also describes the regulation of the pest control industry¹ and use of pesticides. Upon successful completion of the course, the student will receive four CE credit hours in the category of Operations of a Community's Physical Property (OPP), or Other (ELE).

The scope of this course is limited to animals that become problematic to residents of Florida community associations, such as termites, alligators, bats, birds, bees and wasps, raccoons, rodents, armadillos, and snakes. Most organisms that are vectors² of epidemic diseases, such as disease carrying mosquitoes, are outside the

scope of this course, although we will reference public health concerns related to some of the pests discussed in the text. Lawn and ornamental plant pest control is also outside the scope of this course. An ornamental is any shrub, bush, tree, or other plant used or intended for use in connection with the occupation or use of any structure or by human beings for purposes other than in an agricultural area.

WHAT IS A PEST?

A pest is an animal or plant detrimental to humans or human concerns, including crops, livestock, and forestry. The term is also used of organisms that cause a nuisance, such as in the home or other structure used by human beings. An older usage is of a deadly epidemic disease, specifically plague. In its broadest sense, a pest is a competitor of humanity.

¹It is often advisable, and sometimes mandatory, to employ pest control professionals to prevent, mitigate and or eliminate pests.

²In epidemiology, a vector is any agent (person, animal, or microorganism) that carries and transmits an infectious pathogen into another living organism. Epidemiology is the study and analysis of the patterns, causes, and effects of health and disease conditions in defined populations. A pathogen is a bacterium, virus, or other microorganism that can cause disease.

I. DEFINITIONS

Pest control is defined in F.S. 482, the Florida Structural Pest Control Act, as:

- the use of any method or device or application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on, or under a structure, lawn, or ornamental
- the identification of or inspection for infestations or infections in, on, or under a structure, lawn, or ornamental
- the use of any pesticide, economic poison, or mechanical device for preventing, controlling, eradicating, inspecting for, mitigating, diminishing, or curtailing insects, vermin³, rodents, pest birds, bats, or other pests in, on, or under a structure, lawn, or ornamental, all phases of fumigation (see definition below), including treatment of products by vault fumigation,⁴ fumigation of boxcars, trucks, ships, airplanes, docks, warehouses, and common carriers, and advertisement of, solicitation of, or acceptance of remuneration for any work described above.

The Act defines **Integrated pest management** as the selection, integration, and implementation of multiple pest control techniques based on predictable economic, ecological, and sociological consequences, making maximum use of naturally occurring pest controls, such as weather, disease agents, and parasitoids,⁵ using various biological, physical, chemical, and habitat modification methods of control, and using

artificial controls only as required to keep particular pests from surpassing intolerable population levels predetermined from an accurate assessment of the pest damage potential and the ecological, sociological, and economic cost of other control measures.

Other definitions described in the statute include:

- **fumigant:** a chemical which, at a required temperature and pressure, can exist in the gaseous state in sufficient concentration to be lethal to a given organism. This definition implies that a fumigant acts as a gas in the strictest sense of the word. It excludes aerosols that are particulate suspensions of liquids or solids dispersed in air.
- **fumigation:** the use, within an enclosed space or in or under a structure or tarpaulins, of a fumigant in concentrations that may be hazardous to human beings
- **pesticide or economic poison:** any substance or mixture of substances intended for:
 - preventing, destroying, repelling, or mitigating any insects, rodents,⁶ nematodes,⁷ fungi, weeds, or other forms of plant or animal life or viruses, except viruses or fungi, on or in, living human beings or other animals or
 - use as a plant regulator, defoliant,⁸ or desiccant⁹
- **Infestation:** the presence of living pests in, on, or under a structure, lawn, or ornamental.

¹Pests or nuisance animals, that spread diseases or destroy crops or livestock. Since the term is defined in relation to human activities, the species that are defined as vermin vary from area to area.

²An airtight room or chamber into which furniture or other items may be placed, into which chemicals are released to kill insects and other pests.

³An organism that lives in close association with its host and at the host's expense, and which sooner or later kills it.

⁴Any member of the order Rodentia, including rats, mice, and squirrels.

⁵A worm of the large phylum Nematoda, such as a roundworm or threadworm.

⁶A chemical that removes the leaves from trees and plants.

⁷A hygroscopic substance used as a drying agent. Hygroscopic refers to a substance that absorbs moisture from the air.

⁸A chemical that removes the leaves from trees and plants

⁹A hygroscopic substance used as a drying agent. Hygroscopic refers to a substance that absorbs moisture from the air.

II. COMMON PEST CONTROL PROBLEMS¹⁰

TERMITES

The Animal

Termites are eusocial¹¹ insects that are classified at the taxonomic rank of infraorder Isoptera, or as epifamily Termitoidae, within the order Blattodea (cockroaches and termites). There are over three thousand species of termites, 21 of which have been recorded in Florida.

The Problem

Because of their wood-eating habits, many termite species do significant damage to unprotected buildings and other wooden structures. Termites play an important role as decomposers of wood and vegetative material, and the conflict with humans occurs where structures and landscapes containing structural wood components, cellulose¹² derived structural materials, and ornamental vegetation provide termites with a reliable source of food and moisture. Their habit of remaining concealed often results in their presence being undetected until the wood is severely damaged.



Formosan Termites

Estimates of the annual cost of damage to wood structures caused by termites ranges between one and seven billion dollars each year. Of the 21 species of termites present in Florida, only a few are considered pests. Drywood and subterranean termites cause the most damage.

Termites remain hidden within wood and underground, making them difficult to detect. A good way to determine if there is a subterranean termite infestation is to look for winged reproductives¹³ (or swarmers), shed wings, mud tubes, and wood damage. Winged reproductives emerge from colonies in large numbers during specific times of the year, depending on the species, but usually in the spring. Swarmers are attracted to light so they can be found along window sills, doors, light fixtures, and vents. Often, the wings of the reproductives will be found on the floor, window sill, or even spider webs. This happens because shortly after their flight, reproductives break off their wings.

Drywood termites live deep inside wood and are difficult to detect except during periods when they swarm¹⁴ or when repair work is being done on infested homes. They access structures during swarming by flying directly to wood structures or furniture. Some of their usual routes of entry include:

- attic or foundation vents that are not screened



Drywood Termite

¹⁰An important source of information for the sections on rats and mice, snakes, armadillos, bats, raccoons, and state laws is an article appearing on the University of Florida IFAS Extension website by Joe Schaefer, "Dealing with Unwanted Wildlife in an Urban Environment".

¹¹(Of an animal species, especially an insect) showing an advanced level of social organization, in which a single female or caste produces the offspring and nonreproductive individuals cooperate in caring for the young.

¹²An insoluble substance which is the main constituent of plant cell walls.

¹³Winged reproductives or alates are new kings and queens and they fly from the colony to start new colonies.

¹⁴Swarming occurs when termites leave a nest inside a structure for the first time. They squeeze through cracks and crevices in the walls and foundation to reach open air. Termites swarm only after the colony reaches a certain size and weather conditions become optimal for flight. For many homeowners, a termite swarm may be the most visible sign of a termite infestation.

- cracks around window frames, door frames, soffits,¹⁵ and roof sheathing¹⁶
- furniture and other wooden items brought into the house.

Subterranean termites are termites that nest within soil. They travel in underground mud tubes or tunnels from their nests and most commonly enter structures through cracks in the concrete foundation or slab. Once in, they extend the tubes to the wooden parts of the structure. Termites in crawl spaces sometimes build free hanging mud tubes, also called drop tubes, that extend from the ground upwards to the wooden floor joists and floor. Since they can enter through a crack or gap as small as 1/32nd of an inch, termites may gain entrance through expansion joints, bath traps,¹⁷ and cracks caused by the slab or foundation settling over time. Other likely sources of entry are cracks and gaps where patios, dirt filled porches, sidewalks, steps, and chimneys are constructed adjacent to the foundation wall, as well as supporting piers of houses with crawl spaces.

A house with siding that is partially beneath the soil creates another possibility for termites to gain entrance into a house. When siding extends below the soil, termite workers can get into the house behind the siding and do so without mud tubes being visible or otherwise being seen before they reach the siding on the house.

Still another way that termite workers may enter a house is from any outside sources of wood, such as a trellis or a planter box. In these situations, termite workers can enter the outside wood source, build mud tubes throughout the wood source, and eventually gain entrance inside through a crack, gap, or suitable hole.

The Formosan subterranean termite is an invasive species commonly referred to as super-termite because of its destructive habits due to the large size of its colonies and its ability to consume wood at a rapid rate. There is an urban legend that Formosan termites can eat through concrete. This is false; no termite species can eat through concrete.



Example of termite mud tube.

The risk for community associations and their residents is the damage that termites can do to wood or wood framed structures and wood furniture. The cost of replacing damaged structures and furniture and of mitigation is typically excluded from association's and unit owners' insurance policies.

Control

There are two major categories of termite treatments based on when the treatment is applied: preconstruction treatments and postconstruction treatments. Preconstruction treatments are protective treatments that are applied or installed as a building is being built, and shortly after the building is completed. These treatments consist of physical barriers and liquid termiticides.¹⁸

Postconstruction treatments are treatments that are applied to older, established buildings. Because termiticide treatments do not last indefinitely, buildings need to be periodically retreated for termites in order to maintain termite protection, and a building that is many decades old may have received several termite treatments. Postconstruction treatments may be applied preventively or remedially. Even in the absence of active termite infestations,¹⁹ preventive treatments may be required simply because of the amount of time

¹⁵The underside of an architectural structure such as an arch, a balcony, or overhanging eaves.

¹⁶Roof sheathing ("sheeting") is any material that is used to provide a solid surface, decking or base to which roofing material is applied to. The most common types of sheathing used nowadays are OSB (oriented strand board) and plywood. OSB is by far the most common and the most practical when considering all factors.

¹⁷The P-trap in the waste line of a bathtub.

¹⁸Pesticides that are targeted towards the control of termites.

¹⁹The presence of an unusually large number of insects or animals in a place, typically so as to cause damage or disease.

that has passed since the last termite treatment or in response to a problem that has compromised the treatment.

Remedial treatments are applied in response to detection of an active termite infestation. Depending on the situation, remedial treatments may be either partial treatments that are applied only to the area of the building where the infestation has been detected or, more commonly, may involve treatment of the entire building. Partial treatments are only appropriate for situations in which there is good reason to believe the majority of the building is properly protected and the active infestation is believed to be limited to a particular area of the building.

Liquid termiticide is the most commonly used method of controlling termites. It is an insecticide that has been specifically developed for termite control. Liquid termiticides are diluted in water and applied to the soil immediately under or around the foundation of a building to establish a zone of treated soil that will prevent termites from tunneling to a structure.

Foam termiticide treatments are insecticides that are diluted in water with a special foaming agent to form an enduse product with a consistency similar to that of shaving cream. Foam treatments are primarily used to supplement control provided by other types of treatments. They can be injected into wall voids and other voids in buildings and foundations where their consistency allows them to spread laterally and even upward to reach areas that could not be easily treated with a liquid termiticide. The foam breaks down quickly, leaving the insecticide residue on the inner surfaces of the treated void. Many of the insecticides used as liquid termiticides may also be mixed and used as foam termiticide treatments. Foam termiticides can be mixed and applied using special foam applicator tanks and are also available in premixed aerosol cans.

Termite baiting stations use low doses of specially selected, slow-acting, non-repellent insecticides that are injected into wood or substrate²⁰ to control

termites. There are two different types of baiting stations, in-ground stations and aboveground stations, but in-ground baiting stations are most common.

In-ground baiting stations are installed in the ground at periodic spacing around the outside perimeter of a building. Foraging termite workers discover the baiting stations, feed on the treated bait, and share the poisoned food with their colony mates. Bait treatments are slow-acting but ultimately result in the destruction of the colony. When properly installed and maintained, in-ground baiting stations are an effective long-term method of protecting buildings from termites.

Because they are slow-acting, baiting stations are usually not used as stand-alone treatments to control existing termite infestations. They are placed around a building at known points of termite activity. Those areas are also treated with a liquid termiticide. The goal is to quickly control the existing infestation with the liquid treatment and then rely on the baiting stations for long-term preventive control.

Fumigation²¹ is sometimes the only effective method of eliminating infestations of drywood termites that have spread to multiple locations within a building. Entire buildings are fumigated by fully enclosing or tenting them in gas-proof coverings and releasing the fumigant inside the building. This is a costly and highly specialized method of termite treatment. Small objects, such as furniture, can be fumigated by placing them in special fumigation chambers.

BIRDS²²

The Animal

Pest birds are species of birds that cause problems for human beings. They are active year-round and can be found in all areas where humans live, including urban, suburban, and rural environments. They are creatures of habit that consistently roost in the same places.

The most common pest bird species in Florida include pigeons, sparrows, gulls, ducks, and geese.

²⁰A substrate is the surface on which a plant or animal lives. A substrate can include biotic or abiotic materials and animals.

²¹Fumigation is a method of pest control that completely fills an area with gaseous pesticides or fumigants to suffocate or poison the pests within. It is used to control pests in buildings (structural fumigation), soil, grain, and produce, and is also used during processing of goods to be imported or exported to prevent transfer of exotic organisms.

²²The Spruce website is the source of much of the information on bird pests.

The Problem

Pest birds cause tens of millions of dollars of damage every year to American buildings, machinery, automobiles, roofs, and ventilation systems. Bird droppings and nesting materials that are allowed to accumulate, pose a host of physical problems which can become serious if they are not corrected. Bird droppings are very acidic in nature. They can erode substrates (an underlying substance or layer), especially tar-based roofing materials. Droppings which accumulate on roofs eat into the material and eventually cause leaks. Bird droppings can cause serious health problems, including histoplasmosis,²³ cryptococcosis,²⁴ and psittacosis.²⁵ Pigeon, starling and sparrow nests are often built in rain gutters, drains and corners of roofs where drains are located, blocking drainage systems and creating standing water, which can result in a spawning pool for mosquitoes.

Many types of birds are attracted to swimming pools, including Muscovy ducks pictured above.

The U.S. Center for Disease Control (CDC) recommends that bird droppings in the pool be treated by pool service providers in the same way as human feces in the pool. The process includes closing the pool, removing the waste material, raising the free chlorine concentration to, or maintain it at, 2 parts per million (ppm); maintain the pH level at 7.5 or less; keep the temperature at 77°F (25°C) or higher. The free chlorine and pH should remain at these levels for 30 minutes. Finally, confirm that the filtration system is operating properly.

Some birds perch on lighting above recreational facilities, such as tennis courts, and their droppings must be frequently cleared away, increasing the burden on maintenance staff and the cost of cleaning services.

Control

Bird control is the generic name for methods to eliminate or deter pest birds from landing, roosting, and nesting.



Muscovy ducks have been added to a list of federally protected native birds by the U.S. Fish and Wildlife Service. However, since they are considered an invasive species in all states except Texas, wildlife agencies and property owners do not require a federal permit to destroy them. State law prohibits the relocation of Muscovites into native wildlife areas as they may be carriers of diseases which can adversely affect native waterfowl.

While most birds are protected under the U.S. Migratory Bird Treaty and Endangered Species Act, three bird species: pigeons, European starlings, and house sparrows, are considered nuisance pests and are not federally protected against control, dispersal, or extermination. Care must be taken in any control efforts, however, as state laws or local ordinances may apply.

There are several methods in which managers and homeowners can control pigeons, starlings, and house sparrows, with the most effective generally being a combination of methods including:

Preventive Methods

- Eliminate, or reduce as much as possible, standing water and areas in which pest birds can feed.
- Keep trash cans covered and areas clean.
- Never feed pest birds.

²³An infection, usually affecting the lungs, caused by a fungus called Histoplasma. The fungus lives in the environment, particularly in soil that contains large amounts of bird or bat droppings.

²⁴A potentially fatal fungal disease. Humans and animals usually get the infection from inhaling dust contaminated with bird feces.

²⁵An infectious disease in humans caused by a bacterium and contracted from infected parrots, such as macaws, cockatiels, and budgerigars, and pigeons, sparrows, ducks, hens, gulls, and many other species of birds.

- Trim trees away from structures and prune those that attract pest bird roosting.
- Add obstructions (such as spikes or sticky glues) to ledges where pest birds roost.
- Lean gutters to prevent standing water.
- If pest birds are feeding on the food in feeders set out for desirable birds, change the type of food. If pest birds are a big problem, it is often advisable to stop using feeders during warm weather.

Exclusion Methods

- Caulk or seal openings through which the smaller pest birds can enter. Sparrows can enter through gaps as small as 3/4 inch, and starlings through one-inch openings.
- Block vent, eave, and loft openings with plywood, 1/4-inch wire mesh, or netting.
- Use door strips (clear, plastic strips hung from door frames) to prevent birds entering without completely closing off the entryway to people.

Nest removal

- Continuing removal of nests, particularly during the spring and summer, can help to reduce sparrow populations.



Bird spikes being used to prevent roosting.

Products

- **Netting:** Attaching nylon or plastic netting to the bottom of rafters will close off the area to birds who are attracted to such areas for nesting and roosting.
- **Spikes or porcupine wire:** Placing spiky wires along areas in which the birds land and roost will keep these areas off-limits. However, some maintenance is required as accumulated twigs and grass will reduce or remove their effectiveness.
- **Repellents:** Sticky, non-toxic repellents can be placed on areas such as ledges to discourage and reduce bird landing and roosting. These products also require maintenance, as they will collect dust and dirt and need to be reapplied regularly.
- **Traps:** Live traps, such as funnel traps, automatic or trigger activated nest boxes, decoys and mists, can all be used to keep from endangering non-target birds, which can then be released without harm. Pest birds caught with these traps may be humanely exterminated rather than released, as the birds can find their way back from even 50 miles away or cause problems in other communities. Local ordinances should be checked prior to any trapping initiative, as permits are required by some.

What Doesn't Work to Control Birds

Although marketed for the control of birds, visual scares, such as balloons, plastic snakes, or fake owls rarely work for any length of time. The birds will quickly adapt to their presence and return to their preferred roosting or feeding site.

Sound and flashing light devices can repel some birds from setting up roosting sites, but, unless they are frequently moved, their effectiveness will be limited.

Do It Yourself (DIY) bird control is possible, but it is critical that the bird be positively identified, all federal, state, and local regulations be followed, and all products be used only according to their labeled directions.

BATS²⁶

The Animal

Bats are mammals of the order Chiroptera, with their forelimbs adapted as wings. They are the only mammals naturally capable of true and sustained flight. There are over 900 living species of bats, of which thirteen live in Florida. All Florida bats rest during daylight hours, taking shelter in a variety of places such as caves, mines, buildings, bridges, culverts, rock crevices, under tree bark, and in foliage.

Different bat species have different diets, including insects, nectar, pollen, fruit and even vertebrates. Due to their small size, high metabolism, and rapid burning of energy through flight, bats must consume large amounts of food for their size. Insectivorous bats may eat over 120 percent of their body weight, while fruit eating bats may eat over twice their weight. Bats are subject to predation from birds of prey, such as owls, hawks, and falcons, and from terrestrial predators able to climb, such as cats.

Bats provide humans with some benefits, at the cost of some threats. Bat excrement or guano is a highly effective fertilizer due to its exceptionally high content of nitrogen, phosphate and potassium,



The Seminole bat is one of the 13 common bat species found in Florida.



Evening bat

nutrients essential for plant growth. The 19th-century guano trade played a pivotal role in the development of modern input-intensive farming practices and inspired the formal human colonization of remote bird islands in many parts of the world. During the 20th century, guano-producing birds became an important target of conservation programs and influenced the development of environmental consciousness. Today, guano is increasingly sought after by organic farmers.

Bats consume insect pests, reducing the need for pesticides. They are sometimes numerous enough to serve as tourist attractions, and are used as food across Asia and the Pacific Rim. In many cultures, bats are popularly associated with darkness, malevolence, witchcraft, vampires, and death.

The Problem

Bats may enter buildings and become a nuisance by their squeaking, scratching, scrambling, and crawling in attics, walls, and chimneys. Bat droppings can accumulate and cause a stench in buildings and an unsightly mess on the outside of buildings.

Bats are natural reservoirs for a large number of zoonotic²⁷ pathogens, including rabies, endemic in many bat populations, histoplasmosis both directly and in guano, Nipah²⁸ and Hendra²⁹ viruses, and possibly

²⁶A major source of information is the Florida Bat Conservancy, a not for profit organization dedicated to preserving Florida's native bat populations through public education and partnerships with other conservation organization organizations and government agencies.

²⁷Referring to a disease which can be transmitted to humans from animals.

²⁸Nipah virus is a zoonotic virus and can also be transmitted through contaminated food or directly between people. In infected people, it causes a range of illnesses from asymptomatic infection to acute respiratory illness and fatal encephalitis. The virus can also cause severe disease in animals such as pigs, resulting in significant economic losses for farmers.

²⁹A rare emerging zoonosis that causes severe and often fatal disease in both infected horses and humans.

Ebola.³⁰ Their high mobility, broad distribution, long life spans, substantial sympatry (range overlap) of species, and social behavior make bats favorable hosts and vectors of disease. They seem to be highly resistant to many of the pathogens they carry, suggesting a degree of adaptation to their immune systems. Bats are implicated in the emergence of severe acute respiratory syndrome (SARS) in China.³¹

Despite how large they appear in flight, most bats are remarkably small. Some can fit through openings smaller than ½-inch wide.

Control

The most effective method of bat control is excluding them from homes and buildings. The following information on exclusion methods is from the Florida Bat Conservancy, a not-for-profit organization dedicated to preserving and protecting native bat populations within Florida.

An exclusion is conducted by positioning one-way devices at the locations where bats are emerging from the roost. The one-way devices allow the bats to exit but prevents them from reentering. Physically capturing bats and relocating them is almost never successful because bats are often hiding in areas of the building that are not accessible. Even if bats are in an open area, attempts to capture them will likely cause them to flee into inaccessible places. Trapping bats as they exit a building does not work because bats are frequently injured or die in the process of being captured and transported to a new location. Furthermore, bats moved to another location will almost always return to their old roost, even if it requires flying many miles. Bats are protected under Florida wildlife laws and it is illegal to intentionally trap, poison or exterminate them. Additionally, it is illegal to conduct a bat exclusion during the maternity season, which in Florida is defined as April 16 through August 14. The maternity season is the time that mothers give birth to their young and nurture them to adulthood.

Plugging holes is ineffective. All of the bats in a roost do not necessarily exit each night, and bats have often

been observed returning to their roost early in the evening, long before midnight.

Bat exclusion techniques have been developed over the years and, when properly applied, are almost always successful on the first attempt. If it is later discovered that an entrance point was missed, an exclusion can be reconducted for that area. The method of exclusion is as follows:

Find the entry points by observing the building during emergence time. Bats emerge from their roost shortly after sunset, so it is best to observe the building from sunset until dark. There may be multiple emergence points, so one should watch different areas on different nights or use multiple observers. A closer look at a hole or crevice that the bats are using will likely reveal staining around the edges from their body oils and a scattering of bat droppings on the wall.

Survey the exterior of the building during the daytime for holes or crevices the bats are using and seal them, as well as any other areas where they could gain access. Once the exclusion is conducted, the bats will frantically look for other entrances back into the building.

Several exclusion methods have been developed over the years. Since every situation is a little different, the most flexible approach is to use an industrial quality bird netting with a ¼-inch mesh. The large weave and light weight of these products will often entangle the bats, in contrast to a smaller weave product which may enable them to crawl on it and possibly reenter the roost.

Attach the netting above the opening using staples or duct tape. The netting should extend about a foot below the bottom of the hole or crevice. The sides of the netting should be attached in a way that puffs the netting out and creates an open space over the hole or crevice, allowing the bats to drop out and fly underneath the netting. If the installer can slide their hand under the netting, there will be sufficient space for the bats to exit freely. When the bats return, they will attempt to fly directly to the hole or crevice, but it will be blocked by the netting. They will not land below

³⁰A rare and deadly disease in people and nonhuman primates. The viruses that cause Ebola Virus Disease (EVD) are located mainly in sub-Saharan Africa. People can get EVD through direct contact with an infected animal (bat or non-human primate) or a sick or dead person infected with Ebola virus.

³¹A contagious and sometimes fatal respiratory illness. There has been no known transmission of SARS anywhere in the world since 2004.

the netting and climb up behind it to reach the hole, nor will they fly vertically up the narrow space between the wall and netting. Although the bottom remains open, the netting must be securely fastened at the top and on both sides. The exclusion netting can then be attached during the day when there is plenty of light. It is a good idea to watch the emergence the first night after the exclusion system is in place to make sure it is working properly, and that bats are not failing to emerge or are getting trapped behind the netting. If a bat becomes tangled in the netting, it can be carefully removed while wearing heavy leather work gloves. If a human is bitten in the process, the bat must be kept for testing, and the person should seek immediate medical attention.

Before removing the netting, the area should be observed carefully at emergence time to make sure no bats are exiting. Florida regulations require that the netting be left up for at least four clear, warm nights to assure all the bats have left. Bats typically do not forage



on cold or rainy nights, so if the weather turns bad, it will be necessary to extend the exclusion an additional four consecutive nights. If bats are still coming out after four nights, then they have either found another way back in or the exclusion system is not working and needs to be revised. If the exclusion materials become loose or detached, the bats will be able to reenter. Bats will be checking continually to determine if they can reenter their roost.

After the bats have been successfully excluded, the netting or exclusion devices can be removed during the day and the openings permanently sealed. The netting should not be removed without sealing the openings or the bats will move back in the following night. If the opening cannot be sealed immediately, the exclusion devices may be left up longer, but there is a risk that wind, storms, or failure of fasteners could allow the bats to reenter. Another approach is to take the netting down and temporarily cover the openings with plywood or hardware cloth until permanent repairs can be made.

Bat Houses

A bat house is a type of small building used outside a residence or building for bats to sleep in. Bat houses may prevent bats from taking up residence inside attics and basements. If bats have confined, warm places to sleep during the day that are easily accessible, they may be less likely to venture into residential structures. A bat house can be helpful in controlling insect pests because the bats residing within are voracious eaters of mosquitoes and other insects.



RACCOONS

The Animal

The raccoon, of the species Procyonidae³² and genus Procyon,³³ is a medium-sized mammal native to North America. It is the largest of the procyonid family, having a body length of 16 to 28 inches and a body weight 11 to 57 lbs. Three of the raccoon's most distinctive features are its extremely dexterous front paws, its facial mask, and its ringed tail. Raccoons

³²Procyonidae is a New World family of the order Carnivora. It comprises the raccoons, coatis, kinkajous, olingos, olinguitos, ringtails, and cacomistles. Procyonids inhabit a wide range of environments and are generally omnivorous.

³³Procyon is a genus of nocturnal mammals, comprising three species commonly known as raccoons, in the family Procyonidae. The most familiar species, the common raccoon (*P. lotor*), is often known simply as "the" raccoon, as the two other raccoon species in the genus are native only to the tropics and less well known.

are noted for their intelligence, with studies showing that they are able to remember the solution to tasks for at least three years. They are usually nocturnal and omnivorous, eating about 40 percent invertebrates, 33 percent plants, and 27 percent vertebrates.

The Problem

The increasing number of raccoons in urban areas has resulted in diverse reactions in humans, ranging from outrage at their presence to deliberate feeding. Some wildlife experts and most public authorities caution against feeding wild animals because they could become increasingly obtrusive and dependent on humans as a food source. Raccoons usually do not prey on domestic cats and dogs, but isolated cases of killings have been reported. Attacks on pets may also target their owners.

While overturned waste containers and raided fruit trees are just a nuisance to homeowners, it can cost several thousand dollars to repair damage caused by



the use of attic space as dens. Relocating or killing raccoons without a permit is forbidden in many urban areas. Loud noises, flashing lights and unpleasant odors have proven particularly effective in driving away a mother and her kits before they would normally leave the nesting place (when the kits are about eight weeks old). However, only preventive measures to restrict access to food waste and den sites are effective in the long term.

Raccoons make pests of themselves by getting into garbage cans, eating pet food, getting into attics or beneath houses, and eating home-grown fruits and vegetables. They are a major carrier of rabies in Florida.



Control

The Association and homeowners can prevent successful intrusion by raccoons (and other animals) by using metal or tough plastic waste containers with tight-fitting lids. If lids do not fit tightly, it may be necessary to wire, weight, or clamp them down. The containers should be tied to a support or held on a rack to prevent the raccoons from tipping them over. Raccoons can be kept out from underneath houses by sealing off all possible entrances. A good method to determine if the animal is out of the sheltered area is to sprinkle a liberal amount of baking flour near the entrance. Wait until an hour or so after dusk and observe if there are any tracks leading out of the entrance. If there are, then seal it off. In certain cases, the construction of an electric fence 6 inches off the ground will solve the problem. Repellents such as naphthalene crystals and noise-making devices may have limited temporary effectiveness.

Once an animal is caught, another problem is created: what to do with it. Trap and release of wildlife is seldom biologically sound. Areas without a resident population of the same species as the relocated animal most likely do not meet its habitat requirements. Relocation to already occupied areas causes problems for both the relocated animal and the resident population of the same species. Current Florida law (Florida Fish and Wildlife Conservation Commission Rule 68A-9.010) requires that all animals captured as a "nuisance" either be humanely destroyed or released on the same contiguous property as they are captured to prevent ecological problems or spreading of diseases. Animals can be transported only for the purpose of traveling to a place where they can be destroyed.



True Story

We live on a golf course next to a county canal lined with beautiful large trees and bushes. Besides the occasional golf ball, we get foxes, bobcats, opossums, armadillos—and raccoons. We have a glass door in the back of our den. The raccoons and my cats are enthralled with one another. On the rare occasions the raccoons visit, they usually stare through the glass and send my cats into gales of fascinated chittering. One night, I looked up—and there was a raccoon attempting to open the door, little paw on the door handle, with my cats waiting right inside! I was so glad that I keep the door locked.

BEES AND WASPS

The Animal

Bees³⁴ are flying insects known for their role in pollination and, in the case of the best-known bee species, the western honey bee, for producing honey and beeswax. There are nearly 20,000 known species of bees in seven recognized biological families. They are found on every continent except Antarctica and in every habitat on the planet that contains insect-pollinated flowering plants. Florida is home to approximately 315 bee species, including the honey bee.

Some species, including honey bees and bumblebees, live socially in colonies. Bees are adapted for feeding on nectar and pollen, the former primarily as an energy source and the latter primarily for protein and other nutrients. Most pollen is used as food for larvae.

Bee pollination is important both ecologically and commercially. The decline in wild bees has increased the value of pollination by commercially managed hives of honey bees.

While not all bees are social, honey bees and bumblebees live in complex societies and are referred to as eusocial. Eusociality is an extreme form of social behavior found in just a few types of animals and is characterized by:

- the presence of several generations in a single nest at the same time
- cooperation by some members of the society in caring for offspring that are not their own
- division of labor with queens that reproduce abundantly and workers that reproduce very little if at all.

Eusocial bees live in large colonies consisting of females of two overlapping generations, mothers (queens) and daughters (workers). Males play no part in the colony's organization and only mate with the queens.



Bumblebee

Most solitary bees nest in the ground in a variety of soil textures and conditions while others create nests in hollow reeds or twigs, and holes in wood. Social bees frequently nest in naturally-occurring sites, such as old rodent burrows, rotted logs, and hollow trees. Occasionally, they also build their nests in houses and buildings. Honey bees also build their nests in enclosed spaces that are generally aboveground including in voids in walls, chimneys, and attics.

³⁴Order – Hymenoptera, Family – Apidae, Genus – Apis

A wasp is any insect of the order Hymenoptera and suborder Apocrita that is neither a bee nor an ant. The most commonly known wasps, such as yellowjackets and hornets, are in the family Vespidae and are eusocial, living together in a nest with an egg-laying queen and non-reproducing workers.

The Problem

Bee Nest

Some bees, especially honey bees and bumblebees, as well as wasps are stinging insects. Bees and wasps sting when an intruder, be it animal or human, comes too close to a nest, disturbs it, or is perceived as a threat.

Although for most people a bee or wasp sting is painful, it is usually otherwise harmless. However, a person with an allergy to the venom or who suffer multiple stings, may experience an anaphylactic³⁵ reaction that is potentially deadly. Honey bee stings can be especially dangerous because the bees release pheromones³⁶ that prompt other nearby bees to attack.³⁷

It is common in Florida for honeybees to be present in the environment, unmanaged by a beekeeper. Wild or, more appropriately, feral, honey bees have the potential to be a nuisance when found on private or commercial property, either in a swarm state or fully developed as an established colony.



Part of the reproductive life cycle of the honey bee is called swarming, an event in which a new colony is produced from an existing colony. This cycle effectively has two stages: the swarm, a transient group consisting of one queen and many worker honey bees



Honey bee

that exist for a short time (a few hours to a few days), and an established colony that has nested in a location and started building a honeycomb in their permanent residence. The distinction between a swarm and an established colony is important, as a swarm is relatively docile since they have no nest to protect. Thus, bees in a swarm tend not to sting. A swarm ranges in size from that of a baseball to that of a basketball and typically hangs from a tree branch, fence or other object.

Established colonies build layers of wax comb, are composed of thousands of bees, make and store honey, rear brood (developing bees) and will actively defend their nest. The colonies can grow quite large, often as large as the nest cavity they occupy. Colonies will have a lot of activity or "bee traffic" going into and out of a small opening of the cavity in which the bees reside.

When a property owner encounters a swarm or an established colony, they have two options, have it removed alive or have it eradicated.

In some cases, depending on the size, location and temperament of an established colony, a registered Florida beekeeper can remove an established colony and all of its components (bees, comb, brood, honey) and relocate it safely to an apiary.³⁸ Swarms, given their transient state and docile nature, usually can be easily removed and relocated.

³⁵A serious allergic reaction that is rapid in onset and may cause death. It typically causes more than one of the following: an itchy rash, throat or tongue swelling, shortness of breath, vomiting, lightheadedness, and low blood pressure. These symptoms typically come on over minutes to hours. Common causes include insect bites and stings, foods, and medications.

³⁶A chemical substance produced and released into the environment by an animal, especially a mammal or an insect, affecting the behavior or physiology of others of its species.

³⁷Some types of bees, such as Africanized honeybees, often referred to as killer bees, are more likely than other bees to swarm, stinging in a group.

³⁸A place where bees are kept; a collection of beehives.



Eradication of a colony by a certified pest control operator (PCO) is often the best choice when the colony is nesting in a location that does not facilitate safe removal (e.g., high up in a tree, deep in an occupied dwelling, near a school, etc.), is deemed no longer able to thrive, or poses a stinging threat to humans.

It is the property owner's choice concerning how a colony is removed. Although honey bees are an important agricultural resource, it is not illegal for a licensed pest control company to eradicate a nuisance honey bee colony. In some cases, public safety necessitates that a given colony be eradicated.

Removal or eradication of nuisance bees or a colony can be dangerous and, if not done properly, may be a violation of state or federal pesticide laws. The Florida Department of Agriculture and Consumer Services (FDACS) maintains a list of Registered Beekeepers and Certified PCOs that perform bee removal and/or eradication services.

Wasp Nest

To eradicate wasps, wear protective clothing, approach the nest at night when the wasps are less active, and thoroughly douse the nest in an approved pesticide spray, insecticidal dust, smoke, or water.

SNAKES

The Animal

Snakes are elongated, legless, carnivorous reptiles of the suborder Serpentes. Like all squamates,³⁹ snakes are ectothermic,⁴⁰ amniote⁴¹ vertebrates⁴² covered in overlapping scales. Many species of snakes have skulls with highly mobile jaws, enabling them to swallow prey much larger than their heads. Florida is home to approximately fifty species of snakes, of which six are venomous.

The Burmese python is a large, non-venomous constrictor that is an invasive species in Florida. They are found primarily in and around the Everglades ecosystem in South Florida and have had a devastating impact on native wildlife, especially mid-size mammals. Although there have been few confirmed sightings in residential areas, pythons can become a potential threat to human beings and their pets if they are forced to expand their range because of insufficient prey animals in the Everglades. The importation of Burmese pythons was banned in the United States in January 2012 by the U.S. Department of the Interior. Eradication efforts, including the payment of bounties by the Florida Fish and Wildlife Conservation Commission, have not been effective in substantially reducing their numbers.⁴³

The Problem

Many people have a strong anxiety toward all snakes. The bites of a few non-venomous snakes can cause noticeable injuries. Venomous snake bites can be lethal. It has been estimated that 7,000–8,000 people per year receive venomous bites in the United States, and about five of those people die. Most fatal bites are attributed to the eastern and western diamondback rattlesnake.

To most people, snakes are unwanted visitors on our properties and in our homes. Snakes are not

³⁹Squamata is the largest order of reptiles, comprising lizards, snakes and amphisbaenians (worm lizards), which are collectively known as squamates or scaled reptiles.

⁴⁰An animal that is dependent on external sources of body heat.

⁴¹Amniotes are a clade of tetrapod vertebrates comprising the reptiles, birds, and mammals. Amniotes lay their eggs on land or retain the fertilized egg within the mother, and are distinguished from the anamniotes, which typically lay their eggs in water.

⁴²Animals distinguished by the possession of a backbone or spinal column, including mammals, birds, reptiles, amphibians, and fishes.

⁴³Including three species of rattlesnakes, the Southern copperhead, the Florida cottonmouth or water moccasin, and the Eastern coral snake. The Eastern Diamondback Rattlesnake is the largest and most dangerous of Florida's native snakes.



The Eastern Diamondback Rattlesnake is the largest and most dangerous of Florida's native snakes.

aggressive and will not charge or chase after people. Their typical reaction to a human intruder is to crawl away and hide. However, snakes may act aggressively if they feel threatened. Some will hiss, shake their tails, and even try to bite intimidating objects.

Control

The frequency of snake visits to yards and homes can be reduced by eliminating firewood stacks, debris, boards, and other objects lying close to the ground, creating preferred cool, damp, and dark shelter or prey habitat areas. Snakes can be removed from inside buildings by placing glueboards or funneled minnow traps in snake-traveled areas such as along walls.

RATS, MICE AND OTHER RODENTS⁴⁴

The Animal

Rodents are mammals of the order Rodentia, which are characterized by a single pair of continuously growing incisors in each of the upper and lower jaws. About 40 percent of all mammal species are rodents; they are found in vast numbers on all continents except Antarctica. They are the most diversified mammalian order and live in a variety of terrestrial habitats, including human-made environments. Squirrels, mice, rats, gerbils, beavers, gophers, and porcupines are among the types of rodents. We will mainly discuss rats, as they tend to be a problem for many associations.

Rats are various medium-sized, long-tailed rodents. Species of rats are found throughout the order Rodentia, but the rats we are most familiar with are found in the genus *Rattus*. Rats are distinguished from mice primarily by their size. The three most common types of rats found in Florida are the roof rat, the Norway rat, and the wood rat (found mainly in North Florida). A mouse is a small rodent characteristically having a pointed snout, small rounded ears, a body-length scaly tail and a high breeding rate. The best-known mouse species is the common house mouse (*Mus musculus*)

Terrestrial or arboreal by nature, rats can be found dwelling in burrows or trees. The Norway rat usually makes its home close to the ground. They will burrow near the foundation of homes, or under shrubs and plants near homes. They will often gain entry through openings in the structure. Once rats are in a structure, they will nest in walls, attics, or other areas where they can build a safe place to raise their young. Since all rats are prolific breeders, an infestation can occur quickly once rats find their way in and create a habitat.

Rats use nesting materials such as cardboard or plant materials to line their nests and they will maintain outdoor burrows with these materials, as well to keep themselves warm and dry. They live in residential structures because humans are a plentiful sources of food, in the form of garbage waste and grains found in pantries, water, and a safe indoor environment.

The Problem

Worldwide, rats and mice spread over 35 diseases. These diseases can be spread to humans directly, through handling, contact with feces, urine, or saliva, or through bites. Diseases can also be spread to humans indirectly, through ticks, mites, or fleas that have fed on an infected rat or mouse.

The Black Death is traditionally believed to have been caused by the microorganism *Yersinia pestis*, carried by the tropical rat flea, which preyed on black rats living in European cities during the epidemic outbreaks of the Middle Ages.

⁴⁴Much of the discussion in this section applies to rodents in general.

Control⁴⁵

The primary strategy for preventing human exposure to rodent diseases is effective control in and around the structure. This is achieved by eliminating any food sources, sealing even the smallest entries, and successful trapping.

Mice can squeeze through a hole the size of a nickel, and rats can squeeze through a hole the size of a half dollar. To prevent rodents from entering the structure, both the interior and exterior must be inspected for gaps or holes.

Gaps or holes inside the structure can be found:

- inside, under, and behind kitchen cabinets, refrigerators, and stoves
- inside closets near the floor corners
- around the fireplace
- around doors
- around the pipes under sinks and washing machines
- around the pipes serving hot water heaters and furnaces
- around floor vents and dryer vents
- inside the attic
- in the basement or crawl space
- in the basement and laundry room floor drains
- between the floor and wall juncture.

Gaps or holes outside the structure can be found:

- in the roof among the rafters, gables, and eaves
- around windows
- around doors
- around the foundation
- around attic vents and crawl space vents
- under doors
- around holes for electrical, plumbing, cable, and gas lines.

Small holes should be filled with steel wool and caulked to keep the wool in place. Lath⁴⁶ screen or lath metal, cement, hardware cloth, or metal sheeting



Roof Rat

should be used to fix large holes. Gaps in mobile home skirtings should be fixed and flashing used around the base of the house. If all entry holes are not sealed rats and mice will continue to get inside. Outbuildings and garages should also be sealed.

Traps

Use an appropriate snap trap. Traps for catching mice are different from those for catching rats. Carefully read the instructions before setting the trap. When setting the trap, place a small amount of peanut butter (approximately the size of a pea) on the bait pan of the snap trap. Position the bait end of the trap next to the wall so it forms a “T” with the wall. Rodents prefer to run next to walls or other objects for safety and do not like being out in the open.

In attics, basements, crawl spaces, and other areas that do not have regular human traffic, set traps where there is evidence of frequent rodent activity. Some rodents, particularly rats, are very cautious and several days may pass before they approach the traps. Other rodents, such as house mice, are less cautious and may be trapped more quickly. Traps should also be placed in outbuildings and in areas that might likely serve as rodent shelters.

⁴⁵The primary source of information is the U.S. Center for Disease Control.

⁴⁶A lath or slat is a thin, narrow strip of straight-grained wood used under roof shingles or tiles, on lath and plaster walls and ceilings to hold plaster, and in lattice and trellis work. Lath has expanded to mean any type of backing material for plaster. This includes metal wire mesh or expanded metal that is applied to a wood or metal framework as matrix over which stucco or plaster is applied, as well as wallboard products called gypsum or rock lath. One of the key elements of lath, whether wooden slats or wire mesh, are the openings or gaps that allow plaster or stucco to ooze behind and form a mechanical bond to the lath.

Clean Up

Eliminate possible food sources by:

- keeping food in thick plastic or metal containers with tight lids
- cleaning up spilled food immediately and washing dishes and cooking utensils soon after use
- keeping outside cooking areas and grills clean
- putting pet food away after use and not leaving pet food or water bowls out overnight
- keeping bird feeders away from the house and utilizing squirrel guards to limit access to the feeder by squirrels and other rodents
- using a thick plastic or metal garbage can with a tight lid
- keeping compost bins as far away from the structure as possible (100 feet or more is best).
- keeping grains and animal feed in thick plastic or metal containers with tight lids
- in the evening, placing uneaten animal feed in containers with lids
- using clean, rodent proof containers when storing trash and food waste inside the structure
- disposing of trash and garbage on a frequent and regular basis and picking up or eliminating clutter.

Eliminate possible nesting sites outside the home. Elevate woodpiles and garbage cans at least one foot off the ground. Move woodpiles far away from the structure (100 feet or more is best). Get rid of old trucks, cars, and old tires that mice and rats could use as homes. Keep grass cut short and shrubbery within 100 feet of the home well-trimmed.

ARMADILLOS⁴⁷

The Animal

Armadillos (from Spanish "little armored one") are New World placental⁴⁸ mammals in the order Cingulata with a leathery armor shell. The average length of an

armadillo is about 30 inches, including tail. Armadillos have a shield-like shell covered with horny scales. Joints in the shell are flexible, which enable the animal to bend and twist. Only the ears and belly of the armadillo are without bony armor. These animals have 28–32 peg-like teeth in simple rows well back in the mouth. There are no front teeth. Armadillos have poor eyesight and hearing, but a keen sense of smell. Both males and females are about the same size, look alike, and have similar habits. Despite their awkward appearance, armadillos are agile runners and good swimmers, and even have the ability to walk underwater across small streams.

Armadillos typically rest in a deep burrow during the day and become more active during the late evening, night, or early morning. These burrows are usually located under brushpiles, stumps, rockpiles, dense brush, or concrete patios, and are about 7–8 inches in diameter and can be up to 15 feet long. Armadillos



often have several burrows throughout their territory.

The Problem

Armadillos are, to some degree, beneficial because they eat adult insects and larvae. But their feeding behavior also can cause problems for property owners and managers. When looking for insects in the soil, armadillos dig numerous holes in golf courses, lawns, flowerbeds, and gardens. These holes typically are 1–3 inches deep and 3–5 inches wide. They also uproot flowers and other ornamental plants. Armadillo burrows

⁴⁷The major source of information on armadillos is the University of Florida IFAS Extension, "The Nine-Banded Armadillo" by Joseph M. Schaefer and Mark E. Hostetler.

⁴⁸The placenta is a flattened circular organ in the uterus of pregnant eutherian mammals (mammals having placentas), nourishing and maintaining the fetus through the umbilical cord.

under driveways, patios, and playgrounds can cause structural damage and burrows in pastures can pose a potential hazard to livestock. Leg and ankle injuries can occur if a person, especially a small child playing in a playground, inadvertently steps in a burrow hole.

Control

Recommended methods of control include:

- reducing watering and fertilizing of lawns
- creating barriers (e.g., fences)
- live trapping
- shooting offending individuals.

Reducing lawn watering and fertilizing will reduce armadillo-caused damage. A moist lush landscape is perfect for the earthworms and insect larvae that are major food sources for armadillos. Sometimes watering adjacent areas may attract armadillos away from a site.

Where highly valued plantings require protection, small fences may be used to keep the animals out. These fences should be approximately 24 inches above ground with the bottom of the fence buried 18 inches below the surface of the ground. The fence should be slanted outward at about a 40 degree angle.

Several live trapping techniques can be used to capture armadillos as they come out of their burrows. One method is to firmly insert a 6-inch diameter PVC pipe into the entrance of an active burrow. Regular-sized armadillos will get stuck in the pipe as they try to exit. A nylon thrownet used for fishing can also be staked down so it covers the burrow entrance. Armadillos will get tangled in the net as they emerge. Another trapping technique requires burying a large bucket (larger than five gallons) in front of the entrance and covering it with newspaper or plastic sheeting and a light layer of soil.

Because armadillos are nocturnal, trapping techniques designed to capture armadillos emerging from burrows should be applied late in the afternoon and checked several hours after darkness. Installing chicken wire along a patio, driveway or house foundation will also discourage them from burrowing.

Armadillos can be trapped in raccoon-sized, metal cage live traps (available from local pest control and

feed stores) or in homemade box traps. Traps should be located near the entrance of burrows or along fences or other barriers where the animal travels. Traps are most effective when "wings" (1 x 6 inches x 6 feet boards or other material) are added to funnel the animal into the trap. The benefit of using baited traps has not been positively established. Armadillos are more likely to enter a cage trap when leaf litter or soil is placed over the wire bottom.

Relocating problem animals to another area is not recommended. This approach only transfers the problem somewhere else, can enhance the spread of diseases, and upsets the natural balance in the area where the armadillo is released. Armadillos are not native to Florida and it is illegal to transport and release them.

Shooting is another method frequently used to control nuisance armadillos where it is legal to discharge a firearm. It is illegal to use artificial lights to aid in the shooting of armadillos at night. Armadillo meat is edible if properly prepared and there is no daily possession or season limit on them.

Poison baits are illegal and ineffective.

ALLIGATORS

The Animal

An alligator is a crocodylian in the genus *Alligator* of the family Alligatoridae. The two living species are the American alligator (*A. mississippiensis*) and the Chinese alligator (*A. sinensis*). An average adult American alligator's weight and length is 790 lbs. and 13.1 feet, but they sometimes grow to 14 feet long and weigh over 990 pounds. The largest ever recorded, found in Louisiana, measured 19.2 feet.

American alligators live in freshwater environments, such as ponds, marshes, wetlands, rivers, lakes, canals, and swamps, as well as in brackish environments. When they construct alligator holes in the wetlands, they increase plant diversity and provide habitat for other animals during droughts. They are, therefore, considered an important species for maintaining ecological diversity.

Although the alligator has a heavy body and a slow metabolism, it is capable of short bursts of speed,



especially in very short lunges. Alligators' main prey are smaller animals they can kill and eat with a single bite. They may kill larger prey by grabbing and dragging it into the water to drown. Alligators consume food that cannot be eaten in one bite by allowing it to rot, or by biting and then spinning or convulsing wildly until bite-sized chunks are torn off. This is referred to as a "death roll."

The type of food eaten by alligators depends upon their age and size. When young, alligators eat fish, insects, snails, crustaceans, and worms. As they mature, progressively larger prey is taken, including larger fish (such as gar), turtles, birds, deer, and other reptiles (including other alligators). In some cases, larger alligators are known to ambush dogs, Florida panthers, and black bears, making them the apex predator⁴⁹ throughout their distribution. Attacks on humans are few but not unknown. Alligators typically do not immediately regard a human, upon encounter, as prey but may attack in self-defense if provoked.

The American alligator is federally classified as "threatened due to similarity of appearance" to other endangered and threatened crocodylians. This provides federal protection for alligators but allows state-approved management and control programs. Alligators can be legally captured only by individuals with proper licenses or permits.

The Problem

Florida has more than a million alligators, but only a

dozen or so bites are recorded each year, according to the Florida Fish and Wildlife Conservation Commission (FWC). Although infrequent, when an attack occurs it can be lethal and traumatic to a survivor, their family, and onlookers. Alligators are considered a nuisance due to the potential danger they pose, especially to pets or children wandering near or swimming in Florida waterways.

Alligators quickly become conditioned to humans, especially when food is involved. Feeding alligators frequently results in loss of their fear of humans. Many aggressive or "fearless" alligators must be removed each year following feeding by humans. Ponds and waterways at golf courses and high-density housing are common areas where alligators become accustomed to living near people.

Control

Managers should inform prospective and current residents of the presence of alligators in their community's waterways. Upon being informed by a resident of an alligator sighting, the manager should contact their county's animal control department or the Statewide Nuisance Alligator Program (SNAP). SNAP is administered by the FWC's Division of Hunting and Game Management. Its mission is to address complaints concerning alligators. Persons with concerns about an alligator can call their toll-free Nuisance Alligator Hotline at 866-FWC-GATOR (866-392-4286). A contracted nuisance alligator trapper is then dispatched.

Generally, an alligator may be deemed a nuisance if it is at least four feet in length and the caller believes it poses a threat to people, pets or property. SNAP uses contracted nuisance alligator trappers throughout the state to remove alligators from locations where they are unwanted or unwelcome. If a complaint meets the qualifying criteria, SNAP will issue a permit to a contracted nuisance alligator trapper authorizing the removal of the animal. Once trapped, the animal is transported and destroyed.

Alligators are most dangerous in water or at the water's edge. They occasionally make overland forays in search

⁴⁹An apex predator is a predator residing at the top of a food chain upon which no other creatures prey. Apex-predator species occupy the highest trophic level or levels and play a crucial role in maintaining the health of their ecosystems.

of new habitat, mates, or prey. Concrete or wooden bulkheads that are a minimum of three feet above the high-water mark will repel alligators along waterways and lakes. Alligators have been documented to climb 5-foot chain-link fences to get at dogs. Fences at least five feet high with 4-inch mesh will effectively exclude larger alligators if the top of the fence is angled outward.

Managers should ensure that signs are posted near waterways advising residents and visitors not to feed the alligators and to be alert to their presence.

Alligator Attacks

There is no doubt that alligator attacks can, and will, occur in communities with lakes. Almost every lake in Florida, whether natural or man-made, is a potential alligator haven. Alligators travel in canals and culverts connecting lakes so a body of water without alligators one day might be heavily populated the next. Alligators float, frequently near the shore, with just their eyes and snout visible which makes them hard to notice. And they are fast; an alligator can run about 30mph. Your little dog, chasing birds along the shore, will be unaware and unsuspecting of an alligator threat. Maybe you allow your 4-year-old grandchild to play near your backyard lake. Pets and children, if unsupervised, can easily be snatched by an alligator with little time for anyone to notice or react. We recommend you never let your pets or your children outside, unsupervised, near lakes or other inland water bodies.

SUMMARY

Many owners and managers give only a casual regard to our wonderful Florida wildlife. Certainly, a reason we enjoy living near lakes, on golf courses, bordering parks, and near the Everglades, is the animals we visually experience: raccoons, bobcats, panthers, foxes, alligators, rabbits, black bears, lots of birds, even a few pythons and snakes. Let's suppose you work in an HOA abutting a golf course and surrounded by a State park, full of trees and lakes. Maybe a mama raccoon and her kits wander too far from their native area. And suppose one of your HOA owners comes home from grocery shopping with fresh deli meats,

strawberries, melons, and other delectables a raccoon might like. As the owner goes to let her two Jack Russells out the back door, she observes two little raccoon kits playing in her swimming pool, and the third climbing on the trellis near the door! And, nearby, mama raccoon is sunning herself near a tree, keeping a wary eye on her babies. One of the kits, seeing the owner come to the door with friendly excited little dogs, splashes through the pool and meanders right up onto the back porch! Perhaps she smells the fresh ham. Maybe she sees the Jack Russells and wants to play. The kit insistently scratches against the screen door, and tries to open it. (Did you know raccoons can actually open door handles?) The dogs, excited at new, strange, playful creatures, also scratch from the inside of the door. They cannot wait to make new friends! In a panic, the owner pushes the dogs away, tosses out some strawberries, closes the back wood door, and calls the manager. The kits rush over to munch on the strawberries while the owner waits for help. The manager calls the local Park Service—who rescues mama raccoon and the kits a few hours later—and relocates them back home to the middle of the park.

Suppose the kits had been sleeping under the tree with mama raccoon, where the owner could not see them. And suppose she let the dogs out. Jack Russells are very curious, friendly and playful dogs. They possibly could have approached the kits, who would engage in play, only to have mama raccoon (who, while most likely not, could be rabid) attack the dogs. Especially as we take over more and more of the Everglades, build abutting parks, nature preserves and encroaching agricultural reserves, we see animals moving near suburban developments. The key is learning to share outdoor spaces with our native creatures and protect our wildlife while keeping our children and pets safe.

III. Statutes

State Laws and Rules Related to Wildlife Control Methods

The Florida Constitution has designated the Fish and Wildlife Conservation Commission (FWCC) as the legal steward of the native wildlife resources of the state. The mission of this state agency is to manage freshwater aquatic life and wild animal life and their habitats to perpetuate a diversity of species with densities and distributions that provide sustained ecological, recreational, scientific, educational, aesthetic, and economic benefits.

Florida Statutes 379.3011 to 379.3017 relate to alligators. It is unlawful to feed or entice wild alligators, or to harvest or sell them without the required permits. Chapter 68A-25.003, F.A.C. explains that only designated agent-trappers of the Commission are authorized to take, possess, and kill those nuisance alligators specifically designated by the Commission.

The FWCC maintains Florida's Official Endangered and Threatened Species List which includes 131 species of federal or state-protected fish, amphibians, reptiles, birds, and mammals.

The Florida Structural Pest Control Act (F.S. 482)

F.S. 482 defines pest as an arthropod, wood-destroying organism, rodent, or other obnoxious or undesirable living plant or animal organism.⁵⁰ An arthropod is an invertebrate (lacking a backbone) animal, such as an insect, spider, or crustacean (crabs, lobsters, shrimps, and barnacles).

Pest Control Operator Requirements

F.S. 482.132 describes the requirements for licensure as a pest control operator as follows:

A prospective operator must:

- be a high school graduate
- have training or experience in pest control

- pass an examination.

An operator who performs fumigations must meet additional criteria, as defined in F.S. 482.151.

A pest control business must maintain insurance coverage, pursuant to F.S. 482. F.S. 482(4) requires a pest control company to notify the FDACS in writing at least 24 hours in advance of fumigation.

PEST CONTROL EMPLOYEE REQUIREMENTS

Identification Cardholder

A pest control employee who performs pest control must carry an identification card, with a picture ID and signature, issued for the licensed operator for whom they work. They are referred to as identification cardholders. The employee may also have to obtain a pest control operator's certificate, depending upon the specific services provided.

An identification cardholder must be an employee of a pest control operator (licensee) and cannot be an independent contractor. The employee may operate only out of, and for customers assigned from, the operator's licensed business location. The employee may not perform any pest control independently of and without the knowledge of the operator and may perform pest control only for the licensee's customers.

Card Expiration

An identification card automatically expires when the holder ceases to be an employee of the licensee for which the card was issued. It is the responsibility of the certified operator to obtain and destroy expired cards. An identification card expires:

- on the licensee's next anniversary date after issuance

⁵⁰arthropod or plant life which damages and can re-infest seasoned wood in a structure, namely termites, powder-post beetles, oldhouse borers, and wood-decaying fungi.

- upon transfer of business ownership, change of business name registered with the department, or change of licensee's business location address.

Card Renewal

Each identification card must be renewed annually on or before the licensee's anniversary date as set by the department for each licensed business location.

Required Training

Every employee must receive four hours of classroom training in pesticide safety, integrated pest management, and applicable federal and state laws and rules within six months after issuance of the card or must have received such training within two years before issuance of the card. Additionally, the employee must receive at least two hours of continuing training in pesticide safety, integrated pest management, and applicable federal and state laws and rules by the renewal date of the card.

Miscellaneous Requirements

The association must ensure that pesticides are used strictly according to their labels or as directed by the EPA or the FDACS. It is illegal for a community association to have unlicensed or uncertified personnel perform pest control services in individual units or in common areas.

An entity or person who uses an unlicensed person to provide pest control services may be convicted of a second-degree misdemeanor. However, a license is not needed for individuals to perform pest control in their own residence, except for fumigation. A license is required to perform fumigation.

SUMMARY

In summary, the objective of this course is to expand managers' awareness of the problems their communities may experience with specific animals, and to describe methods that have proven effective in control of said animals and insects. An additional purpose is to provide information on laws and regulations pertaining to pest control activities.

Many community association residents, including board members, love animals,⁵¹ and are concerned that humane methods of control are utilized. Reference has been made in the text about eradicating, exterminating, or destroying pest animals, including alligators, birds, and feral bees. Undoubtedly such methods are disturbing or unacceptable to some managers and students taking this course, in addition to directors and residents. Unfortunately, in some cases, such as alligator control, state guidelines require trapping, transporting, and ultimately destroying the animal. In other cases, such as with bees and wasps, the Board may be faced with the issue of the cost and effectiveness of transporting their nests as opposed to eradication. Pest control companies are often an invaluable asset providing management with alternative control strategies.

Pests can be destructive of property, and harmful, even fatal, to residents, their guests, and their pets. Managers should be knowledgeable of federal, state, and local laws regarding protected species, as well as legal and effective methods of pest control. Boards of directors, with their managers' guidance, should seek to achieve a balanced approach to pest control that reflects their values, as well as protecting the environment and their communities.

⁵¹Termites are not a species that have much of a human fan club. However, mammals, birds, and even some reptiles have persons who care deeply about their welfare.



Bugs, Birds, Bats, Bees, and Beasts – Understanding Pest Control Services For Community Associations

FINAL EXAMINATION

1. Pest control is all of the following except:

- a. the use of any method or device or application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on, or under a structure, lawn, or ornamental
- b. the identification of or inspection for infiltrations in, on, under, or over a structure, lawn, or ornamental
- c. the use of any pesticide, economic poison, or mechanical device for preventing, controlling, eradicating, inspecting for, mitigating, diminishing, or curtailing insects, vermin, rodents, pest birds, bats, or other pests in, on, or under a structure, lawn, or ornamental, and all phases of fumigation
- d. the advertisement of, solicitation of, or acceptance of remuneration for any work involving the use of any pesticide, economic poison, or mechanical device for preventing, controlling, eradicating, inspecting for, mitigating, diminishing, or curtailing insects, vermin, rodents, pest birds, bats, or other pests in, on, or under a structure, lawn, or ornamental, and all phases of fumigation

Reference: I. Definitions

2. Which of the following is not true of termites?

- a. They are euro-social insects.
- b. Liquid termiticide is the most commonly used method of controlling termites.
- c. Estimates of the annual cost of damage to wood structures caused by termites ranges between one and seven million dollars each year.
- d. Formosan termites can eat through concrete.

Reference: II. Common Pest Control Problems: Termites

3. Which of the following is true of pest birds?

- a. Visual scares are an effective control method.
- b. Pigeons, European starlings, and sparrows are federally protected against control, dispersal, or extermination.
- c. Spikes or sticky glues placed on ledges where pest birds roost can be an effective control method.
- d. Bird droppings are very alkaline and can erode substrates, especially tar-based roofing materials.

Reference: II. Common Pest Control Problems: Birds

4. Which of the following is not true of bats and/or bat control?

- a. Despite how large they appear in flight, most bats are remarkably small. Some can fit through openings smaller than ½-inch wide.
- b. Bats are natural reservoirs for a large number of zoonotic pathogens, including rabies.
- c. Bats may enter buildings and become a nuisance by their squeaking, scratching, scrambling, and crawling in attics, walls, and chimneys. Bat droppings can accumulate and cause a stench in buildings and an unsightly mess on the outside of buildings.
- d. An inclusion is conducted by positioning one-way devices at the locations where bats are emerging from the roost. The one-way devices allow the bats to exit but prevents them from re-entering.

Reference: II. Common Pest Control Problems: Bats

5. Which of the following is true of raccoons?

- a. Pest raccoons should be trapped and relocated to a non-contiguous property.
- b. Preventive measures to restrict access to food waste and den sites are the only effective long-term raccoon control strategies.
- c. Raccoons are incapable of killing dogs and cats.
- d. Raccoons are not a major carrier of rabies in Florida.

Reference: II. Common Pest Control Problems: Raccoons

6. Which of the following, related to bees and/or wasps, is true?

- a. Feral bees cannot be legally relocated or eradicated.
- b. A person with an aversion to bee or wasp venom or who suffer multiple stings, may experience an anaphylactic reaction that is potentially deadly.
- c. The Florida Department of Agriculture and Consumer Services maintains a list of Registered Beekeepers and Certified Pest Control Operators who perform bee removal services.
- d. Bees in a swarm are more likely to sting.

Reference: II. Common Pest Control Problems: Bees & Wasps

7. Which of the following related to snakes or snake control is true?

- a. Snakes are aggressive and will charge or chase after people.
- b. The Burmese python is a large venomous constrictor that is an invasive species in Florida and has had a devastating impact on native wildlife, especially mid-size mammals.
- c. Snakes can be removed from inside buildings by placing glueboards or funneled minnow traps in snake-traveled areas such as along walls.
- d. The Western Diamondback Rattlesnake is the largest and most dangerous of Florida's native snakes.

Reference: II. Common Pest Control Problems: Snakes

8. Which of the following is true of rats and/or mice?

- a. Rats and mice are different species of rodents.
- b. Since all rats are prolific brooders, an infestation can occur quickly once rats find their way in and create a habitat.
- c. The primary strategy for preventing human exposure to rodent diseases is to eliminate food sources, sealing even the smallest entrances, and successful trapping.
- d. Rats and mice only spread disease to humans indirectly, through ticks, mites, or fleas that have fed on an infected rat or mouse.

Reference: II. Common Pest Control Problems: Rats, Mice and Other Rodents

9. Which of the following is true of alligators or their control?

- a. Associations boards may allow members to kill alligators with personal weapons.
- b. Alligators are a potential danger to pets but not humans.
- c. Upon being informed by a resident of an alligator sighting, the manager should contact their county's animal control department or the Statewide Nuisance Alligator Program (SNAP).
- d. Managers should not inform prospective residents of the presence of alligators in their community's waterways because it could discourage sales and reduce property values.

Reference: II. Common Pest Control Problems: Alligators

10. Which of the following is not true of the Florida Structural Pest Control Act?

- a. It defines pest as an arthropod, wood-destroying organism, rodent, or other obnoxious or undesirable living plant, person, or animal organism.
- b. It requires a pest control employee who performs pest control to carry an identification card with a picture ID and signature, issued for the licensed operator for whom they work.
- c. It requires an association to ensure that pesticides are used strictly according to their labels or as directed by the EPA or the FDACS.
- d. It requires a prospective pest control operator to be a high school graduate, have training or experience in pest control, and pass an examination.

Reference: III. Statutes



~ NOTES ~



Policies & Procedures: Navigating Through Human Resources Issues

Part I: The Organization

Part II: Civil Rights Act

Part III: Sexual Harassment

Part IV: Employee Handbook

INTRODUCTION & OVERVIEW

Often individuals take a leap of faith that if they start a new career everything will fall into place with little effort because they possess what they believe is the adequate knowledge skills and abilities to be successful.

Though the individual planning to start a new job, begin a new career or start-up a new business may see themselves as a subject matter expert in the services to be provided, that does not necessarily mean that they are yet equipped to understand everything that they must do in order to begin their new path.

These principles can apply to a new career or small business start-up, and often to times when career advancements or growth are involved. This may include an individual who wishes to strike out on their own as a CAB, a CAM who has responsibilities for several staff members

and increased supervisory accountability or a CAM who has site responsibilities to multiple associations.

Navigating the complexities of understanding all of the information that will be required in order to recruit employees, protect their rights and sustain those human resources is overwhelming for many in such transitions.

This course will discuss many of the facets of being an organization or professional that will be charged with the responsibilities for providing a work environment that protects the employees, the stakeholders and themselves from harassment, adverse actions and discrimination.

"The strength of the team is each individual member. The strength of each member is the team." Phil Jackson, NBA Coach, Los Angeles Lakers & Chicago Bulls (retired)

I: THE ORGANIZATION – COMMUNITY ASSOCIATION, EMPLOYER, EMPLOYEE AND STAKEHOLDERS

The **organization**. What exactly is that? The Oxford Dictionaries define it as *an organized group of people with a particular purpose, such as a business or government department*. This definition includes **company**, firm, concern, operation, corporation, institution, **community association**, group, establishment, consortium, conglomerate, combine, syndicate, body, agency,

federation, confederation, alliance, coalition, movement, society, league, club, network, confederacy and association. Note that we will use **"company,"** and **"organization"** interchangeably with **"community association."**

The Society of Professional Human Resources (SHRM) identifies the organization in a similar way,

identifying the organization's roots to ancient times when people formed groups to achieve goals that the individuals were unable to achieve on their own. The modern organization evolved to coordinate the many different activities that are needed to produce goods and services necessary to achieve its goals.

The Community Association

In the State of Florida, community associations must be incorporated (since April 1, 1977). Community associations are governed in part by F.S. 617, Corporations Not for Profit. Therefore, along with other business and operational entities that work alongside community associations, it fits the definition of organization. A community association manager (CAM) and, in many cases, a community association business (CAB) provide and perform a variety of

specialized skills, knowledge and abilities on a variety of organizational levels. In fact, a CAM and CAB, in addition to whatever employment or contractual agreement they may have with the organization (i.e. community association), must adhere to F.S. 468.4334 Professional practice standards; liability.

Community Association Institute (CAI) defines the **client** as a singular term applying to one or more community association properties (condominium, homeowner association, cooperative, PUD etc.) and their governing body. The client may employ the manager directly or be under some form of independent contract with the manager. Even in this definition, the client, as described, is an organization and, in the case of Florida Statutes, client in this form speaks of an organization that is incorporated, a community association.

The 2018 Florida Statutes

Title XXXII

Regulation of Professions
and Occupations

Chapter 468

Miscellaneous Professions
and Occupations

468.4334 Professional practice standards; liability.

- (1) A community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under this chapter. A community association manager and a community association management firm shall discharge duties performed on behalf of the association as authorized by this chapter loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.
- (2)(a) A contract between a community association and a community association manager or a contract between a community association and a community association management firm may provide that the community association indemnifies and holds harmless the community association manager and the community association management firm for ordinary negligence resulting from the manager or management firm's act or omission that is the result of an instruction or direction of the community association. This paragraph does not preclude any other negotiated indemnity or hold harmless provision.
- (b) Indemnification under paragraph (a) may not cover any act or omission that violates a criminal law; derives an improper personal benefit, either directly or indirectly; is grossly negligent; or is reckless, is in bad faith, is with malicious purpose, or is in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

When an organization forms, it may have a number of legal guidelines that it must adhere to in order to exist. An organization that is well planned and foresees existing into the long-term future may also create its mission and its vision statements. As part of its mission, the organization will establish the ethics to which it strives to adhere and will expect its employees and members to adhere to as well.

The organization's ethics explain the discipline of dealing with what is good and bad, or right and wrong, or with moral duty and obligation.

In order for an organization to determine what it will publish as its organizational ethics, it will consider in its simplest terms what its code of conduct will be. This code of conduct, also known as code of ethics, is a set of principles designed to guide employees to conduct themselves with honesty and integrity in all actions representing the organization. It reflects the organization's mission and how it wants the public (members) to perceive it. It embodies policies based on the many laws that govern it, and the moral and value characteristics to which the organization wants

its employees to adhere. All businesses, firms, associations and the like can set their own value-based policies as part of their "brand."

What will a code of ethics include? The code of ethics is a statement of the values adopted by the organization, its employees and its directors that set the official tone of top management regarding expected behaviors. SHRM identifies some of the major provisions of a code of ethics to include:

- Professional responsibility
- Ethical leadership
- Fairness and justice
- Conflicts of interest
- Use of information

Guidelines for writing a code of ethics recommend that the creator(s) be clear about the objectives that the code is intended to accomplish. Support and ideas for the code should come from all levels of the organization. Always be aware of the latest developments in the laws and regulations that affect community associations and

What is Your Association's Brand?

A brand is an overall experience of a member that distinguishes an organization or product from its rivals in the eyes of the customer. Brands are used in business, marketing, and advertising.

The practice of branding is thought to have begun with the ancient Egyptians, who were known to have engaged in livestock branding as early as 2,700 BCE. Branding was used to differentiate one person's cattle from another's by means of a distinctive symbol burned into the animal's skin with a hot branding iron. If a person stole any of the cattle, anyone else who saw the symbol could deduce the actual owner. However, the term has been extended to mean a *strategic personality* for a product or company, so that 'brand' now suggests the values and promises into which a consumer may perceive and buy.

Branding is a set of marketing and communication methods that help to distinguish a company or products from competitors, aiming to create a lasting impression in the minds of customers. The key components that form a brand's toolbox include a brand's identity, brand communication (such as by logos and trademarks), brand awareness, brand loyalty, and various branding (brand management) strategies.

An example: Williams Island in Aventura calls itself "the Florida Rivera." Ocean Village, along the Treasure Coast, says it is "Your Home Away from Home." Both convey an image of a place to go to relax, sun oneself, vacation. Kings Point in Delray Beach describes itself as "Active Adult Living at its Finest." Grand Key, in Tampa, describes itself as "*a great place to live... a great place to play... in the heart of Tampa.*"

So, maybe your association wants a "brand," such as a logo, or symbol on its stationery, that conveys what your association is about. If so, what would it be?

managers. The code should be written as simply and clearly as possible, avoiding legal jargon and empty generalizations. The code should respond to real-life questions and situations. It should provide resources for further information and guidance and in all its forms should be user-friendly because ultimately a code fails if it is not used.

In terms of the organization, which will usually be a corporation, it also has certain social responsibilities. Its commitment to excellence in the area of social responsibility includes its implied, enforced or felt obligation of managers, acting in their official capacity, to serve or protect the interests of groups other than themselves. When the organization behaves as though it has a conscience, it is said to be socially responsible. *Human Resource Management Tenth Edition*, R. Wayne Moody, SPHR¹, explains that the organization is expressing how the organization as a whole behaves toward society through its social responsibility.

The Employer

We have seen, in part, how the organization identifies or brands itself. In community association management, we must also look at who the employer is and what that means.

The Equal Employment Opportunity Commission (EEOC), the agency responsible for enforcing federal laws regarding discrimination or harassment against a job applicant or an employee in the United States, provides that employers have an affirmative duty to maintain a workplace free from harassment and discrimination.

Black's Law Dictionary, abridged eighth edition, gives a legal definition of an **employer** as a person or entity who controls and directs a worker under an express or implied contract of hire and who pays the workers' salary or wages.

Merriam-Webster's Collegiate Dictionary defines an **employer** as one that employs or makes use of something or somebody. Especially, an employer is a person or company that provides a job paying wages or a salary to one or more people.

Internal Revenue Service defines an **employer**

generally as any person for whom an individual performs or did perform any service, of whatever nature, as an employee.

Making the determination of which entity is the actual employer may become somewhat of a challenge in community association management. Most certainly, a CAB may be the employing unit, or the employer, who by a legal contract provides employees or staff members to a community association. In many instances, the community association itself will be the organization who is the employer. This is not to ignore the fact that, in some instances, the CAM is neither an employee of a CAB or of the community association. In which case, the CAM may be identified as an independent contractor.

Even if the community association happens to be self-managed, it does not take away the responsibility of the organization (community association) to adhere to specific laws and ordinances. The community association should consider developing its code of ethics for the benefit of any and all of those individuals who serve the community association in some capacity, either compensated or voluntary.

The Employee

Merriam-Webster's Collegiate Dictionary defines an **employee** as one employed by another usually for wages or salary and in a position below the executive level.

A legal definition of **employee**, as stated in *Black's Law Dictionary*, is a person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.

For Internal Revenue Service purposes, an **employee** is defined as someone who works for an employer. Employers can control when, where, and how the employee performs the work.

Along with determining who the employer is, it is just as important to determine who the employees are. Also challenging is the fact that the CAM may be an independent contractor, as other staff members and service providers may very well be.

¹Senior Professional in Human Resources

In a similar manner and description of control relative to independent contractors, if the CAB or community association does not have employees but instead uses the services only of independent contractors, it does not take away the responsibility of the community association to adhere to specific laws and ordinances. Even under these circumstances, the community association should consider developing its code of ethics for the benefit of any and all of those individuals who serve the community association in some capacity.

The Stakeholders

This now brings us to the consideration of what might be called stakeholders.

Merriam-Webster's Collegiate Dictionary identifies **stakeholders** as a person or persons with an interest or concern in something, especially a business.

Black's Law Dictionary gives a legal definition of **stakeholder** as a person or persons who have an interest or concern in a business or enterprise, though not necessarily as an owner.

Human Resource Management, Tenth Edition identifies organizational **stakeholders** as those individuals or groups whose interests are affected by organizational activities.

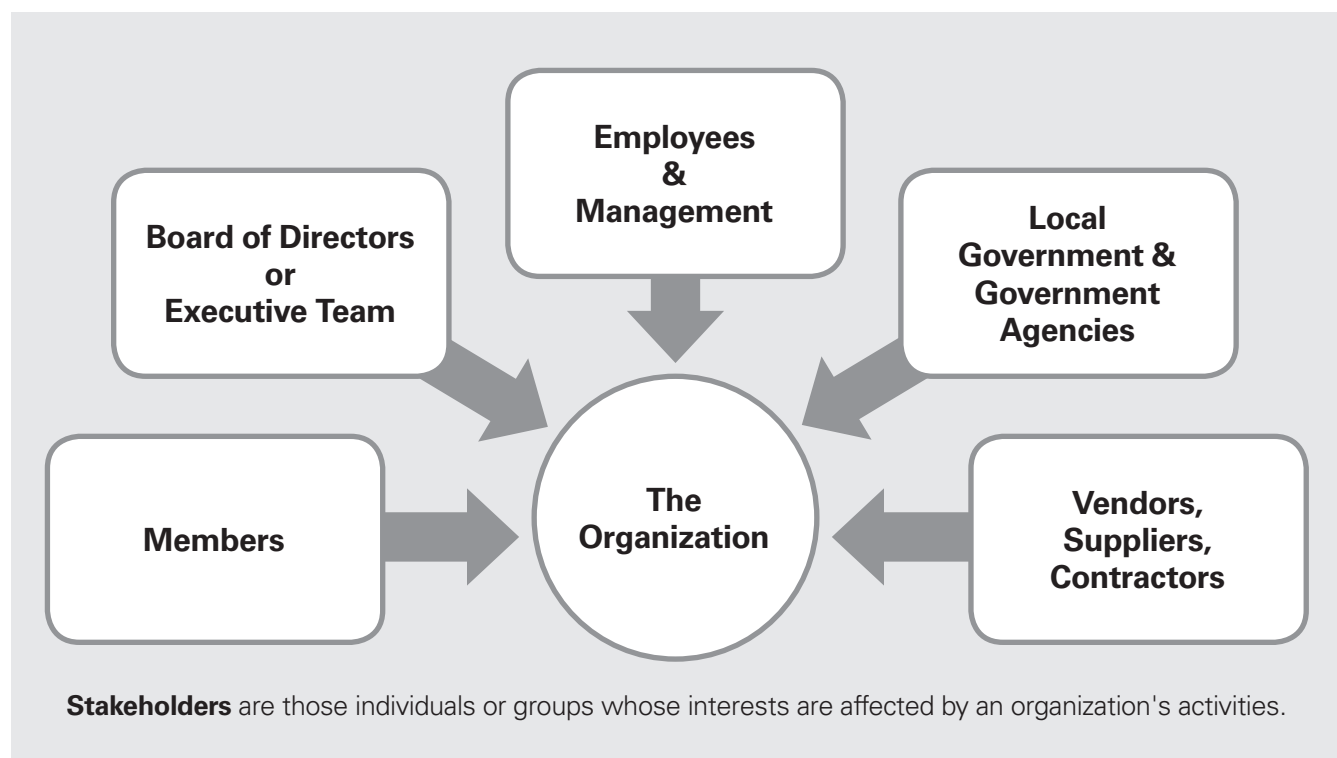
Therefore, these suggest that various entities may be determined to be stakeholders of the organization, regardless what the organization may be – business, association or similar.

In compliance with EEOC, the employer will take all reasonable steps to prevent or eliminate harassment and sexual harassment by non-employees, including customers, clients and suppliers, who are likely to have workplace contact with employees.

In any organization, including community associations, it is necessary to determine what the roles are of employer, employee, stakeholder or others.

Regardless of the role, all parties of an organization must be mindful of laws and policies that affect the organization as a whole and which, if not addressed, can degrade fiduciary responsibilities, where violations of such can become not only financially costly but also potentially affect reputation and legal status.

Part II of this course will include a brief history of some of the most profound acts and legal changes that have occurred in the USA and have had a great impact on organizations, including community associations, CAMs and CABs.



II: THE CIVIL RIGHTS ACTS – HISTORY AND THE IMPACT ON EMPLOYING ORGANIZATIONS

The Civil Rights Act as originally adopted has had an extraordinary impact on organizations in many aspects. Subsequent amendments have substantially changed the way that organizations, employers and employees think about their respective roles.

History

The Civil Rights Act of 1866 is the oldest Federal legislation affecting staffing. This Act provides that all citizens have the same rights and that discrimination on the basis of race is covered by the Act.

Amendments to the Act came in the form of the Equal Pay Act of 1963. This prohibits an employer from paying less money to an employee of the opposite gender, if they both do work that is substantially the same. The equal pay act affects any employer with at least one employee.

Title VII of the Civil Rights Act of 1964 has had the greatest impact on equal employment opportunity. Title VII makes it illegal for an employer to discriminate in hiring, firing, promoting, compensating, or in terms, conditions or privileges, of employment.

Until 1968, the Act was presumed to apply only when there was action involving a state or state agency, but not by private parties. That changed in 1968, when the Supreme Court overruled that assumption and expanded the interpretation of the Act to cover all contractual arrangements. *Executive Order 11375* of 1968, also modified the language in the Civil Rights Act of 1964, changing the word “creed” to “religion” and adding sex (gender) discrimination to the other prohibited activities.

Until the 1970s, however, *sexual harassment* was a problem without a name. People and laws changed over time and the dynamics of sexual harassment evolved.

Title VII of the Civil Rights Act of 1964 as amended in 1972 had the greatest impact on human resource management. The amendments of 1972 created the

exceptions to Title VII as well as creating the Equal Employment Opportunity Commission (EEOC).

CIVIL RIGHTS ACT OF 1964

An act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States of America to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Civil Rights Act of 1964 was enacted by the 88th United States Congress and became effective July 2, 1964.

In 1977, 13 years after Congress passed Title VII, sexual harassment was recognized as a form of sexual discrimination.

Again, amended in 1991, Title VII provided for appropriate remedies for intentional discrimination and unlawful actions in the workplace. Sexual harassment in the workplace was no longer just about women. Men making harassment complaints had increased over the years and could no longer be ignored. In March 1998, the Supreme Court unanimously declared that same sex harassment is a valid claim.

The EEOC Title VII has also been accompanied with legislation prohibiting discrimination of protected classes, such as pregnant women, persons over a certain age, and persons with disabilities.

Title VII also prohibits discrimination against an individual because of his or her association with another individual of a particular race, color, religion, sex, or national origin, such as by an interracial marriage.

Though the discrimination laws evolved, it has not been

easy for individuals to file complaints of harassment. In 2009, a claim of retaliation was more common than other charges of any other type of discrimination.

In Title VII, the phrase “terms, conditions, or privileges of employment” was evidence that the intent of Congress was to strike at any and all disparate treatment of men and women in employment. The language of Title VII casts a wide net and is not limited to economic or tangible discrimination.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Unlawful discrimination includes the following actions and practices:

- Prohibits employers from discriminating against prospective and current employees on the basis of race, color, religion, sex, and national origin
- Amended 1978 to add pregnancy as a protected class
- An employer may not retaliate against a complaint
- Harassing acts occur when employees are forced to endure work or environments that are hostile, intimidating or offensive to them because of their membership in a protected class

Protected Under Title VII

- Private employers with 15 or more employees employed for 20 weeks during the current or preceding calendar year. Until 1972 Title VII applied to 25 employees
- Federal government employees
- State and local government employees
- Private and public employment agencies
- Labor organizations
- Joint labor/management committees

Employment policies established by employers must be valid and effective. Employers should understand that Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, color, sex, religion and national origin.

Among the other federal laws that prohibit discrimination are the Americans with Disabilities Act (disability), the Genetic Information Nondiscrimination Act (genetic information including family medical

history) and the Age Discrimination in Employment Act (40 or older). State laws generally prohibit discrimination against the same classes protected by federal law. Employers’ policies should clearly state that such activities are illegal and will not be tolerated.

A Possible Exception to Employment Discrimination Activities

It may be possible that an employer is permitted to discriminate based on a protected trait that is reasonably necessary to the normal operation of the specific business. This is known as a **Bona Fide Occupational Qualification (BFOQ)**. This exception is very narrow in scope (i.e. an employer or customer’s preference for an individual of a particular religion is not sufficient to prove a BFOQ). In order to prove a BFOQ defense, an employer must evidence three elements:

1. Direct relationship between the protected trait and the ability to perform the job duties
2. The BFOQ relates to the central mission of the specific business
3. There are no less-restrictive or reasonable alternatives

An association’s reasons for a BFOQ must be specific and absolute, not based on stereotypes or generalized assumptions. So, an association could not advertise for a man to perform general maintenance functions, based upon the stereotype that men are better at maintenance repairs. An allowable BFOQ could include a resort condominium advertisement for a couple to manage and maintain it. It may be logical to advertise specifically for a married couple.

Governance

The Equal Employment Opportunity Commission (EEOC) as well as certain other Fair Employment Practices Agencies (FEPAs) enforce Title VII (42 U.S.C. § 2000e-4). The EEOC and state FEPAs investigate, mediate, and may file lawsuits on behalf of employees.

Title VII also provides that an individual can bring a private lawsuit. An individual must file a complaint of discrimination with the EEOC within 180 days of learning of the discrimination or the individual may lose the right to file a lawsuit.

III: SEXUAL HARASSMENT – WHAT IT IS. WHO IS VULNERABLE? ECONOMIC AND NON-ECONOMIC IMPACT. EMPLOYER’S OBLIGATIONS.

When faced with a complaint of an employee or when establishing employment policies, an employer or supervisor may ask several questions of its human resources specialists. What is sexual harassment? Who is vulnerable? How does sexual harassment affect employees and employers? How does an organization protect itself and prevent sexual harassment?

Sexual Harassment

Sexual harassment is defined as:

- Unwelcome sexual advances
- Requests for sexual favors
- Other verbal or physical conduct of a sexual nature

when:

- Submission is a condition of employment and/or
- It is used as the basis for employment decisions and/or
- When the purpose or effect results in interfering with work performance or creating an intimidating, hostile or offensive work environment.

Sexual harassment is a type of gender discrimination.

Two standards of sexual harassment exist, **quid pro quo** and **hostile work environment**.

Quid Pro Quo is a Latin term meaning something for something. Relative to sexual harassment, it could mean a trade of job, job benefits, promotion or increase in pay, in exchange for sex. If the victim rejects the sexual demands, he or she may suffer some loss, such as job loss, rejection of a promotion, or other job benefits.

Hostile work environment is when an employee faces an intimidating, hostile or uncomfortable work environment. In 1980, the EEOC endorsed a new category, hostile work environment, for



sexual harassment claims. What makes a hostile environment? Hostile work environment can include any of, or any combination of, the following:

- Pictures, erotic words, posters that some individuals find offensive
- Off-color jokes or innuendos. Innuendos are usually less direct than jokes but still damaging to some
- Other offensive activities, such as pinching, grabbing, leering, verbal harassment, vulgar comments about an individual’s anatomy
- Sexual propositions on or off the worksite

Economic and Non-economic Impact

In terms of dollars, it is expensive to get caught on the wrong side of a harassment complaint. The financial losses for employers can include loss of money due to legal actions taken, loss of revenue, and, perhaps more importantly, the cost of the impact due to loss of reputation and credibility.

Going back as far as 1995, harassment has cost from tens of thousands of dollars to several millions of dollars. Issues such as an employer failing to take steps to prevent misconduct, preferential treatment for

sexual favors (quid pro quo), sexual harassment after an employee reported unethical business practices, and failure for the employer to take steps to stop alleged harassment, are just a few examples. These types of actions or failure to take appropriate action have cost companies a lot of money and have, in some cases, lead to the demise of a company or organization.

A 2010 study released by the SHRM found that one in three companies had dealt with sexual harassment claims within the past two years. The EEOC task force reports that, since 2010, employers have paid a total of \$699 million to employees claiming that they were harassed on the basis of sex, race, disability, age, national origin, color, and religion through its pre-litigation process. It further cited an estimate of settlements and court judgments in 2010 that amounted to more than \$356 million in costs.

There are other kinds of impact and loss other than financial loss. Symptoms resulting from harassment are similar to other forms of stress including:

- Psychological reactions such as depression or PTSD
- Physiological reactions such as headaches, sleep disorders and heart disease
- Career related effects such as a drop-in work performance.

Second hand effects are also prevalent individually as well as throughout the organization:

- Discourages people from asserting themselves
- Reinforces stereotypes
- Creates a hostile and intimidating environment
- Affects morale

In 2003, economist Kaushik Basu of Cornell University published a paper arguing that exposure to sexual harassment has something in common with exposure to excessive health hazards and working excessive hours due to its biological impact.

Employer's Obligations

The following paragraphs will address other questions concerning sexual harassment. In doing so, it is important to note that the ethics, practices and policies of an organization speak to employers, employees, to

the public and to the stakeholders of the organization.

The *"Interpretive Guidelines"* (www.eeoc.gov/eeoc/publications/adahandbook) issued by the EEOC on sexual harassment provide that employers have an affirmative duty to maintain a workplace free from sexual harassment. So, who is vulnerable to harassment? The simple answer in a community association is officers and directors, employees, employers and non-employees (contractors and vendors)... maybe even members and residents.

According to the Federal Supreme Court, 1998, the reasonable care standard, employers can be liable for sexual harassment damages if any of the following conditions exist:

- The victim never complained to the company
- The harasser is a coworker, not a supervisor
- The harasser is a customer (member)
- The harasser and the victim are the same sex
- An investigation was not conducted out of respect for the victim's request for confidentiality
- The victim perceives his or her own opportunities impeded by a manager's sexual harassment of or legitimate consensual relationship with, another employee

Harassment by non-employees include members or residents, clients and suppliers, who are likely to have workplace contact with employees. It may also include officers, directors and other volunteers of the association. An employer is expected to take all reasonable steps to prevent or eliminate sexual harassment, including by non-employees. You may recall that in Part I, The Organization, CAI includes in its definition of a client as being one or more community association properties.

There are a variety of actions that an organization and employer can take to establish that their ethics, practices and policies are intolerant of sexual harassment or any type of discriminatory activities.

When faced with a sexual harassment complaint, some organizations and employers respond by reprimanding the offender, mediating with those involved, dismissing the accuser and the allegation, and/or transferring the accuser or the offender.

The victim's actions can depend on a lot of variables. In some cases, the victim might do nothing, or try to resolve the problem by talking to the harasser. He or she may leave the job or demand a transfer. A victim may discuss it with management and file a formal complaint, file charges with a state agency or the EEOC, or consult an attorney.

Saying No. A victim's action may start with a benign statement. Often the victim will use body language that he or she feels can project to a harasser that the victim is serious, frequently adopting a posture, vocal tone, eye contact, facial expression, or display a personal distance. The questions here are: Does the harasser get it? Does the victim escalate the assertion? What if the harassment continues? Saying no may not be the best action to take. Serious harassers don't stop easily.

Official help. A victim may seek official help. If so, he or she will want to get the facts together: collect evidence received such as letters and photos, keep a detailed journal, talk with friends or with co-workers. He or she may seek support and guidance from the employer's human resource specialist or the employer's employee assistance program (EAP) provider (if the association has one). In many associations, the number of staff is small, and there may be no formal procedure for handling complaints. Additionally, harassment by officers or directors makes a victim's response difficult; to whom does the victim complain? Such situations may suggest to a victim that the only way to respond is to consider filing a formal action using the formal complaint procedures.

A recent poll conducted by MSN, in partnership with "Business Insider," revealed that one in three people (31 percent) in the U.S. admitted to having experienced sexual harassment on the job in some form. In addition, 15 percent of men said they had experienced workplace sexual harassment.

Many times, employers have been known to take a position of retaliation. **Retaliation** is when an employer takes negative action against an employee for opposing harassment or discrimination. For example, retaliation may occur when an employee files a complaint or gives evidence as a witness in a lawsuit, administrative proceeding or an internal investigation.

To Whom Does the Manager Complain?

Del Boca Vista has a Board of seven members. Four are men in their 60s and 70s. Two are men in their 40s. One is a woman in her 40s.

The new manager is a 39 year old woman, well qualified for her position. Recently, the 72 year old president, a widower, has been coming into the office daily, to review progress on association projects. At the beginning of each meeting, he compliments the manager on her attire, and suggests that he and the manager would be more comfortable discussing projects in his apartment. Each time, she demurs, stating all the files are in the office computer.

A few days ago, the president came in, and, with a big smile, provided the manager with a "gift" – a laptop computer. "Now," he says, "you can download the data to the computer." He wiggles his eyebrows up and down, "And we can meet more comfortably in my apartment. I have some goodies you will enjoy."

What should the manager do? To whom do you suggest she raise this issue? And how?

Data compiled by the EEOC reveals that half of all formal claims of sexual harassment in the U.S. do not result in any charges. **EEOC reports that the average wait time for a complaint to be addressed was 295 days in 2017.** That problem is likely not to improve. And, in community associations, where the manager may be the only employee with whom the Board or vendors have contact, the problem becomes more complicated. To whom can the manager complain? Will a complaint result in termination of the job?

Employer's responsibility and liability for harassment. EEOC guidelines state that employers have a duty to maintain a workplace free from sexual harassment. As such, an employer is responsible for such acts if the employer knew or should have known about them. The employer may not be responsible when it can show that it took immediate and appropriate corrective action on learning of the problem. In community associations, the employer includes the officers and Board of Directors. It may include committee members and other volunteers, as well as employees who work for the association in supervisory roles.

The employer is automatically liable for harassment by a supervisor that results in negative employment action such as termination, failure to promote or hire, and/or loss of wages. If the harassment results in a hostile work environment, the employer can avoid liability only if it can prove:

- It reasonably tried to prevent and promptly correct the harassing behavior
- The employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer

An employer is liable for harassment by non-supervisory employees or non-employees over whom it has control, such as independent contractors or customers on the premises, if it knew, or should have known about the harassment. That is, harassment does not only go down the chain; it can also go sideways or up the chain. That is, an employee can harass a co-worker, or a supervisor. Example: a director on the Board could harass another director.

When investigating allegations of harassment, the EEOC looks at the entire record, including the nature of the conduct, and the context in which the alleged incidents occurred.

Where does harassment occur? It happens from the top to the bottom of the workplace hierarchy and across all industries and sectors. Harassment can take place at the workplace or off site, even in a social setting. Places where customer service and client recommendations are key to job performance and tied to compensation are more likely to have higher rates of sexual harassment.

EEOC data reveals that, between 2005 and 2015, around 25 percent of complaints came from the service sector (which would include community association management). However, 42 percent felt compelled to accept it out of fear of losing jobs they could not afford to lose.

In short, harassment and sexual harassment have been damaging issues for a very long time and are not likely to go away any time soon. So how can an employer or organization such as your community association stay ahead of harassment?

Efforts to protect, prevent and address harassment issues and complaints

Upper management, supervisors, as well as other employees, have the ability to put the company or community association at risk for a lawsuit. If the behavior is hostile, discriminatory, harassing, unfair, or showing favoritism, the lack of timely and appropriate action can subject a company or community association to financial and non-financial losses that may not be recoverable.

An employer may be able to protect itself if it has an effective anti-harassment policy and complaint procedures. As previously mentioned, defense for employers includes two elements:

- The exercise of reasonable care to prevent and correct promptly and
- An employee's failure to (or avoidance to) take advantage of preventative or corrective opportunities provided by the employer

CASE EXAMPLES:

Sexual Orientation Harassment, 2001. A male employee filed a sexual harassment claim alleging that male co-employees and supervisor created a hostile working environment by subjecting the male employee to verbal abuse because he was effeminate and did not meet their stereotyped version of male behavior. They taunted the plaintiff by referring to him as "she and her." The Court concluded that these workers had subjected the plaintiff to an objectively and subjectively hostile work environment.

Employer's Vicarious Liability and Reasonable Care, 1998. The employer's defense was that it exercised reasonable care to prevent or correct promptly any sexually harassing behavior and the employee failed to take advantage of preventative and corrective opportunities provided by the employer or to avoid harm otherwise. The court held that "an employer is vicariously liable (responsible for the behavior of third parties, such as clients and customers) for actionable discrimination caused by a supervisor, but subject to an affirmative defense looking to the reasonableness of the employer's conduct as well as that of a plaintiff victim."

It is always a good idea to make the time to audit the harassment policies. Successful anti-harassment policies include elements such as:

- A clear and well-publicized “zero tolerance” policy
- More than one way for employees to report problems
- Guidelines explaining the discipline that employees who harass others would face
- Training employees and management
- Actively enforce policies

Employment standards and policies should also

consider including policies on how the company will address false and frivolous sexual harassment complaints. It should be clear that an employee cannot threaten a harassment charge when he or she is in trouble or not getting his or her way. Unfounded harassment complaints are concerning and, unfortunately, occur with some frequency. One example is when an employee files a claim of sexual harassment to try to avoid a disciplinary action by the employer.

In Part IV, the discussion will include planning and creating policies, employee handbooks and effectively communicating these tools with employees.

IV: EFFECTIVE COMMUNICATION RECRUITING, ORIENTATION, EMPLOYEE HANDBOOK AND TRAINING

An employing unit must take care in its recruiting and hiring processes. The information that an employee receives about the organization will often begin during the recruitment efforts and will carry on, at orientation and through publications, such as an employee handbook and written policies. The information should be updated from time to time during the life of the organization.

It is important that policies and other organizational matters be clearly communicated to all employees from the very beginning and throughout their tenure with that specific organization. This is true within community associations, with few employees, with predominantly contractors, with volunteers, and with vendors.

Some of the critical factors that are involved in informing and communicating with employees are issues mandated by employment laws. While some employers will choose only to post the required federal and state labor/employment law posters, others choose to create and maintain employee handbooks along with other written policies.

Recruiting and Hiring

There are several elements to the hiring process. It may begin with a recruitment campaign. Many companies and organizations use venues such as trade shows or industry events to showcase their company or organization while hoping to recruit potential new employees. Employee recruitment agencies play a big part in most industries. Online electronic recruitment is very common in the twenty-first century. Many community associations use industry journals and headhunters who directly recruit CAMs and other community association employees.

The method used by the company or community association to engage with prospective new employees is crucial to the employer as well as the employee. For many, this is the first opportunity for a company or community association to communicate its ethics, vision, mission and policies.

Many employers believe that diversity in the workplace is good for business, believing that it can lead to increased productivity and innovation. Human resource

professionals often make diversity and inclusion efforts a priority in recruitment strategies. However, inclusion efforts can also put a company or community association at a disadvantage and may subject them to legal trouble.

One way that an emphasis on diversity and inclusion can go wrong is if the recruiting and hiring efforts focus so much on inclusion that it may, in turn, leave others feeling excluded. Many employers unknowingly subject themselves to legal risks by going about their efforts in the wrong way.

It may be wise to look at the company or community association from the inside out. Find out from the current employees about the community association culture and if any improvements can be made to create a more inclusive, welcoming environment for all. In the hiring process employers should always hire the most qualified individuals. Looking at the company's marketing materials and website may be key to developing tools that will reach a wide network of potential employees.

Now the employee is hired. All of the preliminary functions have occurred. The offer is made and accepted, relative documentation is complete, and it is time to begin the employer/employee relationship.

Orientation

One of the keys to the success of an employee may be the orientation (on-boarding) processes that the employer provides. Another is an effective and well communicated job description. After recruiting efforts, an orientation process is another opportunity for the community association to communicate the ethics, vision, mission and policies.

Orientation also provides a venue to explain how the job fits into the community association's structure and goals. It may also be an opportunity to explain how an employee can acquire needed knowledge and skills to perform the job properly. An effective orientation process includes taking the time to review the policies and rules of the employing community association.

Each step taken during the recruiting, hiring and orientation process is critical to ensuring the employee's smooth transition to the workplace. These measures can also benefit the employer in low

employee turnover rates, a well-balanced workplace life for its employees from top down, and aid the employer in protecting itself and its employees from becoming the subject of future negative legal actions.

Employee Handbook and Policies

An employee handbook (manual) includes information about the employer, the company or community association, its policies and procedures, as well as explaining resources for inquiries and reporting conflicts.

Organizational development is a systematic method of examining an organization's processes, including structure, technology, individuals, groups and the human resources' strategies to improve the way it achieves desired business results. Part of the strategy may include the preparation and publication of an employee handbook.



The information and materials included in an employee handbook can be a tremendous benefit to the employing organization, to the employees and often to stakeholders if it is well thought out and carefully written.

Advantages to an employee handbook may include some or all of the following features:

- Promote uniformity in the treatment of employees
- Improve morale and may free the employer from requests for special treatment
- Promote efficiency and help to establish an organizational culture

- Set out rules for expected workplace behavior and results of willful violations
- Is a convenient source of information

In addition, the employee manual may serve to provide an employer a defense to an unemployment insurance claim or abusive discharge suit. It also should provide evidence of the employer's compliance with laws in the areas of workers compensation, equal employment, employment discrimination and harassment laws including sexual harassment.

It is important that each time the handbook is updated, the revisions are conveyed to the employees. The revisions should be signed by each employee who receives a copy, regardless whether it is the publication of a new handbook, a one-page amendment, or an online advisory. This acknowledgement should be kept on record by the employer.

In the event that the employer's process of orientation and/or subsequent updates to the handbook and policies are through an electronic online system, employees should be provided with a method of access, provided a time frame in which to comply with reviewing the new or updated information and clearly stated instructions of how to acknowledge that they have done so.

There are disadvantages to providing an employee handbook as well. The handbook could be considered a unilateral contract. A poorly written employee handbook might give the impression that it is an offer by the employer that it will abide by the provisions of the handbook and that acceptance of the handbook is achieved simply by working for the employer.

Charles H. Fleischre, Attorney at Law, in "HR for Small Businesses" suggests that an employee handbook not include issues such as arbitration provisions since it is not intended to be a contract for employment. However, some courts have found that the provisions in an employee handbook amount to an employment contract, even though no contract was actually intended. For such reasons, an employer or community association should consult with its human resources specialists and/or its legal counsel. Keep in mind that, if a community association employs only a single employee, or a few employees, it should still provide written employee policies and procedures.

It is important that the employee handbook use prominent disclosures that the handbook is not an employment contract. It should clearly state that the employee handbook is intended only as a convenient source of information about current practices and procedures and are subject to change without prior notice.

Written policies or an employee handbook can help or hurt the employer's efforts to comply with the law. It can serve to help limit the employer to legal exposure. Clearly communicating what is expected from employees and managers can provide an opportunity to avoid certain problems or to prevent a problem by taking quick action to investigate and resolve a problem or a complaint.

It can also determine the employer's legal responsibilities to the employees. For example, every company or community association should have written policies prohibiting harassment and discrimination and should outline the steps the employer will take if an employee makes a complaint.

Care in the wording of an employee handbook is critical to its success in protecting both employer and employee. Companies and community associations that do not have legally valid written policies and that avoid review of these policies from time to time may be placing themselves at legal risk.

Creating Employee Handbook and Policies

A company or community association intending to create its employee handbook and the policies to be included or those in addition to the handbook should consult with its human resources specialist (if it has one), as well as its legal counsel, to assure that the intended information and protections are worded in a way that is legal, valid and enforceable.

A manager or an officer of the Board who is preparing the Handbook may use an organizational development tool, such as the ADImE model. This is employed by many instructional designers and training developers. The acronym describes 4 phases used to define the stages of creating materials for training and informing. There are various models for this creating process, most of which are variations of the ADDIE model developed in 1975 at FSU for the U.S. Army as an instructional system design method.

The evaluation phase should also help to determine whether or not to update the manual, policies or training programs as originally designed. Evaluation will become the review process over the life of the materials provided to the employees.

Many employers feel that taking the time to plan and create a handbook, however brief, is a time waster. Larger associations, and larger CABs, may find it more beneficial to outsource the creation of its employee manual and policies. For small community associations, there are examples of handbooks and policies online that may help them put together the basic Employee Handbook.

THE PHASES OF THE ADIME MODEL:

1. **“A” assess.** Perform a needs assessment. Establish priorities and define specific objectives
2. **“D” design.** Define the objectives, develop a plan, develop the materials, select the entities who will create the product, select the methods of the design and schedule
3. **“Im” implement.** Deliver the program as designed. Create an atmosphere that promotes understanding, learning and acceptance
4. **“E” evaluate.** Remember that this is a work in progress which will continuously be updated over the lifetime of the company or organization along with law. The evaluation process should be able to provide the employer with the impact, reactions and acceptance. It should also evaluate if and how employees and managers transfer the written information into workplace behaviors and how it contributes to the organization’s effectiveness.

Remember that the goal of effective policies is to benefit the safety, health and welfare of the organization, employer and employees.

The position of the Equal Employment Opportunity Commission (EEOC) is that clearly communicated employee policies that are updated as needed and are consistently enforced may help employees understand and comply with the employer’s rules and expectations. It may also help prevent problems that may arise from discrimination complaints and could

limit the employer’s liability if a complaint does arise.

Small businesses may elect to not have a written employee manual or written policies. If that is the case, it may still be able to prevent and correct matters of discrimination or harassment if the employer informs its employees that it prohibits discrimination or harassment and encourages employees to report such activities promptly.

Policies to include in an employee handbook. By EEOC guidelines and standards, a small business owner and an employer (including a community association) may have legal responsibilities under federal employment anti-discrimination law. From a planning standpoint, this might be the “Assessment” phase of the plan. Assess the need and type of policies that should be developed for your community association.

Certain federal employment anti-discrimination laws apply depending on the number of employees:

- At least one employee – a business is covered by the law that requires employers to provide equal pay for equal work to male and female employees
- 15 to 19 employees – in addition to equal pay for equal work, a business is covered by the laws that prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation or gender identity), national origin, disability and genetic information (including family medical history)
- 20 or more employees – a business is additionally covered by the laws that prohibit discrimination based on age (40 or older)

Additional state and/or local employment discrimination laws may also apply to the business.

Once determined, the employer may make the consideration of how the policies will be communicated. This may be the “Design” phase of the plan. Whether an employer creates written policies or not, certain information can be helpful as workplace rules and expectations. These include general non-discrimination, harassment, reasonable accommodations and leave policies.

Non-discrimination policy. A “zero tolerance” policy regarding anti-discrimination should be clear and well publicized. Employees should be provided with more

than one avenue to report problems. It is important to explain the discipline that employees who harass others would face, such as suspension, training or termination. Finally, reinforcement of the policies, the possibility of training programs and consistent enforcement of the policies is key.

A general non-discrimination policy should state that discrimination is based on race, color, religion, sex (including pregnancy, sexual orientation or gender identity), national origin, disability, age (forty or older) or genetic information (including family medical history), that it is illegal and will not be tolerated. As stated previously, additional state and/or local employment discrimination laws may also apply.

Another tip is that the policy should state that the employer will provide reasonable accommodations to applicants and employees who need them for medical or religious reasons or as required by law. It should include a provision that reporting such activities will not result in employer retaliation against an employee.

The employer must protect employee confidentiality when reporting discrimination. Managers and other employees with human resources responsibilities should be required to respond appropriately to any report.

The policy should provide prompt, thorough and impartial investigation of complaints as well as prompt and effective correction and preventative action when necessary. Particularly because a community association may have a small number of staff, vendors, directors and officers, it becomes even more important to maintain confidentiality, and to take swift and unbiased action.

A non-discrimination policy includes policy against all forms of harassment, including sexual harassment. It may be wise for the employer to also include periodic training sessions. It is advisable to make attendance mandatory and separate sessions should be held for supervisory and nonsupervisory personnel, if possible.

An effective harassment policy encourages reporting of serious incidents, is appropriate and reasonable for the community association, is clear and comprehensible to everyone, and is evaluated and updated periodically, to meet legal changes and changing needs of the community.



The parties or entities who will implement the policies and who will be authorized to receive complaints must develop policies and procedures to raise awareness to the impact of harassment including sexual harassment on the community association, the complaining party and the stakeholders. All should learn to recognize signals and methods to prevent harassment. There should be a clear procedure for investigating and dealing with complaints.

In order to be able to defend against a harassment charge, an employer must have a written policy. Liability of the employer is not dependent on an employee quitting. In fact, merely subjecting the employee to severe harm can constitute illegal discrimination.

EEOC guidelines maintain that an employer has a duty to keep a workplace free from sexual harassment. The employer is responsible if the employer knew or should have known about an incident. However, an employer may not be responsible if it can show that it took immediate and appropriate corrective action when it learned of the problem. Many of these issues may be contained in the employee handbook and/or policies.

What happens if a harassment complaint is made but, upon investigation, it turns out to be unfounded? In creating policies, it is important to advise employees of the consequences for violating policies as well as the ramifications of filing a frivolous claim of harassment. Abusing the reporting and harassment complaint procedure should not be a viable option for employees. Rather, there should be a policy that prohibits making false claims.

This can be a very sensitive area, however. The

employer does not want to be accused of retaliation or disparate impact, so a policy against false claims of harassment should include that an employee's claim will be thoroughly investigated and the investigation should be performed by disinterested parties.

Reasonable accommodation policy. Another important issue to address in an employee handbook and policies includes a reasonable accommodation policy. This policy specifies that the community association provides reasonable accommodations to applicants and employees who need them for medical or religious reasons or as required by law. It should provide contact information for the individual or entity authorized to handle reasonable accommodation requests. It should also train managers and supervisors how to respond promptly and effectively to such requests.

A reasonable accommodation policy should also explain that, under some circumstances, the employer may need to request additional information or documentation to establish whether the medical condition or religious beliefs are protected by law or to determine what kind of accommodation is most effective. As in other policies, it should explain how employees can report discrimination related to a request for reasonable accommodation and describe the consequences of violating the reasonable accommodation policy.

Federal, state and local laws may require reasonable accommodations for other reasons.

Leave policy. Employees must know under what circumstances a leave of absence is available. The policy should make clear the eligibility requirements for leave, the procedures for requesting leave and the responsibilities of the community association and the employee during and after leave.

An employer may be required to provide medical or religious leave even if it does not have a leave policy, the employee requesting leave has not earned enough leave or the employee has used all of his or her leave.

The association should, when possible, train and require managers and supervisors to meet with the employee to clarify the leave request and to discuss other work-related issues, such as current workload, upcoming deadlines, projects in progress for which the

employee is responsible and temporary transfers of responsibilities. The employer should require managers and supervisors to respond promptly to leave requests.

Other laws such as workers' compensation and Family and Medical Leave Act (FMLA) may also apply to the employer.

Workplace bullying. In recent years, many employers have also included policies on workplace bullying. Though bullies have been around for a very long time, it is only in recent years that the corrosive effects of workplace bullying have come to the forefront as having a significant negative impact on productivity. It, of course, also has the possibility of subjecting employees and employers to legal threats. Workplace bullying can decrease productivity, contribute to increased absenteeism, and lead to higher turnover.

The financial impacts on a community association, as the employer, include increased costs of recruitment and retraining. Departing a job due to bullying may also lead to a valid claim against an association's workers compensation. Other costs to the community association are the potential negative effects on a community association's image, loyalty of its employees, and its members. Possible fines for violations of occupational health and safety laws, along with legal costs from employees who may bring lawsuits, are all critical issues concerning how workplace bullying is addressed. Though bullying in itself is not illegal, bullying can easily and often does overlap with other behaviors that are categorized as harassment and otherwise are illegal.

Clearly worded and communicated anti-bullying policies can serve as an effective warning to employees and defense for an employer. The policy should clearly define what the employer considers to be bullying behaviors, advise how employees can report bullying, explain the complaint and investigation process and list the consequences to the offending person(s).

Training. Many employers, in addition to employee handbooks and written policies, provide training programs to its employees. The training programs may relate to the knowledge, skills, and abilities needed to perform the job successfully. Periodic training in areas, such as workplace safety, sexual harassment, legal and compliance updates, may also be provided in classroom settings or online.

Sources of training might include an inhouse human resources division (in a CAB) or it might be outsourced to professional trainers (in a small association).

Those employers who provide training must move through the steps of planning much the same way as it will to create an employee handbook. Utilizing inhouse strategies involves assessments of the personnel to determine what, when and how frequently certain training will occur as well as what level of employee will be involved. The training program(s) will go through the design and development phases and prior to implementation the program may require approval by the employer and/or other upper level management divisions.

Those employers who provide training utilizing outsourced professional trainers will also go through the planning phases before implementation. However, there may be additional decisions on the employer's part. For example, will the training program occur on-site or at another facility, will the program be an in-person session or online, what materials will be provided, and at what cost to the employer?

Due to the potential high cost effects to employers, many community associations rely on online training. Often the training session will involve mandated logins as well as a predetermined time frame in which to complete the training and a completion procedure such as taking a test.

Whether the employer publishes written policies or employee handbooks, provides information through an outsourced and/or online provider, or simply posts legally mandated posters on a jobsite, it is critical to review, update and clearly communicate changes. These strategies all have the potential of protecting both employee and employer from personal and legal actions. They need to be carefully thought out and communicated to all to whom they may apply including employees and non-employees.

SUMMARY

This course focuses on human resources policies and procedures. Regardless of the size of your community association, no matter how many employees, contractors, or vendors you hire—directly or indirectly—you should have policies and procedures in place for:

- Screening
- Hiring
- Training
- Evaluations

Associations should be aware of federal, state and local ordinances that affect hiring, such as the various Civil Rights Acts and the ADA.

Policies regarding harassment and bullying apply to directors and officers, as well as employees, contractors and vendors. Florida statutes require directors to receive certification from a DBPR approved vendor, or sign a certification that they have read the documents and agree to adhere to them and the laws. The association should consider providing training to directors and officers in human resources related areas. Harassment and bullying can often occur at the "executive" level, that is, from the Board and officers. Directors and officers should be aware that their behavior can and does affect the liability of an association for harassment, bullying and other claims.

Because harassment can be between employer-employee, employee-employee and employee-supervisor, the association should assure that all staff (and the Board) are trained and understand the consequences of their actions. A well-trained workforce can increase productivity and employee satisfaction.

The association should put all policies and procedures in writing. In a small association, that could be a simple notebook or one- or two-page memoranda addressing each issue. In a larger association, or in a CAB, with many employees, the association or CAB may create a formal personnel manual, which it provides to every employee, contractor, and vendor (as appropriate). In either case, the employee should sign that he or she has received and has read the manual. Of course, as policies and procedures change, the association should notify all employees in writing.



Policies and Procedures: Navigating the Complexities of Human Resources

FINAL EXAMINATION

- 1. A set of principles designed to guide employees to conduct themselves with honesty and integrity in all actions representing the community association is known as:**
- Employee Handbook
 - Code of ethics
 - Policies
 - EEOC

Source: The Organization: The Community Association

- 2. Individuals or groups whose interests are affected by organizational activities are identified as:**
- Stakeholders
 - Shareholders
 - Individuals
 - Groups

Source: The Organization: The Stakeholders

- 3. This agency, formed by Congress to enforce Title VII of the Civil Rights Act of 1964, provides that employers have an affirmative duty to maintain a workplace free from harassment and discrimination.**
- SHRM
 - BFOQ
 - CAI
 - EEOC

Source: The Civil Rights Acts: History

- 4. What has had the greatest impact on equal employment opportunity?**
- The Equal Pay Act of 1963
 - The Pregnancy Discrimination Act of 1978
 - Title VII of the Civil Rights Act of 1964
 - The Age Discrimination in Employment Act

Source: The Civil Rights Acts: History

5. An employer may be permitted to discriminate based on a practiced trait that is reasonably necessary to the normal operation of the specific business if it can prove that it is:

- a. BFOQ
- b. FEPAs
- c. Title VII
- d. EEOC

Source: The Civil Rights Acts: A Possible Exception to Employment Discrimination Activities

6. Title VII applies to employers who employ _____ or more employees for twenty or more weeks in a current or preceding calendar year.

- a. 20
- b. 25
- c. 15
- d. 5

Source: The Civil Rights Acts: Title VII of the Civil Rights Act (Box)

7. Relative to sexual harassment, this term could mean a trade of job, job benefits, promotion or increase in pay in exchange for sex.

- a. Something for nothing
- b. Quid pro quo
- c. Hostile work environment
- d. Hostility enforcement

Source: Sexual Harassment: Quid Pro Quo

8. Information in an employee handbook includes but is not limited to:

- a. information about the community association amenities.
- b. the employer's policies and procedures.
- c. explains resources for handling member complaints to the Board.
- d. discusses acceptable behaviors for directors at Board meetings.

Source: Effective Communication: Employee Handbook & Policies

9. The phases in the ADImE model include these steps in planning:

- a. Assess the need; Design and develop a plan; Implement the program as designed; and Evaluate
- b. Assess the need; Draw on the resources of the community association; Implant the ideas into employees' behaviors; and Evaluate
- c. Arrive at a decision; Draw on the resources of the community association; Implement the program as designed; and Evaluate
- d. Assess the need; Design and develop a plan; Implement the program as designed; and Estimate the cost of the program or materials

Source: Effective Communication: Creating Employee Handbook and Policies

10. This Federal employment anti-discrimination law (Equal Pay Act of 1963) specifically affects a business or community association that employs at least one employee.

- a. Prohibits discrimination based on race, color, religion and sex
- b. Prohibits discrimination based on age (40 or older)
- c. Equal pay for equal work to male and female employees
- d. Prohibits discrimination based on national origin, disability and genetic information

Source: The Civil Rights Act: History



~ NOTES ~



Maintenance/Capital Expenditure: A Reserve Schedule Perspective

Part I: Maintenance, Deferred Maintenance & Capital Expenses

Part II: Emergency Planning

Part III: Reserves & Special Assessments

Part IV: Maintenance & Reserve Schedules as a Management Planning Tool

"If it gets measured, it gets done." Author Unknown

INTRODUCTION

This course is designed to inform community association managers of the importance of maintenance, deferred maintenance, and capital expenditures in community associations and the utilization of reserves schedules as a maintenance plan to coordinate and fund these future expenses. The course includes the identification of reserve categories, developing estimated and remaining useful life, estimating replacement cost and the implementation of reserve projects through the lens of the reserve schedule as a central management planning tool.

PART I: MAINTENANCE, DEFERRED MAINTENANCE AND CAPITAL EXPENSES

DEFINITIONS

What is maintenance?

Maintenance is work that is required to maintain a building, grounds, or equipment in such condition that it may be continuously used, at its original or designed capacity and efficiency for its intended purpose. This includes, but is not limited to:

- Repairing any type of mechanical or electrical device should it become out of order or broken

- Performing routine actions on a device that keeps it in working order (maintenance) or prevents trouble from arising (preventive maintenance)

Maintenance should preserve and enhance common property and assets. Property and buildings that are properly maintained help to prevent accidents thereby promoting the safety of members, residents, guests, employees, and vendors. The manager should regularly report to the Board on maintenance projects. Prompt and correctly performed maintenance, whether an

association or member responsibility, is fundamental to preserving the assets of the association and sustaining property values.

What is deferred maintenance?

Maintenance or repair that is performed less frequently than yearly and results in maintaining the useful life of an asset is deferred maintenance.

- Painting a building usually occurs every five to seven years, depending on weather conditions, the location of the building, and the quality of the paint.
- Touch-up painting is not a deferred expense.
- An overhaul of the generator is a typical deferred maintenance expense.

What is capital expenditure?

Any disbursement of funds for the purchase or replacement of an asset, the useful life of which is greater than one year, or for the repair or rehabilitation of an asset that will extend its useful life for a period greater than one year.

- Funds that are necessary to renew, repair, or replace an asset for it to continue to function as needed.
- Replacing a generator; reroofing, retrofitting the pool with a solar heater, etc.

What is liability loss exposure?

Liability loss exposure stems from accidents, whether intentional, accidental, civil, or criminal. The association is held liable (having legal or judicial obligation for costs or damages) because of a legal violation that it is alleged to have committed or for which it is supposedly responsible.

Requirements

Maintenance should preserve, protect and enhance the common property and assets. Property and buildings that are properly maintained will help to prevent accidents, thereby ensuring the safety of members, residents, guests, employees, and vendors.

Examples:

- Replacing equipment, complying with inspections and licensure of elevators, generators.



Prompt and correctly performed maintenance, whether an association or member responsibility, is fundamental to preserving the assets of the association, liability loss exposure, and sustaining property values. Results of not performing maintenance could cost the association and its members significant monies.

Examples:

- **Property damage:** the association fails to maintain a light pole in front of a member's unit. The light pole falls through the member's vehicle windshield.
- **Bodily injury:** the association fails to repair a light and a pothole in the parking area and a member falls in the dark, breaking his leg.

EXAMPLES OF BUILDINGS, GROUNDS, & CAPITAL EQUIPMENT SYSTEMS

- Air conditioning and heating (HVAC)
- Electrical and lighting (interior and exterior)
- Elevators
- Fire-life safety
- Generator
- Pool and spa
- Landscaping & sprinkler systems
- Laundry facilities (if provided)
- Security equipment and systems
- Recreational amenities (if provided)
- Water and sewage
- Trash disposal

All structures on the property should be preserved in good condition to ensure safety and maintain an aesthetically pleasing appearance. The manager should regularly report to the Board on maintenance

projects. The association should have a procedure and communication mechanism in place for association members to report maintenance issues to management or the Board of Directors.

Examples:

- A website wherein members can generate their own work orders
- Paperwork orders with a summary provided to the manager, maintenance supervisor, and Board on a weekly basis

The manager and chief engineer or maintenance supervisor are usually responsible for supervising the maintenance of the buildings, grounds, and capital equipment systems to keep them in good operating condition.

Note that not all associations have the same equipment. For instance, an HOA may not have elevators or laundry facilities.

Board of Directors Maintenance Responsibilities

The Board of Directors has powers and responsibilities regarding the maintenance of the association and the budgeting for maintenance of the association. Florida Statutes (F.S.) 718, 719, and 720 mandate that the Board meet defined obligations, such as:

- Presenting an annual budget that considers long-term maintenance funding, as well as levying and collecting assessments to fund operations
- Entering into contracts; employing staff and professionals; and providing necessary services to maintain the common property

When the Board fails to carry out the association's duties to repair and maintain common property, an individual member may have the right to bring legal action against the Board.

Although the Board may rely on professionals to assist with day-to-day duties, the Board cannot waive or delegate its responsibility for the operation and well-being of the association.

If a member or other person intentionally or negligently damages common property, the association has the

right to bring legal action against the member or other person to recover damages.

CAM/CAB Maintenance Responsibilities

A CAM/CAB, if the association Board has hired such, has the responsibility for the maintenance of the association and the budget preparation, which includes operational and long-term maintenance. Among the practices performed by a CAM/CAB, as defined by statute, the following relate to maintenance and its budgeting:

- Coordinate maintenance for a residential community association
- Coordinate or perform maintenance for real or personal property and other related routine services involved in the operation of a community association
- Prepare budgets or other financial documents for a community association

Additionally, CAMs and CABs should satisfy their responsibilities with a duty of care and a duty of loyalty.

- **Duty of care** is similar to prudent business judgment; in that it is assumed that the CAM exercises the skill and care that a reasonable person would exercise under the same or similar circumstances.
- **Duty of loyalty** is similar to fiduciary responsibility in that it is assumed that the CAM will act only in the best interests of the community association when handling its affairs.

The CAM/CAB is employed by and works at the discretion of the community association's Board of Directors. The CAM's specific duties, including maintenance supervision and coordination, are determined by the community association, the CAB (if CAM is employed by a CAB), or both. The CAM's responsibilities should be defined in a written contractual agreement and/or position description.

Types of Maintenance

Each community association has five types of required maintenance work for which it should budget for and which it should perform.

Routine maintenance: Regularly recurring maintenance activities, usually routinely scheduled. These costs are usually included in the operating budget.

**Examples:**

Pool cleaning, lawn mowing, window washing, cleaning the lobby, vacuuming the hallway carpet, replacing a/c filters

Preventive maintenance: Periodic maintenance that is performed on property, machinery, or components, to ensure proper operation, minimize breakdowns, and prolong useful life.

Examples:

Cleaning sewer lines, servicing elevators, cleaning air handlers, cleaning and sealing roofs, cleaning storm drains

Emergency services maintenance: Responses to emergencies (discussed later in this chapter). Depending on the extent and nature of the problem, the association may use operating or reserve funds, levy a special assessment, or borrow funds.

Examples:

A roof leak, a broken pipe in a wall, a leak in the emergency generator fuel tank, damage due to a storm, malfunctioning HVAC, collapsed well

Corrective maintenance: Work that is requested by a member, tenant, employee, or the Board or that is identified during a routine inspection of the property, necessary to fix or repair a maintenance issue. The association schedules this work by using a work order system. The association generally includes funds for corrective maintenance in its operating budget. However, if a member requests maintenance to repair a component in the unit, or a problem within an LCE, the Board must review its documents, to determine if

the repair is its responsibility, or a responsibility of the member.

Examples:

Removal of a wasp nest, replacement of burnt out hall lights, malfunctioning parking lot lights

Scheduled replacement: Includes the maintenance, replacement, or rehabilitation of major components and systems. Scheduled maintenance includes deferred maintenance and capital equipment replacement. Generally, the association budgets for these items as part of its reserve program.

Examples:

Concrete restoration, building waterproofing and painting, resealing asphalt lots, repair of seawalls, roof replacement

Property Inspections

Management must ensure that regularly scheduled inspections of the building, grounds, and equipment are conducted by the chief engineer or maintenance supervisor, and/or vendors who are employed to maintain specific types of equipment, such as pool equipment, elevators, cooling towers, and generators. Some services can be provided by trained, but unlicensed, in-house employees. Florida Statutes require other services, such as elevator and generator maintenance, be performed by a contractor licensed or certified for that specialty.

The manager should require that vendors and contractors provide written reports of services and inspections for each property visit. The report should document dates and results of inspections, and fully describe areas of deficiency. The reports should also document if/when the deficiencies are corrected, or scheduled to be corrected.

Examples:

- 1) The elevator contractor notes that the sensor that sounds an alert when something is wrong with the elevator is not functioning properly. Since this is a safety hazard, he should notify the manager and immediately fix the problem.
- 2) If the pool service vendor is properly

performing its job, the manager should not learn that the pool heater needs replacement when an irate member complains that the water is cold.

It is important for the manager to separately conduct periodic property inspections, preferably with their maintenance supervisor. The manager should carry a checklist, on which they note problems or issues. Checklists are available through various sites, such as the Florida Community Association Journal (FLCAJ), Building Owners and Managers Association (BOMA), and the Community Associations Institute (CAI). We have provided a sample form for inspections as Exhibit 1 (pages 76 and 77).

Some maintenance problems may be easily corrected, such as directing cleaning crews to more thoroughly clean hallways. Other problems may reveal more serious issues, such as a water leak from a unit into association walls. The more familiar the manager (and maintenance supervisor) is with the building, grounds, and equipment, the more quickly they will notice and correct problems before these become severe and more expensive to repair or replace. Ensuring that maintenance occurs as required prolongs the life of equipment, reduces the cost of repairs, and mitigates liability to the association.

Note that not all problems can be diagnosed in advance and not all problems are preventable. However, if the manager conducts appropriate inspections and ensures that their staff follow through on required maintenance, it is less likely that the equipment will fail suddenly and without warning, and it is less likely (but not altogether preventable) that the manager will get that midnight call to handle an issue that requires a specialist.

Inspection reports by building, health, and fire department officials, insurance claims adjusters and consultants must be properly filed, and any deficiencies corrected to ensure safety and prevent fines, loss of insurance coverage, and loss of use of the equipment, facilities, or the building itself.

Preventive Maintenance

Preventive maintenance and prompt and complete repair of damage to buildings, balconies, roof, parking garage and lot, roadways, pool and spa,

other recreation facilities, seawall, cooling towers, generators, elevators, air conditioning, heating, electrical, plumbing, sewage and trash disposal equipment, and other property and assets must be accomplished to prevent untimely breakdowns, deterioration of buildings, and subsequent loss of property value. Installation and maintenance of current building-code-compliant shutters or impact-resistant glass is essential to prevent or minimize hurricane damage and reduce the cost of insurance.

It is essential to maintain all fire safety systems, including the fire alarm panel, standpipe system, pumps, sprinklers, hoses, and exit and evacuation signage in good operating condition. A fire-life safety plan that is created or developed by a licensed or certified professional engineer or architect and approved by the local fire department is required by statute.

Maintenance Controls

In the previous section, we discussed property inspections. In this section, we discuss systems to plan, schedule, and monitor maintenance. The association should establish two basic schedules:

- One that shows projects and work to be performed in the current fiscal year (usually daily-weekly-monthly activities)
- One that shows multi-year and major projects (such as concrete restoration, or reroofing).

A sample janitorial task list may include:

- Sweep hallways
- Check/replace lighting
- Vacuum carpets
- Empty wastebaskets
- Clean the parking lot/garage
- Clean and polish interior elevator panels
- Removing the lint from dryers

For routine work, the manager should develop a checklist on which staff or contractors log progress. A checklist works especially well for janitorial clean-up functions.

Note: This is not the same as the checklist the manager will use for monitoring maintenance activities.

Exhibit 1 Sample Maintenance Inspection Form

This is an example of a Maintenance Inspection Form that a CAM may use when inspecting the association. Note that it includes only sample items for each category.

Maintenance Inspection Form						
AREA	GOOD	FAIR	POOR	MAINTENANCE REQUIRED	ASSIGNED TO	DUE DATE
Hallways/Units						
Floors clean/rugs vacuumed						
Doors dusted and cleaned						
Handrails clean and undamaged						
Windows clean						
HVAC/Air Conditioning						
Cooling towers						
Heat exchangers						
Filters and hoses						
Heating Plant						
Heat timer settings						
Vacuum system						
Fire extinguishers						
Blow down valve						
Roof						
Rain proof/leaks						
Coping systems						
Flashing						
Gutters/downspouts						
Elevators						
Signage						
Door operation						
Ventilation fans						
Emergency phone						
Mechanical						
Ejector pumps						
House pumps						
Exhaust fans						
Hoses and connections						
Generator						
Electric switch gear						
Storage tank						
Log book						
Key						

Maintenance Inspection Form (cont'd.)						
AREA	GOOD	FAIR	POOR	MAINTENANCE REQUIRED	ASSIGNED TO	DUE DATE
Stairwells						
Landings and steps clean						
Doors and railings dusted and cleaned						
Fire equipment working						
Exit signage						
Other						
Mailboxes						
Names						
Locks						
Bulletin board						
Swimming Pool						
Pump						
Chemical systems						
Pool log						
Deck area						
Safety equipment						
Association Signage						
Signs clean/undamaged						
Fire exits						
Directional						
Apartment numbers						
Parking Lot						
Lights working						
Timers working						
Curb marking clear and readable						
Unauthorized vehicles						
Fire lanes unblocked						
Handicapped spaces						
Grounds						
Grass cut/free of weeds and pets						
Shrubs trimmed/free of vines						
Trees trimmed						
Sprinklers in good working order						
Other						

PART II: EMERGENCY PLANNING

A primary responsibility of a community association is to preserve, protect and enhance the common property and assets. Integral to that responsibility is having a disaster and emergency plan that establishes what needs to be accomplished before, during, and after a disaster/emergency.

DEFINITIONS

What is an emergency?

An emergency is a sudden, unexpected, or impending situation that may cause injury, loss of life, damage to the property, and/or interference with the normal activities of a person or an association, and which requires immediate attention and remedial action. An emergency usually must be addressed immediately to safeguard the health, safety, and wellbeing of the residents and/or property of the association.

What is a disaster?

A disaster is a natural or man-made hazard that has come to fruition, resulting in an event of substantial extent causing significant physical damage or destruction, loss of life, or drastic change to the natural environment. It is classified as either a natural disaster or a man-made disaster. A disaster can also be defined as, "A serious disruption of a community or society

involving widespread human, economic, material, or environmental losses that exceed the ability of the affected community or society to cope using its own resources."

Association Responsibilities in a Disaster or Emergency

The association should not disregard the likelihood of a peril or disaster happening. It would be unethical for the association to do so, and it may be negligent for the manager and the Board to ignore the potential of an emergency or disaster. Planning for disasters and emergencies acknowledges that a disaster/emergency will occur at some point. Management must also realize that the disaster planning process is ongoing and requires extensive familiarity with the residents, the property, and the staff.

Emergency powers granted to community association boards

The Condominium, Cooperative and HOA Acts provide boards with emergency powers when a state of emergency is declared by the governor (or the President of the United States). These include, but are not limited to:

- Conducting board and membership meetings with notice given as soon as possible, including via

Emergencies and Disasters That May Affect an Association

The Federal Emergency Management Agency (FEMA) defines emergencies, specifically those most likely to affect an association to include, but are not limited to those listed below.

- Arson and fire related
- Bomb threats
- Deaths
- Environmental accidents
- Hostage situations
- Interruption of utilities
- Severe thunderstorms
- Terrorism
- Accidents
- Broken pipes
- Droughts
- Fires
- Hurricanes
- Medical crises
- Storm surge
- Tornadoes
- Boiler explosion
- Chemical or blood spills
- Elevator failure
- Floods
- HVAC failures
- Power outages
- Structural failure

publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the property, or any other means the Board deems appropriate under the circumstances. Cancel and reschedule meetings.

- Designating assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.
- Relocating the office or designating an alternative principal office.
- Entering into agreements with counties and municipalities to assist with debris removal.

What is a Citizen Corps?

The mission of Citizen Corps is to harness the power of every individual through education, training, and volunteer service to make communities safer, stronger, and better prepared to respond to the threats of terrorism, crime, public health issues, and disasters of all kinds through:

- Preparing the public for local risks with targeted outreach
- Engaging voluntary organizations to help augment resources for public safety, preparedness and response capabilities
- Integrating the whole community and integrating nontraditional resources to ensure disaster preparedness

Citizen Corps programs build on the successful efforts that are in place in many communities around the country to prevent crime and respond to emergencies. Programs that started through local innovation are the foundation for Citizen Corps and this national approach to citizen participation in community safety.

Citizen Corps is coordinated nationally by the Department of Homeland Security's Federal Emergency Management Agency. In this capacity, FEMA works closely with other federal entities, state and local governments, first responders and emergency managers, the volunteer community, and the Corporation for National & Community Service.

- Implementing a disaster plan immediately following an event for which a state of emergency has been declared, including, but not limited to, shutting down elevators, electricity, water, sewer, security services, or air conditioning for association buildings.
- Determining portions of the property that are not fit for entry or habitation, based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the Board.
- Requiring evacuation of property in the event of a mandatory evacuation order. If a unit owner or other occupant fails to evacuate, the association is immune from liability for injury to the person or property arising from such failure. (Condominium/cooperative only)
- Mitigating further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the property regardless of whether the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.
- Contract, on behalf of a unit owner, for items or services for which the owner is otherwise individually responsible, but which are necessary to prevent further damage to the property. In such event, the unit owner on whose behalf the Board has contracted is responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority to enforce collection of the charges. Such items or services may include the drying of the unit, the boarding of broken windows or doors, and the replacement of a damaged air conditioner or air handler to provide climate control in the unit or other portions of the property. (Condominium/cooperative only).
- Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the documents, levy special assessments without a vote of the owners.
- Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the

association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the community association documents.

This authority is limited to the time reasonably necessary to protect the health, safety, and welfare of the association and the members and their families, residents, occupants, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

Emergency/Disaster Plan

The association should have a written document that plans and outlines procedures for prevention of emergencies and disasters, when prevention is viable; and a planned response to each type of disaster or emergency when prevention is not feasible (clearly, not every emergency or disaster will mandate the same response).

Basic data in the plan, which the association should update annually, contains, among other information, the following list:

- How to prepare for and react to specific emergencies
- Method of accessing contact information for directors, officers, vendors, and members
- Method of accessing an updated inventory of property and equipment
- Instructions for association members and residents. This will differ based on the type of property.

Example:

In a high-rise building, the instructions may include vacating floors immediately above and below an area on fire. For a property near the ocean, it may require that residents evacuate per the direction of local or state officials, in advance of a tropical storm or hurricane.

- List of residents with special needs, who may require additional assistance before, during, and after an emergency or disaster. The association should collect this information annually and provide it to the county's designated emergency coordinator.

- Reference information: hospitals, fire rescue, local and state government resources, FEMA, etc.

Important Information

We recommend that the association prepare flash drives containing important information and provide copies to the manager, president, and other persons in the association who are responsible for preparation and recovery. The Board should also encourage members and residents to have a family (personal) disaster preparedness and recovery plan.

The association should be aware of any special risks caused by the geographic location of the property,

Should your community form a Community Emergency Response Team (CERT)?

This program supports local response capability to disasters and emergencies by training volunteers to organize themselves and spontaneous volunteers at the disaster site, to provide immediate assistance to victims, and to collect disaster intelligence to support responders' efforts when they arrive.

CERTs include members of an association who want to be better prepared for the hazards that threaten their communities. FEMA and local governments provide training for CERT team members. This includes basic organizational skills that they can use to help themselves, their loved ones, and their neighbors until help arrives. Training consists of 20 hours of instruction on topics that include disaster preparedness, fire safety, disaster medical operations, light search and rescue, team organization, and disaster psychology. Upon completion of the training, participants are encouraged to continue their involvement by participating in training activities and volunteering for projects that support their community's disaster preparedness efforts.

CERTs have proven themselves to be an active and vital part of their communities' preparedness and response capability. CERT members must keep their safety in mind as their first priority. CERT volunteers must know their capabilities and the limitations of their training and equipment and work within those limitations.

such as flooding or wildfires. It should also be familiar with local emergency response agencies, such as police, fire, and medical emergency teams. Local response agencies often join with local Citizen Corps, to strengthen the ability of the area-wide community to respond to disasters and emergencies. This usually includes an internal team (CERT), which may be trained by FEMA and join with other community associations to respond to emergencies and disasters. Oftentimes, the association team will coordinate with teams from other associations.

Note: When responding to an emergency, the association must adhere to local building code and county or municipal disaster and emergency protection program requirements. After a major disaster, such as a hurricane, the State of Florida and FEMA may offer aid for recovery in the form of grants and low-interest loans. FEMA has guides, manuals, and courses to assist associations in developing internal procedures.

PART III: RESERVES & SPECIAL ASSESSMENTS

DEFINITIONS

What are reserves?

Reserves are monies that are set aside for specific future expenditures, usually for the cost of major repairs to, or replacements of, the association property. Reserve funds are almost always restricted to one or more specific accounts.

What is deferred maintenance?

Maintenance or repair that is performed less frequently than yearly and results in maintaining the useful life of an asset is deferred maintenance.

What is capital expenditure?

Any disbursement of funds for the purchase or replacement of an asset, the useful life of which is greater than one year, or for the repair of an asset that will extend its useful life for a period greater than one year.

What is a special assessment?

A special assessment charges members a specific amount, in addition to the periodic assessment, for a non-budgeted, typically unanticipated, operating expense, maintenance repair or replacement, or other expense, where operating and/or reserve funds are not available and or sufficient to cover the expense.

Reserve Requirements

The DBPR defines reserves as any funds that are restricted as to use by the members of the association or its documents. If funds are not set aside for such expenses, or the association has insufficient operating funds, the association must levy a special assessment or borrow monies at the time such repair or replacement occurs.

Reserve funds are restricted and may not be used for routine maintenance without a vote of the members. The title of each reserve account must specify the purpose for which the funds are to be used. Some associations provide a brief descriptive title and include the definition of the specific type of reserve in a "Definitions" section of the reserve schedule. Some associations develop very detailed reserve schedules that itemize components of larger systems and collapse components into "systems" categories.

An association's main source of income is assessments collected from members. When an association establishes reserves, it funds major projects requiring substantial moneys over a longer period than one year. This is intended to avoid or reduce large special assessments or large increases in regular assessments in a specific year.

Condominium/Cooperative Reserves

The Condominium and Cooperative Acts require that associations have specific reserve items. The Acts require reserves in proposed budgets for:

1. Roofing
2. Painting
3. Paving
4. Any other deferred maintenance or capital expenditure items that are expected to cost more than \$10,000, such as concrete restoration, replacement of generators, and elevator modernization.

If there are limited common elements or areas that are restricted for the use of specific members, the association documents may require that those members pay for the cost of all maintenance to those elements or areas.

HOA Reserves

An HOA must provide reserves if the developer initially established reserve accounts, if the current budget includes reserves, or if a majority TVI¹ elects to provide for reserves, either at a membership meeting or by written consent. The budget must designate the

components for which the reserve accounts may be used. Once approved, the Board must include the reserves in every subsequent budget.

Reserve Account Types

Reserves are commonly established for specific items, such as the pool, roofing repairs and replacement, roadway resurfacing, painting, and so on. When the association accounts for the funds in each reserve category, the reserves are considered "segregated." If the association creates a single account, with estimates of when certain association components will be replaced, the reserves are considered "pooled." We discuss each below.

Segregated Reserves

The association must calculate and display each reserve account separately. For example, roofing, paving, painting, and elevator maintenance all appear separately on the schedule. The amount that is required for each account is listed separately and totaled into the reserve schedule for each specific year. The funds from one reserve category cannot be used to fund another reserve item without a vote of the members as discussed above. Below is a sample of a segregated reserve.

SAMPLE ESTIMATE RESERVE BUDGET

Estimated Reserve - 20XX						
Reserve	Estimated Useful Life	Remaining Useful Life	Estimated Cost	Projected Balance CY	Fully Funded Prop.	50% Funded Prop.
Roof Replacement/Repair	30	30	\$ 1,063,000		\$ 35,335	\$17,715
Painting	8	8	115,000		14,375	7,190
Sidewalk Paving	29	8	25,000	\$ 25,000		
Pool Resurfacing	8	3	5,000	5,000		
Road Resurfacing	2	0	10,000	9,703	300	150
TOTALS			\$ 1,218,800	\$ 39,703	\$ 50,010	\$ 25,055

¹TVI refers to the total eligible voting interest. So, if an association has 175 units, and 7 are delinquent more than 90 days.

POOLED RESERVES BASED ON SEGREGATED RESERVE SCHEDULE

Item	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Roof										350,000					
Elevator Mod															500,000
Paving								150,000							
Painting						200,000							200,000		
Pool Refurb.					50,000										
Total Project Cash Outflows	0	0	0	0	50,000	200,000	0	150,000	0	350,000	0	0	200,000	0	500,000
Beg. Cash Balance	689,000	741,000	793,000	845,000	847,000	699,000	751,000	653,000	705,000	407,000	459,000	511,000	363,000	415,000	-33,000
Annual Reserve Req.	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000	52,000
Ending Cash Balance	741,000	793,000	845,000	897,000	899,000	751,000	803,000	705,000	757,000	459,000	511,000	563,000	415,000	467,000	19,000

Pooled Reserves

A condominium, cooperative, or HOA is permitted to form pooled reserve accounts instead of, or in addition to, segregated reserve accounts. That is, if the association establishes a pooled reserve account for roof replacement, building painting, and pavement resurfacing, funds may be drawn from this account to pay for any of those three items. A majority of members at a duly called and quorumed meeting must approve the establishment of pooled reserves. They must also approve expending those funds for any items that are not included in the pool.

If the association has segregated reserves, it must obtain approval of a majority of members at a duly called and quorumed meeting to create pooled reserves.

Use and Modification of Reserve Funds

Unlike an operating account, reserve funds cannot be used for any purpose other than the designated purpose unless a different purpose is approved by majority vote of members at a duly called and quorumed meeting.

Example:

Tosca La Bella Condominium has 300 members.

The Board wishes to use funds from the exterior painting reserve to offset the costs to replace the clubhouse carpeting. The association members, at a duly called and quorumed meeting, must vote to transfer the funds in the reserve account for the clubhouse carpeting. A minimum of 151 members must attend the meeting, in person or by proxy. A majority of those in attendance at the quorumed meeting must vote in favor. So, if 151 persons attend, 76 must vote in favor of the transfer of funds.

Fully Funded Reserves

The Condominium and Cooperative Acts require that condominium and cooperative proposed budgets fully fund reserves. This means that the proposed budget must include sufficient funds in each reserve account to ensure that deferred maintenance and capital expenditures may be carried out without special assessments or loans. The costs of each reserve account are estimated in today's dollars, without future projections for inflation or other increases. Each year, the association must update the cost for each reserve item.

Did you know?

A condominium or cooperative association is not required to offer members the opportunity to reduce or waive reserves. That is, it can provide a proposed budget to the membership that only fully funds all required reserves.

Reducing or Waiving Reserves

To reduce or waive the reserves, a majority of members at a duly called and quorumed members' meeting must vote in favor.

Example:

Tumbling Towers Condominium has 205 units. The Board has recommended waiving the reserves in the proposed budget. The association must have 103 members present in person or by proxy at a duly called and quorumed member meeting. Assuming it has exactly 103 members present, a majority (52) must vote to waive reserves.

The only voting interests who are eligible to vote on questions that involve waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question.

Example:

If a condominium has a penthouse pool for the exclusive use of ten penthouse owners, the budget will include a separate reserve for the penthouse pool, which only the ten owners may waive or reduce.

In a condominium or cooperative, the waiver or reduction only applies to that proposed budget year. The Board must fully fund reserves in future proposed budgets, where members may vote to reduce or waive reserves each year.

If HOA members reduce or waive a reserve account, depending on how the motion is worded, the HOA will fund that item at the level approved by the membership, or will not include that item, as applicable, every year thereafter.

Disclosures

Condominium: In a condominium, any proxy question relating to waiving or reducing the funding of reserves or using existing reserve funds for any purpose other than that for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot, as follows:

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.

HOA: If the budget for an HOA does not provide for reserve accounts and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report must contain a disclosure, pursuant to F.S. 720.303(6)(c)1.

Cooperative: The Cooperative Act does not require disclosures if reserves are not funded.

Reserve Schedule

The Board must establish a reserve schedule on an annual basis. It includes:

- A list of all required deferred maintenance and capital expenditure reserve items, and any additional items the members have voted to include
- The estimated useful life of each item
- The estimated remaining useful life of each item
- The estimated cost of deferred maintenance and capital equipment replacement for each item
- The estimated fund balance for each item as of the end of the current fiscal year
- The required funding amount for each budget year for each item

Identifying Reserve Categories

Developing Estimated Useful Life, Remaining Useful Life and Replacement Cost

Estimates of the expected life of a specific asset change according to factors such as weather, storm damage, the type of construction, preventive and routine maintenance (or lack thereof), property location (oceanside or inland), and building code changes. The Board must annually reevaluate the estimates for changes in estimates and deferred maintenance performed during the year and may include factors such as inflation and earnings on invested funds for the current year. The Board should not estimate inflation for future years.

Example:

Panda Villas has a flat roof, with an estimated life of 25 years. The roof was replaced 15 years ago. The current estimated replacement cost is \$600,000. Currently, Panda Villas expects to have \$200,000 in the roof reserve at the end of this fiscal year. What should the association budget for its roof reserve?

Step 1: 25 (estimated useful life) less 15 (current age) = 10 (remaining useful life)

Step 2: \$600,000 (replacement cost) less \$200,000 (year-end balance) = \$400,000

Step 3: \$400,000 divided by 10 years = \$40,000 in this year's reserve schedule

While reserve schedules may differ slightly in appearance or name, all reserve schedules must contain the information and disclosures that are required by statute and administrative rule.

Reserve Budget Steps

We recommend that the Board undertake the following steps each year to create its reserve schedule:

- Review the inventory of association property and evaluate the condition of each capital item
- Examine the original plans and specifications of each capital item

- Review work orders for capital equipment
- Consult with directors, officers, and members who may have special knowledge about the association
- **Consult professionals, such as architects, engineers, contractors, vendors, suppliers, and licensed professionals**

Reserve studies

Some associations contract for reserve studies to properly budget for replacement or repair of capital equipment and deferred maintenance. A reserve study presents a projection of future costs to repair, replace, or rehabilitate the facility and components. The reserve study team may include an engineer, a CPA, a community association manager, or other persons who are qualified and experienced in examining building components and determining maintenance requirements, component life cycles, and costs for maintenance repairs and major projects.

Proposals

In some instances, a reserve study may be too costly or excessive for an association's needs or budget. The association may opt to obtain proposals in lieu of a reserve study from architects, engineers, contractors, vendors, suppliers, or licensed professionals who are qualified and experienced in examining a building's components to derive maintenance requirements, estimated useful life, remaining useful life and replacement costs for maintenance repairs and major projects.

Additionally, you may seek to consult with directors, officers, and members who may have historical knowledge about the association and its components.

If the association obtains proposals solely for the purpose of estimating component life cycles or replacement costs, and not for the actual awarding of a contract, then competitive bidding is not required. However, you may choose to obtain multiple proposals to mitigate vendor bias.

PART IV: MAINTENANCE & RESERVE SCHEDULES AS A MANAGEMENT PLANNING TOOL

It is typical for the Board of Directors to have a maintenance “to do” list to document its maintenance needs. Typically, this list is compiled by an officer(s), director(s) and/or manager. Unfortunately, this list may not necessarily be known to the rest of the directors and/or the association members. In the interest of community transparency, the Board and the manager may wish to establish a community calendar, which states key maintenance (and management) events.

The Board may also want to discuss and approve the list as an official association maintenance plan at a meeting. Therefore, at each successive meeting, the Board will review progress on the plan. This serves to keep the Board of Directors accountable for the maintenance plan. It also helps inform the association members of the maintenance plan and its progress. Additionally, should the association not have sufficient funds to satisfy completion of the maintenance plan contents, the Board and the manager may use the plan to explain to the membership the need for the special assessment. Thus, the special assessment should not be a surprise to the membership since the Board has been keeping members informed all along.

It is typical for an association’s maintenance plan and reserve schedule to be treated as two separate and distinct documents. In reality, the maintenance plan should not only incorporate the maintenance line items in the fiscal year budget, but also the reserve schedule items. Additionally, the reserve schedule should drive the execution of the contents in the maintenance plan. It contains the requisite data for planning multi-year repair and replacement of components. These often exceed the funding limitations of an annual budget.

Unfortunately, condominium and cooperative associations often only fund the statutory reserve categories of roofing, painting, and paving because they have interpreted the statutes to mean that they must fund only painting, paving, and roofing. They often ignore the requirement to fund deferred maintenance and capital expenditure items that are projected to cost more than \$10,000. This frequently results in

significant, and unexpected, special assessments when the association must undertake such projects, placing a substantial burden on its members.

Nowadays, many more association elements requiring replacement or repair exceed \$10,000. Associations are more frequently including items such as concrete restoration, replacement of generators, pool resurfacing and elevator modernization in their reserve schedules. However, there are other replacement and repair items, exceeding \$10,000, that should be included in the reserve schedule, such as:

- Irrigation systems
- Swimming pool, spa, and equipment
- Elevators
- Drainage systems
- Seawalls, pilings, and docks
- Electrical systems
- Fireproofing and fire protection systems
- Plumbing
- Concrete roadways, walkways
- Building structure (concrete restoration)
- Parking lots and garages
- Heating and cooling systems
- Impact resistant windows and doors
- Tree root pruning
- Mailbox replacement
- Canopy and awning replacement
- Fountain repair
- Wall reconstruction and fencing
- Gate entry replacement
- CCTV security systems
- Fire alarm upgrades
- Building railings
- Fire safety (sprinklers, smoke detectors, smoke barrier doors)

If the above referenced items or systems exceed \$10,000, then they should be included in your reserve schedule. And, your reserve schedule should be a part of your association’s maintenance plan.

What other components can you add to this list that affect your community association?

Budget + Reserve Schedule = Maintenance Plan

So, can you, as a manager, see how a board can utilize its maintenance and reserve plans as your maintenance planning tool?

Planning reserve projects

The planning of reserve projects should be inclusive. In other words, the input of the board members, manager, building engineer, maintenance supervisors, and members should be valued and encouraged.

The association should use its reserve schedule as a guide for the process of planning reserve projects. The reserve schedule answers the integral questions needed for planning reserve projects:

- How old is the item?
- How much time before it fails, and requires replacement or needs major repairs?
- How much will it cost (in today's dollars)?
- How much money does the association have to dedicate to this item?
- How much money (fund balance) will the association have at the end of the fiscal year?

It is important to note that, although the Board must establish a reserve schedule on an annual basis as

outlined above), these are minimal requirements. You may consider including additional information so that the reserve schedule becomes management's maintenance tool.

Summary

We recommend that the association establish two basic schedules to assist in implementing projects based on the urgency and the funding:

- One that shows projects and work to be performed in the current fiscal year (usually daily/weekly/monthly activities). This list should be driven by your association's fiscal budget.
- One that shows multi-year projects (such as major projects, concrete restoration, or reroofing). This list should be driven by your association's reserve schedule.

In this course, we have identified the maintenance responsibilities of the community association, the maintenance types and differences, and the property maintenance requirements. We also discussed the association's statutory reserve requirements and schedules and the reserve schedule development. Finally, we arrived at the understanding of utilizing reserve schedules as a management and maintenance planning tool, specifically deferred maintenance and capital expenditure planning.



Maintenance and Capital Expenditure: A Reserve Schedule Perspective

FINAL EXAMINATION

1. Which of the following is NOT an example of a maintenance objective to preserve, protect, and enhance the value and property of the association?

- a. Replace pool furniture
- b. Ensure updated annual elevator certificate of operation
- c. Consult association attorney regarding enforcement of use restrictions
- d. Cleaning lobby floors

Reference: Part I: Maintenance, Deferred Maintenance & Capital Expenses: Requirements

2. How does an association waive or partially fund its reserves?

- a. An affirmative vote of the majority of eligible members must vote to waive or reduce the reserves at a properly noticed and quorumed membership meeting.
- b. A super-majority vote of the Board of Directors must vote to waive or partially fund reserves.
- c. The Board of Directors must approve the waiver or reduction at a properly noticed and quorumed board meeting.
- d. The association must amend its governing documents to permit reduced funding of reserves.

Reference: Part III: Reserves & Special Assessments: Use & Modification of Reserve Funds: Reducing or Waiving Reserves

3. Deferred maintenance is any maintenance or repair performed:

- a. more frequently than yearly.
- b. as frequently as possible.
- c. as per manufacturer's specifications.
- d. less frequently than annually and performed to maintain the useful life of an asset.

Reference: Part III: Reserves & Special Assessments: Definitions

4. A capital expenditure is which of the following?

- a. Maintenance of its fixed assets with a minimum useful life of five years
- b. Purchase or replacement of an asset whose useful life is greater than three years
- c. Purchase or replacement of an asset whose useful life is greater than one year or for the repair of an asset that will extend its useful life a period greater than one year
- d. Purchase or replacement of an asset whose useful life is greater than 13 months

Reference: Part III: Reserves & Special Assessments: Definitions

5. Which of the following does NOT apply to a pooled reserve account?

- a. If an association has segregated reserves, it must obtain approval of a majority of its members to create pooled reserves.
- b. It is restricted only for the purposes of pool resurfacing or pool-related repairs.
- c. It can be created by a condominium, cooperative, or HOA by a vote of its members.
- d. It is a combination of one or more segregated reserve accounts into a single reserve account permitting more flexibility for paying capital expenditures and deferred maintenance.

Reference: Part III: Reserves & Special Assessments: Reserve Account Types: Pooled Reserves

6. A valid estimate of the cost of replacement or repair of capital equipment and deferred maintenance can often be determined by all, except which of the following?

- a. A reserve study
- b. A professional engineer
- c. A president of an association who is a retired professor of English
- d. A CPA

Reference: Part III: Reserves & Special Assessments: Reserve Schedule: Reserve Studies; Proposals

7. A reserve schedule includes all, except which of the following information?

- a. The required funding amount for the proposed budget year for each item
- b. The estimated fund balance for each item as of the end of the prior budget year
- c. The estimated remaining useful life of each item
- d. The estimated useful life of each item listed

Reference: Part III: Reserves & Special Assessments: Reserve Schedule

8. What is a special assessment?

- a. A claim members make on the association for damage to their unit or parcel
- b. A charge to members for repairs to their unit or parcel made by the association
- c. An addition to the regular assessment for a board sponsored event
- d. A charge to members of a specific amount, in addition to the periodic regular assessment, for a non-budgeted, typically unanticipated repair, replacement, or other expense

Reference: Part III: Reserves & Special Assessments: Definitions

9. Maintenance is defined as:

- a. activities required to maintain buildings, grounds, or equipment so that they may be continuously used, at their original or designed capacity and efficiency for their intended purpose.
- b. activities required by statute.
- c. activities required to be performed by licensed personnel.
- d. activities that are paid for by the association's maintenance fees.

Reference: Part I: Maintenance, Deferred Maintenance & Capital Reserves: Definitions

10. Types of maintenance include all of the following except:

- a. Corrective
- b. Emergency
- c. Statutory
- d. Preventive

Reference: Part I: Maintenance, Deferred Maintenance & Capital Reserves: Types of Maintenance





Legal Update 2019-2020

This course is approved by the DBPR Council of Community Association Managers for three hours of continuing education credit in the areas of:

Legal Update Seminars (LU)

Online Course Approval Number:	9629733	Exp. 10/6/21
Correspondence Approval Number:	9629734	Exp. 10/6/21

Course Reference Materials

The course reference material listed below can be found here www.bertrudgers.com/cam-ce:

- **Exhibit 1 - 2018 Chart of Legislation, pg. 50**
- **Exhibit 2 - 2019 Chart of Legislation, pg. 51**
- **Exhibit 3 - Conflicts of Interest, pg. 100**
- **Exhibit 4 - Property Owner Bill of Rights, pg. 112**

LEARNING OBJECTIVES

1. Review 2018 and 2019 statute changes directly impacting community associations and community association managers and/or community association businesses.
2. Review summaries of other legislation passed in the 2018 and 2019 sessions that indirectly affect community associations, community association managers, and/or community association businesses. Managers will briefly discuss two laws that affect community association businesses.
3. Review administrative rule changes directly impacting community associations and community association managers and/or community association businesses.
4. Review F.S. 468 Part VIII, F.A.C. 61-20, and F.A.C. 61E14, when changes have occurred in 2018 or 2019.

Foreword

This text includes legislation affecting community associations that was enacted into law as a result of the 2018 and 2019 legislative sessions. It does not include local government ordinances or rules, any arbitration cases, declaratory statements, court decisions, or Supreme Court opinions. We recommend that CAMs consult with association attorneys to ensure that they receive information on county and municipal ordinances, rules, arbitration decisions, declaratory statements,

and court cases that may affect community associations.

In most cases, we summarize the change in the statute or F.A.C. You will note that we include the reference for each area, as appropriate, and group the change by legislative session (2019 or 2020), type association, or issue. Within each type association, we group the change by bill number. We also provide a chart of legislation that summarizes the subject matter(s) of each bill or action. See **Exhibits 1 and 2**.

Explanation of Terms

The State of Florida is governed by its constitution, Florida Statutes (F.S.), and the Florida Administrative Code (F.A.C.). The F.A.C. is regulations written and published by state agencies, such as the Department of Business and Professional Regulations.

The State of Florida has a permanent collection of state laws organized by subject area into a code made up of titles, chapters, parts, and sections. The Florida Statutes are updated annually by laws that create, amend, transfer, or repeal statutory material. Each Florida statute is referred to as a chapter, from Chapter 1 to Chapter 1013. For example, Chapter 718 is the statute titled the *Condominium Act*. The total compilation of chapters is published in the *Laws of Florida* and codified as *Florida Statutes*. Each chapter is referred to as a Florida Statute or F.S.

Legislators propose changes, additions, and deletions to existing statutes during the legislative session. Legislation is originated in the House of

Representatives or the Senate. HB is the abbreviation for House Bill. SB is the abbreviation for Senate Bill. A bill, once passed by both the House and Senate, and signed by the governor, is referred to as a Chapter by year of passage; as an example, Chapter 2018-096. The first four digits (2018) refers to the year the bill was enacted (passed by the legislature and signed by the governor), the digits (096) following the hyphen indicate that it was the 96th bill to pass in the 2018 legislative session.

To avoid confusion, the term chapter, as used in this course, will refer to the newly enacted bill. A statute will be referred as F.S. or by name, except when quoting directly from the statute when it is referred to as a chapter. Statutes are divided into sections and subsections. Sections are abbreviated s., for example 718.111. Subsections are abbreviated **ss.**, such as 718.111(12).

EXHIBIT 1

2018 LEGISLATION		
Bill Number/F.A.C.	Subjects	Effective Date
DBPR		
HB 029 [Chapter 2018-007]	Military Personnel & Spouse	July 1, 2018
Community Associations		
HB 841 [Chapter 2018-096]	<ul style="list-style-type: none"> • Condominium Associations • Cooperative Associations • Homeowners' Association 	July 1, 2018 ¹
HB 617 [Chapter 2018-055]	• HOA Covenants & Restrictions Marketable Title Act	October 1, 2018
Legislation and Actions Related to Community Associations		
HB 529 [Chapter 2018-152]	Florida Fire Prevention Code: Doorstep Refuse & Recycle Containers	July 1, 2018 (Expires July 1, 2021)
HB 539 [Chapter 2017-051]	Alarm Systems	June 2, 2018
HB 875 [Chapter 2018-097]	Construction Defects Cases	July 1, 2018
HB 1011 [Chapter 2018-063]	Homeowner Insurance Policy Disclosures	January 1, 2019

¹Websites are effective January 31, 2019.

EXHIBIT 2

2019 LEGISLATION		
Bill Number/F.A.C.	Subjects	Effective Date
Community Associations		
SB 4 [Chapter 2019-003]	Miscellaneous Provisions (Condominium)	July 3, 2019
HB 7103 [Chapter 2019-165]	Fire Sprinkler retrofit requirements (Condominium)	June 28, 2019
Legislation and Actions Related to Community Associations		
HB 1393 [Chapter 2019-140]	Department of Financial Services (Fire alarm permit applications)	July 1, 2019
SB 82 [Chapter 2019-120]	Vegetables Gardens	July 1, 2019
HB 301 [Chapter 2019-108]	Insurance	July 1, 2019
HB 617 [Chapter 2019-082]	Flood Insurance	July 1, 2019
HB 369 [Chapter 2019-159]	Substance Abuse Services	July 1, 2019
HB 441 [Chapter 2019-146]	E911	July 1, 2019
HB 1159 Chapter 2019-155]	Tree Trimming	July 1, 2019
HB 1247 [Chapter 2019-094]	Construction Bonds	October 1, 2019
HB 829 [Chapter 2019-151]	Attorneys' Fees and Costs Related to Civil Actions	July 1, 2019
HB 7127 [Chapter 2019-168]	Corporate Income Taxes (as it relates to CABs)	June 28, 2019 ²
HB 1009 [Chapter 2019-090]	Florida Corporations Act (as it relates to CABs)	January 1, 2020

2018 Legislation**HB 29 [Chapter 2018-007] - Effective July 1, 2018****Licensure of Armed Forces Members in Good Standing and Their Spouses or Surviving Spouses****DBPR**

Summary: Chapter 2018-007 amends section 455.02 [Business and Professional Regulations: General Provisions] that applies to the licensure of Armed

Forces members in good standing, and their spouses or surviving spouses. F.S. 455 applies to all professions governed by the DBPR.

F.S. 455.02(1) now reads:

Any member of the United States Armed Forces now or hereafter on active duty who, at the time of becoming such a member, was in good standing with any of the boards or programs listed in s. 20.165 and was entitled to practice or engage in his or her profession or occupation in the state shall be kept in good standing

²Operates retroactively to January 1, 2019; Section 3 operates retroactively to January 1, 2018.

by the applicable board or program, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the United States Armed Forces on active duty and for a period of 2 years after discharge from active duty. A member, during active duty and for a period of 2 years after discharge from active duty, engaged in his or her licensed profession or occupation in the private sector for profit in this state **must complete all license renewal provisions except remitting the license renewal fee, which shall be waived by the department.** [emphasis added]

Commentary: *The amendment changes the statute to require that the Armed Forces member must now meet all licensure renewal requirements except payment of the license renewal fee. There now appears to be a contradiction in the statute because there was no change in the statutory language stating that the member must be kept in good standing without registering, paying dues or fees, or performing any other act. The statute's maintaining the member in good standing "without registering or performing any other act" appears to contradict the new requirement to meet all licensure renewal requirements except paying dues or fees.*

F.S. 455.02(2), now reads:

A spouse of a member of the United States Armed Forces who is married to a member during a period of active duty, or a surviving spouse of a member who, at the time of death, was serving on active duty, who is in good standing with any of the boards or programs listed in s. 20.165 shall be kept in good standing by the applicable board or program as described in subsection (1) and shall be exempt from licensure renewal provisions, but only in cases of his or her absence from the state because of his or her spouse's duties with the United States Armed Forces. **The department or the appropriate board or program shall waive any license renewal fee for such spouse when he or she is present in this state because of such member's active duty and for a surviving spouse of a member who at the time of death was serving on active duty and died within the 2 years preceding the date of renewal.** [emphasis added]

Commentary: *The amendment changes the statute*

to require that the armed forces member's spouse or surviving spouse now meet all licensure renewal requirements except payment of the license renewal fee. There appears to be a contradiction in the statute because there was no change in the statutory language stating that the spouse or surviving spouse must be exempt from licensure renewal provisions if they were absent from the state because of their spouse's duties with the United States Armed Forces.

The amendment waives the license renewal fee, but not any other licensure requirements, if the spouse is present in the state because of the member's active duty.

The amendment waives the license renewal fee for a surviving spouse of an armed forces member who was on active duty at the time of their death and whose death occurred within two years preceding the date of renewal.

HB 841 [Chapter 2018-96] - Effective July 1, 2018

Community Associations

Summary: *This bill, relating to condominiums, cooperatives, and homeowners' associations, amends official records, notice of meetings, term limits, recalls, fining, electric vehicle charging stations, material alteration votes, condominium bulk buyers, and amendments.*

Condominiums/Cooperatives/HOAs

The Condominium, Cooperative, and Homeowners' Association Acts are now consistent in requiring that an association make association records available to a unit owner within ten working days after receipt of a written request by the Board or its designee. That is, the records of a condominium, cooperative or HOA must be made available to a member within **ten** working days after receipt of a written request by the Board or its designee.

F.S. 719.106(1)(c) (cooperatives) and F.S. 720.303(2) (HOAs) were amended to provide that directors of the Board may use email as a means of communication, but may not cast a vote on an association matter via email. The Condominium, Cooperative, and Homeowner Association Acts now have the same

language regarding the use of email by directors for communication. The Acts do not permit voting via email.

Condominiums

Condominium Official Records - General F.S. 718.111(12)(a) and (b)

Electronic records relating to voting by unit owners, has been added to the list of records that must be maintained for one year from the date of the election, vote, or meeting to which the document relates.

The following official records must be permanently maintained from the inception of the association:

- A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).
- A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.
- A photocopy of the recorded bylaws of the association and each amendment to the by-laws.
- A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.
- A copy of the current rules of the association.
- A book or books that contain the **minutes** of all meetings of the association, the board of administration, and the unit owners.

Other revisions include (changes in bold): **All other official records** must be maintained within the state for at least seven years, **unless otherwise provided by general law.**

Condominium Official Records – Websites

F.S. 718.111(12)(g)

The **2017** legislature passed an amendment requiring, by July 1, 2018, an association with 150 or more units that does not manage timeshare units to create a website, dedicated to the association's activities and on which required notices, records, and documents were to be posted. The **2018** legislature amended the

revised statute, changing the deadline to **January 1, 2019**, and requires an association **managing** a condominium with 150 or more units that does not **contain** timeshare units to post digital copies of the documents specified in subparagraph 2 of F.S. 718.111(12)(g). on its website.

Amendments relating to the types of documents required to be posted on the website are as follows:

- A **list** of all executory contracts or documents. The prior statute required the posting of a list of any management agreement, lease, or other contract. **A copy of the actual agreement, lease, or contract is no longer required.** An executory contract is a contract that stipulates that the parties have duties to perform at a future date before it becomes fully executed.
- After bidding for related materials, equipment, or services has closed, a list of the bids received by the association within the past year must be posted. Additionally, the association has a choice to post summaries of bids that exceed \$500 for one year or to post complete copies of the bids.
- Any monthly income or expense statement to be considered at a meeting must be posted. The requirement to post any proposed financial report to be considered at a meeting has been removed. This suggests that the association may not need to post aging reports, for instance, that are to be reviewed at board meetings.
- Any contract or document regarding a conflict of interest or possible conflict of interest as provided in F.S. 468.436(2)(b)6. and 718.3027(3). Those conflicts of interests are:
 - contracting by a community association manager or firm, on behalf of an association, with any entity in which the CAM or CAB has a financial interest that is not disclosed
 - upon the Board voting against a proposed activity by a director or officer or relative of the director or officer, failure of the director or officer or relative of the director or officer to notify the Board in writing of his or her intention not to pursue the proposed activity or to withdraw from office.

The statute continues to provide that, the association or its agent (for instance, the CAM) is not liable for

disclosing information that is protected or restricted, unless the disclosure was made with a knowing or intentional disregard of said information.

The following statement has been added:

The failure of the association to post information is not in and of itself sufficient to invalidate any action or decision of the association’s board or its committees.

Condominium Financial Reporting

F.S. 718.111(13)

The statute was amended as follows (changes in bold):

If the division determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division’s request may not waive the financial reporting requirement provided in paragraph (d) of F.S. 718.111(13) **for the fiscal year in which the unit owner’s request was made and the following fiscal year** (a maximum of two years).

Prior to the amendment, the *duration* of the loss of the association’s authority to waive financial reporting requirements was unstated.

Condominium Meeting Notices of Regular or Special Condominium Assessments

F.S. 718.112(2)(c) and (d)

The statute was amended to require that notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments. The amendment replaced previous wording that required the notice to state the *nature* of the assessment. The word **nature** has been deleted.

The statute was amended to provide that a unit owner who consents to receiving notices by electronic

transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

The statute was additionally amended to provide the association the authority to adopt a *rule creating a procedure* for conspicuously posting the meeting notice and the agenda on a website for at least the minimum period of time for which a notice of a meeting is required to be physically posted on the condominium property. The rule must include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members. The electronic notice must include a hyperlink to the website where the notice is posted, to unit owners whose email addresses are included in the association’s official records.

Note: Posting on the website is not in lieu of posting on the physical property. It is in addition to posting on the physical property.

Condominium Bylaws – Number of Required Directors

F.S. 718.112(2)(d)

The statute was amended to provide clarification and was not a substantive change. It now reads:

In the absence of such a provision, the board of administration shall be composed of five directors, unless the condominium has five or fewer units. The board shall consist of not fewer than three directors in condominiums with five or fewer units that are not-for-profit corporations.

Condominium Board Director Terms of Office

F.S. 718.112(2)(d)

Language stating that *directors may serve longer than one year* if permitted by the bylaws or articles of incorporation, **replaced** the limitation that *directors may serve two-year terms*.

The amendment changed the total years a director may serve, if permitted by the bylaws or articles of incorporation, to a maximum of *eight consecutive*

years, unless approved by an affirmative vote of unit owners representing two-thirds of *all votes cast in the election*, or unless there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy. The prior language limited the maximum period a director could serve on the Board to *four consecutive two-year terms*, unless two-thirds of *the total voting interests* approved by an affirmative vote or unless there were not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy.

A term limited director may still be elected and serve, if they submit a notice to run and are listed on the ballot, and if they receive two-thirds of all votes cast in the election.

The amended statute does *not* place a limit on the maximum number of years in a term. Hypothetically, if an association's bylaws or articles of incorporation provided for a term of office of any number of years, from one to a maximum of eight, it would conform to the statute.

The DBPR has not provided administrative rules or other guidelines as to whether this new provision applies to directors who have served eight consecutive years prior to the amendment or if it is applied prospectively to begin at the next election. However, on September 12, 2018, the Division of Florida Condominiums, Timeshares, and Mobile Homes (DFCTSMH) issued a Declaratory Statement (DS 2018-035), in response to a request from the Apollo Condominium Association on Marco Island that concludes the following:

"Pursuant to the amendments made to section 718.112(2)(d)2., Florida Statutes, if at the time of the next scheduled election the current board member [director] has served on the association board for eight consecutive years, that board member [director] would be ineligible to serve unless there are fewer eligible candidates than vacant seats on the board or unless that candidate is approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election."

Whether this is applicable to all condominiums is not clear. An association should consult with its attorney for guidance.

The statutory amendment does not address the

possibility of a director seeking to extend their tenure beyond the four consecutive two-year terms maximum by simply resigning for a brief time and then being reappointed by the remaining directors to fill the vacancy.

This section of the statute does not apply to timeshare condominiums.

Condominium Recalls

F.S. 718.112(2)(j) (changes in bold)

The statute was amended to require that, **upon the conclusion of the board meeting** required to be held within five full business days after receipt of an agreement in writing by a majority of voting interests, **provided that the recall is facially valid**, a recalled director must turn over to the Board within ten full business days any and all records and property of the association in their possession. A document (the recall) has facial validity if it appears to meet the requirements of an applicable statute or rule.

Additionally, the amendment added a provision stating that, "If the Board, at the conclusion of the meeting, determines that the recall is not facially valid, the unit owner representative may file a petition to the DBPR challenging the Board's determination on facial validity."

Previous language stating that the unit owner representative could file a petition challenging the Board if it did not file the required petition was removed.

The amendment added the following language regarding the *right of a recalled director* to file a petition challenging their recall:

"The petition may challenge the facial validity of the written agreement or ballots filed or the substantial compliance with the procedural requirements for the recall. If the arbitrator determines the recall was invalid, the petitioning director shall immediately be reinstated, and the recall is invalid. A director who is successful in challenging a recall is entitled to recover reasonable attorney fees and costs from the respondents. The arbitrator may award reasonable attorney fees and costs to the respondents if they prevail, if the arbitrator makes a finding that the petitioner's claim is frivolous."

Condominium Material Alterations

F.S. 718.113(2)(a) and (b) (changes in bold)

The added language was intended as a clarification:

If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the eligible total voting interest (TVI) must approve the alterations or additions **before the material alterations or substantial additions are commenced.**

Separate amendments with the same language apply to the common elements of condominiums operated by multicondominium associations and real property of associations operated by multi-condominium associations.

The amendment does not state whether members may “ratify” a material alteration or betterment made by the Board without an owner vote in advance of the change.

The previous statutes applied to associations existing on October 1, 2008. The revised language applies to associations existing on **July 1, 2018.**

Electric Vehicles in Condominiums

F.S. 718.113(8)

A new provision regarding electric vehicle charging stations was created as follows:

The Legislature finds that the use of electric vehicles conserves and protects the state’s environmental resources, provides significant economic savings to drivers, and serves an important public interest. The participation of condominium associations is essential to the state’s efforts to conserve and protect the state’s environmental resources and provide economic savings to drivers. Therefore, the installation of an electric vehicle charging station shall be governed as follows:

- Neither a declaration of condominium or restrictive covenant, nor the board, may prohibit or be enforced to prohibit any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner’s limited common element parking area, as defined in s. 320.01. F.S. 320.01 defines an electric

vehicle as a motor vehicle that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current.

- The installation of charging stations is subject to the following provisions:
 - The installation may not cause irreparable damage to the condominium property.
 - The electricity for the electric vehicle charging station must be separately metered and payable by the unit owner installing such charging station.
 - The unit owner who is installing an electric vehicle charging station is responsible for the costs of installation, operation, maintenance, and repair, including, but not limited to, hazard and liability insurance. The association may enforce payment of such costs pursuant to s. 718.116.
 - If the unit owner or his or her successor decides there is no longer a need for the electronic vehicle charging station, such person is responsible for the cost of removal of the electronic vehicle charging station. The association may enforce payment of such costs pursuant to s. 718.116.
- The association may require the unit owner to:
 - comply with bona fide safety requirements, consistent with applicable building codes or recognized safety standards, for the protection of persons and property.
 - comply with reasonable architectural standards adopted by the association that govern the dimensions, placement, or external appearance of the electric vehicle charging station, provided that such standards may not prohibit the installation of such charging station or substantially increase the cost thereof.
 - engage the services of a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station.
 - provide a certificate of insurance naming the association as an additional insured on the owner’s insurance policy for any claim related to the installation, maintenance, or use of the electric vehicle charging station within 14 days after receiving the association’s approval to install such charging station.

- reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station within 14 days after receiving the association's insurance premium invoice.
- The association provides an implied easement across the common elements of the condominium property to the unit owner for purposes of the installation of the electric vehicle charging station and the furnishing of electrical power, including any necessary equipment, to such charging station, subject to the requirements of this subsection.

The statute does not identify who is responsible for costs the association may incur if it needs to upgrade the condominium's electrical system to accommodate an increased demand for electricity.

Condominium Liens Related to Installation of an Electric Vehicle

F.S. 718.121

The statute was amended to add the following language:

Labor performed on or materials furnished for the installation of an electric vehicle charging station pursuant to F.S. 718.113(8) may not be the basis for filing a lien under Part I of F.S. 713 against the association, but such a lien may be filed against the unit owner.

Condominium Conflicts of Interests

F.S. 718.3026(3) and 718.3027(2)

This legislation **deletes** F.S. 718.3026(3) and consolidates discussion of conflicts of interest in F.S. 718.3027. It adds language relating to a proposal to engage in an activity that is a conflict of interest as defined by F.S. 718.3027(1) (Exhibit 1) by a director or officer or a relative of a director or officer:

- The association shall comply with the requirements of s. 617.0832, and the disclosures required by s. 617.0832 must be entered into the written minutes of the meeting. *See Exhibit 3 on page 100.*
- Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other (other

than the director with the conflict of interest) directors present.

- At the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members.
- Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present.
- If the contract is canceled, the association is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

Condominium Fining and Suspension Procedures

F.S. 718.303(3)(b)

The statute was amended as follows:

- It now requires a proposed fine or suspension to be **confirmed or rejected** by a committee of at least three members appointed by the Board. The committee members cannot be officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. Prior to the amendment, persons residing in a director's residence were prohibited from serving on the committee. This is no longer the case.
- The proposed fine or suspension must be approved by a majority vote of the committee.
- If the proposed fine or suspension is approved by the committee, the fine payment is due five days after the date of the committee meeting at which the fine is approved.
- The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

Note: The requirement that the fine is due within five days of the committee meeting at which the fine is imposed may be unreasonable. Although the statute now permits household members to be on

the committee, this may create a perceived conflict of interest that the Board should avoid.

Condominium Bulk Buyer

F.S. 718.707

The statute was amended to remove its termination date of July 1, 2018. The statute is now permanent.

COOPERATIVES

Cooperative Official Records

F.S. 719.104(2)(a) and (b)

The statute was amended as follows:

- Strikes in s. 719.104(2)(a)4, the requirement to retain minutes for a "period of not less than 7 years."
- Strikes in s. 719.104(2)(a)9 the requirement to maintain all accounting records for a "period not less than 7 years."

Exhibit 3 - Conflicts of Interest

F.S. 718.3027 Conflicts of Interest

- (1) Directors and officers of a board of an association that is not a timeshare condominium association, and the relatives of such directors and officers, must disclose to the board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice, as required in subsection (5):
 - (a) A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the association.
 - (b) A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.
- (2) If a director or an officer, or a relative of a director or an officer, proposes to engage in an activity that is a conflict of interest, as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. The association shall comply with the requirements of s. 617.0832, and the disclosures required by s. 617.0832 shall be entered into the written minutes of the meeting. Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present. At the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. If the contract is canceled, the association is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.
- (3) If the board votes against the proposed activity, the director or officer, or the relative of the director or officer, must notify the board in writing of his or her intention not to pursue the proposed activity or to withdraw from office. If the board finds that an officer or a director has violated this subsection, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.
- (4) A director or an officer, or a relative of a director or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, or the relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.
- (5) A contract entered into between a director or an officer, or a relative of a director or an officer, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required by s. 718.111(12)(g) is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.
- (6) As used in this section, the term "relative" means a relative within the third degree of consanguinity by blood or marriage.

- Requires electronic records related to voting by unit owners to be maintained in the official records for *one year* from the date of election, vote, or meeting to which the document related.
- Extends the time in which records of the association are required to be made available to a unit owner after receipt of a written request by the Board or its designee from **five** days to **ten** days.

Note: s. 719.104(2)(b) states, in part, “The official records must be maintained within the state for at least 7 years. ...” It appears that the requirement on the period to retain minutes and financial records has not changed for cooperatives. However, some attorneys have opined that minutes (and possibly financial records) must be maintained from the inception of the cooperative. We strongly recommend that you consult with the association attorney on this issue.

Cooperative Director Eligibility

F.S. 719.106(1)(a)

- The statute was amended to prohibit co-owners in a residential cooperative association of more than ten units, to serve as directors of the Board at the same time, unless the co-owners own more than one unit, or unless there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy.

F.S. 719.106(1)(m)

The statute added the following provision:

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.

Cooperative Meeting Notices

F.S. 719.106(1)(c) and (1)(d)

The statute was amended and now:

- requires that a notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purpose for such assessments. The prior statute required a

description of the *nature* of the assessment, that is now deleted.

- permits cooperative associations, by rule, to adopt a procedure for conspicuously posting a meeting notice and the agenda on a website serving the cooperative association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the cooperative property. Any rule adopted shall include, in addition to other matters, a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, that must include a hyperlink to the website where the notice is posted, to unit owners whose email addresses are included in the association’s official records.
- includes a statement that a unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that may block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

Note: Posting on the website is not in lieu of posting on the physical property. It is in addition to posting on the physical property.

Cooperative Common Expenses for Communication Services

F.S. 719.107(1)(b)

The amendment allows an association to enter into bulk service contracts, if so provided in the bylaws, for communication services defined in F.S. 202, and that the costs of such contracts are deemed a common expense.

F.S. 202.11(1) defines communication services as, “The transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing

applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added."

Prior to the amendment a cooperative association was only permitted to enter into a bulk service contract for an antenna television system or a duly franchised cable television service.

The amendment also provided that communication services, information services or internet services may be cancelled in the same manner as the statute provided, prior to the amendment, for community antenna systems or duly franchised cable television services. Cancellation requires a vote of a majority of the voting interests present at the next regular or special meeting of the association.

Cooperative Fining and Suspension Procedure

F.S. 719.303(3)

The statute was amended as follows:

- It now requires a proposed fine or suspension to be confirmed or rejected by a committee of at least three members appointed by the Board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. Prior to the amendment, persons residing in a director's residence were prohibited from serving on the committee.
- The proposed fine or suspension must be approved by a majority vote of the committee.
- If the proposed fine or suspension is approved by the committee, the fine payment is due five days after the date of the committee meeting at which the fine is approved.
- The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

Note: The requirement that the fine is due within five days of the committee meeting at which the fine is imposed may be unreasonable. Although the

statute now permits household members to be on the committee, this may create a perceived conflict of interest that the Board should avoid.

HOMEOWNERS' ASSOCIATIONS

HOA Electronic Notice of Meetings

F.S. 720.303(2)(c) and 720.306(1)(e)

The statute was amended to clarify (new language in bold) that the association may provide notice of meetings by electronic transmission **to any member who has provided a facsimile number or email address to the association to be used for such purposes.** A member must consent in writing to receiving notice by electronic transmission.

HOA Fining and Suspension Procedure

F.S. 720.305(2)

The previous statute required that a fine or suspension may not be levied by the Board without a minimum 14 days' notice to the *person* sought to be fined or suspended. The amended statute changes the notice requirement by replacing *person* with *parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner.*

Additionally, the statute is amended to require that if the proposed fine or suspension, levied by the Board, is approved by the committee, the fine payment is due five days after the date of the committee meeting at which the fine is approved. Prior to the amendment, the statute did not have a required time period for payment.

Note: The requirement that the fine is due within five days of the committee meeting at which the fine is imposed may be unreasonable. Although the statute now permits household members to be on the committee, this may create a perceived conflict of interest that the Board should avoid.

HOA Amendments to Governing Documents

F.S. 720.306(1)(e)

The amendment created requirements, for the first time, relating to amending an association's governing documents. They are:

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

Prior to this amendment, an association seeking to amend its documents had to comply solely with provisions governing amendments, if any, in its existing documents.

An important change is the requirement to mail or deliver the proposal to the mailing address identified on the property appraiser's website for the county in which the parcel is located. The association can no longer rely on its official records or the mailing address provided by the owner.

Note: Some attorneys have opined that s. 720.306(1) (e) broadens the definition of "governing documents" to include rules and regulations. In such a case, rules and regulations, and any amendments thereto, would be required to be filed in the public records. We suggest that HOAs record current rules and regulations, and, thereafter, record any amendments

to these documents. HOAs should also consult the association attorney regarding this issue.

HOA Elections

F.S. 720.306(9)

The statute was amended to read as follows:

"...If an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required pursuant to this section or the bylaws, write-in nominations are not permitted, and such qualified candidates shall commence service on the Board of Directors, regardless of whether a quorum is attained at the annual meeting. ..."

HOA Application of Payments

F.S. 720.3085

The statute was amended to clarify that the application of payment, as described in the statute, applies *regardless of any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment*. For example, if a payment was received by the association with the notation "paid in full" on the check, the association could deposit the check without concern that it could not legally pursue recovery of any remaining outstanding amount.

Note: This was a glitch fix that had been previously been made to the Condominium and Cooperative Acts.

HB 617 [Chapter 2018-055] – Effective October 1, 2018

Covenants and Restrictions

F.S. 712.001 was amended to create a new title, the Marketable Record Title Act (MRTA). The statute, prior to its amendment, required the extinguishment of the title of homeowners' associations after 30 years from the date of its recording. A title is a legal deed or document constituting evidence of a right to ownership of property. Extinguishment is the annulment of a legal document, such as a title or a covenant. The legal document that is extinguished by the statute is the HOA covenant (declaration). Once that occurs, it would make it impossible for the association to

function. The amendment provides a method to prevent its extinguishment or in other words, revitalize its covenant.

F.S. 712.01 was amended to define and redefine terms including:

- **Community covenant or restriction:** Any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located that:
 - subjects the parcel to any use restriction that may be enforced by a property owners' association; or
 - authorizes a property owners' association to impose a charge or assessment against the parcel or the parcel owner.
- **Person:** Includes the singular or plural, natural or corporate, private or governmental, including the state and any political subdivision or agency thereof as the context for the use thereof requires or denotes and including any property owners' association.
- **Property owners' association: A homeowners' association** as defined in s. 720.301, a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners that is authorized to enforce a community covenant or use restrictions that are imposed on the parcels.
- **Root of title:** Any title transaction purporting to create or transfer the estate claimed by any person that is the last title transaction to have been recorded at least 30 years before the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.
- **Parcel:** Any real property that is subject to any covenant or restriction of a property owners' association.
- **Covenant or restriction:** Any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located that subjects the parcel to any use or other restriction or obligation.

The amendment's effect on HOAs is limited to those

associations that include a provision in their covenant or restrictions that terminates or extinguishes the association's covenant or restriction, and, in effect, the association, after 30 years from the date its title was recorded. The amendment provides a homeowners' association with the right to protect itself from extinguishment **by filing for record**, at any time during the 30-year period immediately following the effective date of the root of title (the date the title was recorded), a written notice in accordance with s. 712.06. Filing for record is the act of submitting a document to the clerk of the court for the court's immediate consideration.

Specifically, the association is required to file either:

- A written notice in accordance with s. 712.06
- A summary notice in substantial form and content as required under s. 720.3032(2) or
- An amendment to a community covenant or restriction that is indexed under the legal name of the property owners' association and references the recording information of the covenant or restriction to be preserved. Failure of a summary notice or amendment to be indexed to the current owners of the affected property does not affect the validity of the notice or vitiate the effect of the filing of such notice.

The amendment eliminates the requirement of obtaining the approval of at least two-thirds of the members to preserve the association's covenant or restriction.

720.3032(e) was amended to read:

"At the first board meeting, excluding the organizational meeting, which follows the annual meeting of the members, the Board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with s. 720.3032."

F.S. 720.3032, is now titled, "Notice of association information; preservation from Marketable Record Title Act." It now requires:

Any property owners' association desiring to preserve covenants from potential termination after 30 years by

operation of F.S. 712 may record in the official records of each county in which the community is located a notice specifying:

- the legal name of the association.
- the mailing and physical addresses of the association.
- the names of the affected subdivision plats and condominiums or, if not applicable, the common name of the community.
- the name, address, and telephone number for the current community association management company or community association manager, if any.
- indication as to whether the association desires to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, F.S. 712.
- a listing by name and recording information of those covenants or restrictions affecting the community that the association desires to be preserved from extinguishment.
- the legal description of the community affected by the covenants or restrictions, that may be satisfied by a reference to a recorded plat.
- the signature of a duly authorized officer of the association, acknowledged in the same manner as deeds are acknowledged for record.

Recording a document in substantially the following form satisfies the notice obligation and constitutes a summary notice as specified in s. 712.05(2)(b) sufficient to preserve and protect the referenced covenants and restrictions from extinguishment under the Marketable Record Title Act, F.S. 712:

Notice of ... (name of association) ... under s. 720.3032, Florida Statutes, and notice to preserve and protect covenants and restrictions from extinguishment under the Marketable Record Title Act, F.S. 712, Florida Statutes.

Instructions to recorder: Please index both the legal name of the association and the names shown in item 3.

1. Legal name of association:
2. Mailing and physical addresses of association:
3. Names of the subdivision plats, or, if none, common name of community:

4. Name, address, and telephone number for management company, if any:

5. This notice does does not constitute a notice to preserve and protect covenants or restrictions from extinguishment under the Marketable Record Title Act.

6. The following covenants or restrictions affecting the community which the association desires to be preserved from extinguishment:

... (Name of instrument) ...

... (Official Records Book where recorded & page) ...

... (List of instruments) ...

... (List of recording information) ...

7. The legal description of the community affected by the listed covenants or restrictions is:

... (Legal description, which may be satisfied by reference to a recorded plat) ...

This notice is filed on behalf of ... (Name of association) ... as of ...(Date)....

... (Name of association) ...

By:

... (Name of individual officer) ...

... (Title of officer) ...

... (Notary acknowledgment) ...

A copy of the notice, as filed, must be included as part of the next notice of meeting or other mailing sent to all members.

The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

The amended statute also created a process for non-HOA communities, with some exceptions, to revitalize their covenants or restrictions.

Legislation and Actions Related to Community Associations

HB 539 [Chapter 2018-051] – Effective June 2, 2018

Requirements for Alarm Confirmation

F.S. 489.529 was amended to revise requirements for alarm confirmation to include additional methods

by which an alarm monitoring company may confirm a residential or commercial intrusion/burglary alarm signal and to require that two attempts be made to confirm an alarm signal.

All residential or commercial intrusion/burglar alarms that have central monitoring are required to have the alarm monitoring company attempt to confirm the alarm signal by call, text message, or other electronic means made to the owner, occupant, or an authorized designee associated with the premises generating the alarm signal, before alarm monitor personnel contact a law enforcement agency for alarm dispatch.

The section of the amended statute relevant to community association, reads:

*"The alarm monitoring company must attempt to confirm the alarm signal **a second time** via communication with the owner, occupant, or an authorized designee associated with the premises if the first attempt to confirm is unsuccessful. However, alarm signal confirmation is not required if the intrusion/burglary alarm has a properly operating visual or auditory sensor that enables the alarm monitoring personnel to verify the alarm signal."*

HB 1011 [2018-063] – Effective January 1, 2019

Homeowners' Insurance Policy Disclosures

Chapter 2018-63 amended 627.7011, Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

Subsection (4) was amended to read:

"(a) An insurer that issues a homeowner's insurance policy must include with the policy documents at initial issuance and every renewal in bold type no smaller than 18 points the following statement:

'LAW AND ORDINANCE: LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.'

"(b) FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT."

The intent of this subsection is to encourage policyholders to purchase sufficient coverage to protect them in case events excluded from the standard homeowner's policy, such as law and ordinance enforcement and flood, combine with covered events to produce damage or loss to the insured property. The intent is also to encourage policyholders to discuss these issues with their insurance agent.

HB 529 [Chapter 2018-152] – Effective July 1, 2018 and Expires July 1, 2021

Florida Fire Prevention Code - Doorstep Refuse and Recycling Collection Containers

F.S. 633.202, was amended as follows:

In apartment occupancies³ with **enclosed corridors served by interior or exterior exit stairs**, doorstep refuse and recycling collection containers, that stand upright on their own and do not leak liquids when standing upright, must be allowed in **exit access corridors** when all of the following conditions exist:

- The maximum doorstep refuse and recycling collection container size does not exceed 13 gallons.
- Waste that is in a doorstep refuse and recycling collection container is not placed in the exit access corridors for single periods exceeding five hours.
- Doorstep refuse and recycling collection containers do not occupy the exit access corridors for single periods exceeding 12 hours.

³Building codes use the term "occupancy" to refer to the use, or intended use, of a building, or portion of a building, for the shelter or support of persons, animals or property.

- Doorstep refuse and recycling collection containers do not reduce the means of egress width below that required under National Fire Protection Association (NFPA) Life Safety Code 101:31, as adopted under the Florida Fire Prevention Code.
- Management staff have written policies and procedures in place and enforce them to ensure compliance, and, upon request, provide a copy of such policies and procedures to the authority having jurisdiction.

Additionally, in apartment occupancies with **open-air corridors or balconies served by exterior exit stairs**, doorstep refuse and recycling collection containers, that stand upright on their own and do not leak liquids when standing upright, must be allowed in exit access corridors when all of the following conditions exist:

- The maximum doorstep refuse and recycling collection container size does not exceed 27 gallons.
- Waste that is in a doorstep refuse and recycling collection container is not placed in the exit access corridors for single periods exceeding five hours.
- Doorstep refuse and recycling collection containers do not reduce the means of egress width below that required under NFPA Life Safety Code 101:31, as adopted under the Florida Fire Prevention Code.
- Management staff have written policies and procedures in place and enforce them to ensure compliance, and, upon request, provide a copy of such policies and procedures to the authority having jurisdiction.
- The authority having jurisdiction may approve alternative containers and storage arrangements that are demonstrated to provide an equivalent level of safety.

The authority having jurisdiction is typically a municipal or county fire department.

The authority having jurisdiction may approve alternative containers and storage arrangements that are demonstrated to provide an equivalent level of safety. The amended statutes provide a phase-in period until December 31, 2020, to achieve compliance.

SB 220 [2018-015] – Effective October 1, 2018

Bankruptcy and Foreclosures

F.S. 702.12 was amended as follows:

- A lienholder, such as a community association, in an action to foreclose a mortgage, may submit any document the defendant filed under penalty of perjury in the defendant's **bankruptcy** case for use as an admission by the defendant and
- A rebuttable presumption⁴ that the defendant has waived any defense to the **foreclosure** is created if a lienholder submits documents filed in the defendant's **bankruptcy** case that:
 - Evidence the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure
 - Have not been withdrawn by the defendant and
 - Show that a final order has been entered in the defendant's bankruptcy case that discharges the defendant's debts or confirms the defendant's repayment plan that provides for the surrender of the property.

The statute does not preclude the defendant, in a foreclosure action, from raising a defense based upon the lienholder's action or inaction **subsequent** to the filing of the document filed in the bankruptcy case that evidenced the defendant's intention to surrender the mortgaged property to the lienholder.

The amended statute applies to any foreclosure action filed on or after October 1, 2018.

HB 875 [2018-097] – Effective July 1, 2018

Construction Defect Cases

The amendment to F.S. 95.11, applies to community associations with respect to construction defect cases. A construction defect is a deficiency in the design or construction of a building or structure resulting from a failure to design or construct in a reasonably workmanlike manner, and/or in accordance with a buyer's reasonable expectation.

⁴A rebuttable presumption is a legal term meaning an assumption that is taken to be true unless someone comes forward to contest it and prove otherwise. A rebuttable presumption can be overturned only if the evidence contradicting it is true and if a reasonable person of average intelligence could logically conclude from the evidence that the presumption is no longer valid.

The amended statute now allows **counterclaims, crossclaims, and third-party claims** that arise out of a pleading by the association to be commenced **up to one year** after the pleading, even if such claims would otherwise be time barred.

Pleading: A pleading is the beginning stage of a lawsuit in which parties formally submit their claims and defenses.

Counterclaim: A counterclaim is a claim by a defendant, such as a contractor, opposing the claim of the plaintiff and seeking some relief from the plaintiff for the defendant.

Crossclaim: A crossclaim is a claim brought by one defendant against another in the same proceeding. For example, the contractor accuses their subcontractor of being at fault for the defect.

Third-party claim: A third-party claim is a claim made by a defendant seeking to compel a person, who is not party to the original legal lawsuit, to either perform or be prohibited from performing a specific action. For example, the contractor brings a third-party claim seeking to compel an architect to redesign the plans used by the contractor that resulted in the defective structure.

The one-year extension does not apply if a building permit has been duly issued and if a local enforcement agency, state enforcement agency, or special inspector has issued a final certificate of occupancy or certificate of completion.

The amendment applies to any legal action beginning on or after July 1, 2018 regardless of when the cause of action occurred, if the action is commenced before July 1, 2019.

2019 Legislation

SB 4 [Chapter 2019-003] – Effective Date July 3, 2019

Editorial insertions.

Community Association Management

Reviser’s note: F.S. 468.432, ***Licensure of community association managers and community association***

management firms; exceptions, paragraph 2, amended to delete obsolete language.

Condominium Act

Reviser’s note: F.S. 718.121 ***Liens***, paragraph (2), amended to confirm the editorial insertion of the word “be” to improve clarity. This was a scrivener’s error.

HB 7103 [Chapter 2019-165] – Effective June 28, 2019

Condominium Retrofit (Fire Sprinklers)

HB 7103 relates to community development and housing. It includes two provisions applicable to condominiums.

F.S. 718.112(2)(l) was amended by adding:

“Firesafety. An association must ensure compliance with the Florida Fire Prevention Code. As to a residential condominium building that is a high-rise building as defined under the Florida Fire Prevention Code, the association must retrofit either a fire sprinkler system or an engineered life safety system as specified in the Florida Fire Prevention Code. ...” It struck specific language requiring that the association obtain a certificate of compliance from a licensed electrical contractor or electrician. It also struck the requirement that the condominium be in compliance with requirements for a fire sprinkler system, have voted to forego retrofitting, or have filed an application for a building permit for the required installation with the local government having jurisdiction by December 31, 2019. It now requires that the local authority having jurisdiction may not require completion of retrofitting of a fire sprinkler system or an engineered life safety system before January 1, 2024. This does not apply to timeshare condominiums.

HB 7103 also amends F.S. 718.1085, relating to retrofit of handrails and guardrails. It clarifies that the term “common areas” means stairwells and exposed, outdoor walkways and corridors, but does not include individual balconies. It also clarifies that the local authority having jurisdiction cannot require retrofitting of common areas with handrails and guardrails before the end of 2024.

Finally, HB 7103 requires that, by July 1, 2019, the state fire marshal issue a data call to all local fire officials to

collect data regarding high-rise condominiums (greater than 75 feet in height) that have not retrofitted with a fire sprinkler system or an engineered life safety system in accordance with ss. 633.208(5) and 718.112(2)(l), Florida Statutes. Local fire officials must submit such data to the state fire marshal, including each individual building, the address, the number of units, and the number of stories. The state fire marshal must receive and compile all data into a report by city and county by July 1, 2020, and present the report to the governor, the President of the Senate, and the Speaker of the House of Representatives by September 1, 2020.

It is presumed that the legislature will utilize this data to determine its future actions with regard to fire safety retrofitting in high-rise condominiums.

HB 1393 [Chapter 2019-140] – Effective July 1, 2019

DFS – Fire Alarm Permit Applications

HB 1393 addresses several issues related to the Department of Financial Services (DFS). It modifies licensure requirements a nonrenewable temporary license for certain insurance agents, including general lines [F.S. 626.175]. HB 1393 also amends other provisions related to insurance agents, penalties, and grounds for disciplinary action. It also discusses implementation of blockchain technology.⁵

Important to community associations, HB 1393 includes provisions related to the following:

- fire safety and fire alarms
- installation, inspection, and maintenance of fire suppressions equipment
- inspection of fire control systems fire hydrants fire protection systems
- firefighter related provisions

Specifically, HB 1393 added F.S. 553.7921, *Fire alarm permit application to local enforcement agency*. It requires a “Uniform Fire Alarm Permit Application” be filed with the local enforcement agency (LEA) before:

- installing or replacing a fire alarm if the LEA requires a plan review for the installation or replacement

- repairing an existing alarm system that was previously permitted by a LEA if the LEA requires a fire alarm permit for the repair

The application is included in F.S. 553.7921(2).

HB 1393 also requires that the Uniform Fire Alarm Permit Application be submitted with any drawing, plan and supporting documentation requirement by the LEA for a project for which a plan review or fire alarm permit is required. HB 1393 provides that the application may be submitted electronically or by fax and provides required signatories.

SB 82 [Chapter 2019–120] – Effective July 1, 2019

Vegetable Gardens

This bill “intends to encourage the development of sustainable cultivation of vegetables and fruits.” Specifically, it prohibits local governments (counties and municipalities) from regulating vegetable gardens on residential properties. “Vegetable gardens” include herbs, flowers, fruits, or vegetables cultivated for human ingestion.

The bill allows local government to adopt regulations related to water use during drought conditions, fertilizer use, or control of invasive species, as long as these do not specifically regulate vegetable gardens.

Note: While this does not specifically affect community associations, HOAs in particular may wish to examine provisions in the declaration and rules that define architectural provisions (size, location and contents of landscaping). HOA boards may wish to discuss potential changes with their attorney and with homeowners, to permit such gardens.

Commentary: *Local governments have expressed concern that HB 82 upsets a range of local regulations to promote urban food gardens, by allowing private residential gardens.*

⁵**Blockchain technology** creates a system of electronic transactions where you don’t need to trust the other party. It eliminates the need for a trusted third party – instead of trusting in people or institutions it is a software that is secured by cryptography and objective mathematics.

HB 301 [Chapter 2019-108] – Effective July 1, 2019

Insurance

This bill addresses several different aspects of insurance. It modifies reimbursement to insurers from the *Florida Hurricane Catastrophe Fund* [F.S. 215.555]. It changes definitions for mobile home coverage [F.S. 319.30]. HB 301 also modified the language to F.S. 624.155, *Civil Remedy*, with regard to noticing residential property insurance claims. F.S. 624.404, *General eligibility of insurers for certificate of authority*, adds the requirements for foreign and alien insurers and exchanges. HB 301 also modifies risk-based capital requirements for insurers [F.S. 624.4085]. It modifies requirements for accessing surplus lines policies [F.S. 626.914; 626.916]. Under *LOSS CONTROL AND LOSS MITIGATION* [F.S. 626.9541(5)], it “does not prohibit” an insurer or agent from offering or giving to an insured free or discounted items of value. F.S. 627.0655 permits an insurer to include a premium discount for a policy under certain circumstances. F.S. 627.426, *Claims administration*, includes certain delivery requirements to demonstrate proof of notice. HB 301 modifies the alternative procedure for resolution of disputed property insurance claims [F.S. 627.7015(2)].

Specific provisions applicable to community associations include:

Workers’ Compensation [F.S. 440.381(2)]: HB 301 amends the penalty for submission of an application containing false, misleading, or incomplete information provided to avoid or reduce the amount of premiums for workers’ compensation, from a **second** degree felony to a **third** degree felony. It also states that sworn statements from the employer and its agent do not need to be notarized. HB 301 also modifies penalties under F.S. 921.022(3)(e) Criminal Punishment Code, Offense Severity Ranking Chart, Level 5, consistent with the change in Workers’ Compensation.

Right of Contribution among Liability Insurers [F.S. 624.1055]: The *right to contribution* is the right of a liability insurer who has discharged a common liability or burden to recover of another, who is also liable, the portion the other ought to pay or bear. The doctrine of contribution requires that entities under a common burden share that burden equitably.

This section applies to liability insurance policies in which an insurer has a duty to defend an insured against claims asserted or suits or actions filed in Florida. This includes surplus lines insurance policies. It does not apply to motor vehicle liability insurance or medical professional liability insurance. It provides that a liability insurer entitled to a contribution from another liability insurer may file a court action if required.

HB 617 [Chapter 2019-082] – Effective July 1, 2019

Flood Insurance

The Legislature modified F.S. 627.7011(4)(b), Homeowners’ policies to state:

“(b) An insurer that issues a homeowner’s insurance policy that does not provide flood insurance coverage must include with the policy documents at initial issuance and every renewal, in bold type no smaller than 18 points, the following statement:

“FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER’S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSSTHE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT.”

HB 369 [Chapter 2019-159] – Effective July 1, 2019

Substance Abuse Services

HB 369 continues to refine standards for sober homes and substance abuse services. It also addresses some of the unintended consequences of previously passed legislation. HB 369 exempts peer-run sober homes (sometimes referred to as “Oxford Homes”) from certification requirement. It defines “peer specialist” as a person who has been in recovery from a substance use disorder or mental illness for at least two years, who uses his or her personal experience to provide services in behavioral health settings to

support others in their recovery, or a person who has at least two years of experience as a family member or caregiver of an individual who has a substance use disorder or mental illness.

HB 369 also does the following:

- Strengthens patient brokering and deceptive practices statutes
- Provides for certification and background checks of peer specialists
- Expands background check requirements for recovery residence administrative personnel
- Expands violations eligible for exemption
- Covers residences that have day/night treatment centers

HB 1159 [Chapter 2019-155] – Effective July 1, 2019

Tree Trimming

HB 1159 added F.S. 163.045, *Tree pruning, trimming, or removal on residential property* that prohibits local governments from requiring notices, applications, approvals, permits, fees or mitigation for the pruning, trimming, or removal of trees on residential property, if a property owner obtains documentation from an arborist certified by the International Society of Arboriculture⁶ or a Florida licensed landscape architect, that the tree presents a danger to persons or property. The local government may not require the property owner to replant a tree that was pruned, trimmed or removed, in accordance with F.S. 163.045. Local governments continue to have rights over mangrove trees.

HB 1159 also amended F.S. 163.3209, *Electric transmission and distribution line right-of-way maintenance*, to permit a property owner to request an electric utility to maintain vegetation on property adjacent to the electric utility's right-of-way, at any time during the year, without notice or permission from

the local government. This applies only to situations when it is necessary for power restoration or when the vegetation is threatening to cause a power outage.

HB 1159 also created F.S. 70.002, *Property Owner Bill of Rights*. It requires each county property appraiser to provide on its website a Property Owner Bill of Rights that must contain certain provisions (Exhibit 2). The purpose of the bill of rights is to identify certain existing rights afforded property owners. It does not create a civil cause of action. See **Exhibit 4** on page 112.

HB 441 [Chapter 2019-146] – Effective July 1, 2019

E911 Systems

HB 441 relates to implementing a text-to-911 system and upgrading 911 systems within the state. Specifically addressed are Enhanced 911 (E911) systems. F.S. 365.172 (3)(h) defines an E911 system as, "...an enhanced 911 system or enhanced 911 service that is an emergency telephone system or service that provides a subscriber with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, and that provides for automatic number identification and automatic location-identification features. E911 service provided by a wireless provider means E911 as defined in the order." HB 441 states why the legislature believes 911 telecommunications and systems serve an important state interest.

Every county is required to develop a countywide implementation plan addressing text-to-911, that is to be enacted by January 1, 2022.

F.S. 365.177 was created to address transfers of E911 calls from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system. Transfers are to include voice, text, image, video, caller identification information, location information, and additional standards-based information.

⁶The **International Society of Arboriculture (ISA)** is an international *non-profit organization* headquartered in *Atlanta, Georgia, USA*. Its mission statement is, "Through research, technology, and education, the ISA promotes the professional practice of *arboriculture* and fosters a greater worldwide awareness of the benefits of trees." The ISA serves the *tree care industry* as a *membership* association and a *credentialing* organization that promotes the professional practice of arboriculture. ISA focuses on re-search, technology, and education to advance best tree care practices and deliver educational publications, services, events, and credentials that provide opportunities for tree care professionals to develop their knowledge, skills, and arboricultural expertise. ISA also works to educate the public about the benefits of trees and the need for proper tree care.

Exhibit 4 - Property Owner Bill of Rights [F.S. 70.002]

This Bill of Rights does not represent all of your rights under Florida law regarding your property and should not be viewed as a comprehensive guide to property rights. This document does not create a civil cause of action and neither expands nor limits any rights or remedies provided under any other law. This document does not replace the need to seek legal advice in matters relating to property law. Laws relating to your rights are found in the State Constitution, Florida Statutes, local ordinances, and court decisions. Your rights and protections include:

1. The right to acquire, possess, and protect your property.
2. The right to use and enjoy your property.
3. The right to exclude others from your property.
4. The right to dispose of your property.
5. The right to due process.
6. The right to just compensation for property taken for a public purpose.
7. The right to relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity unfairly affects your property.

HB 441 provides requirements for development of this plan. F.S. 365.179 was created to address direct radio communication between 911 public safety answering points (PSAP)⁷ and first responders. It requires each sheriff, in collaboration with first responder agencies, to establish written protocols for immediately broadcasting 911 communications or public safety information over the primary radio dispatch channels of each first responder agency, with certain exceptions. By January 1, 2020, each sheriff must provide to the Florida Department of Law Enforcement (FDLE) copies of inter-local agreements.

HB 1247 [Chapter 2019-094] – Effective October 1, 2019

Construction Bonds

HB 1247 updates the statutes related to construction bonds. F.S. 255.05 requires notice of non-payment to be made by the contractor [claimant] under oath. It provides forms for contest of claims and for notice of nonpayment. HB 1247 also specifies that a claimant who serves a fraudulent notice forfeits their rights under the bond.

We recommend that, when using construction bonds, an association review requirements with the association attorney.

HB 829 [Chapter 2019-151] – Effective July 1, 2019

Attorneys' Fees and Costs Related to Civil Actions

HB 829 related to challenges of local ordinances as being preempted by the state constitution or state law. If a civil action is filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that it is expressly preempted by the State Constitution or by state law, the court shall assess and award reasonable attorney fees, costs, and damages to the prevailing party. HB 829 also prohibits the award of attorney fees and costs under certain circumstances.

We recommend that associations, when considering challenging local ordinances, verify their rights with their attorney.

HB 7127 [Chapter 2019-168] – Effective June 28, 2019⁸

Corporation Income Tax

HB 7127 relates to **community association businesses (CABs)** that are for profit corporations. It adopts the Internal Revenue Code in effect on January 1, 2019. It extends the period during which

⁷“Public safety answering point,” “PSAP,” or “answering point” means the public safety agency that receives incoming 911 requests for assistance and dispatches appropriate public safety agencies to respond to the requests in accordance with the state E911 plan.

⁸Operates retroactively to January 1, 2019; Section 3 operates retroactively to January 1, 2018.

automatic refunds and downward adjustments to tax rates apply. HB 7127 also provides requirements for the Department of Revenue, including audit and investigation authority. These changes are effective January 1, 2019.

HB 7127 revises the definition of “adjusted federal income” regarding additions and subtractions from taxable income. This section is retroactive to January 1, 2018.

HB 1009 [Chapter 2019-090] – Effective January 1, 2020

Florida Business Corporation Act

HB 1009 is a substantive revision to F.S. 607, the Florida Business Corporation Act. This applies to **community association businesses (CABs)** that are for profit corporations.

Among other changes, HB 1009 made technical changes and revisions to F.S. 607. It adjusted responsibilities of the Secretary of State. It revised requirements and authorizations for the contents of articles of incorporation and bylaws. It amended definitions and requirements for registered agents. HB 1009 revised for the delivery of notice or other communication and revised the procedures for service of process, notice, or demand on a corporation. HB 1009 also amended procedures and rules related to shareholder meetings. It addresses director terms, resignations, and meetings. It modified notice for organizational meetings to give at least two, rather than three days’ notice. HB 1009 revised the requirements relating to the liability of certain persons acting in accordance with emergency bylaws. It also revised when a corporation’s power to act may be challenged.

We recommend that CAMs review all provisions with the CAB’s attorney.

F.A.C. CHAPTER 61E14-1.001 – Effective August 15, 2019

PRELICENSURE

61E14-1.001 Prelicensure Education Requirements.

(1) All community association manager applicants must satisfactorily complete a minimum of 16 in-person classroom hours of instruction of 50 minutes each within 12 months prior to the date

of examination. No applicant shall be allowed to take the licensure examination unless the applicant provides documentation of completion of the requisite prelicensure education. Each contact hour shall consist of at least 50 minutes of classroom instruction.

- (2) The 16 hours of prelicensure education shall be comprised of courses in the following areas:
- (a) State and federal laws relating to the operation of all types of community associations, governing documents, and state laws relating to corporations and nonprofit corporations – 20%;
 - (b) Procedure for noticing and conducting community association meetings – 25%;
 - (c) Preparation of Community Association Budgets and Community Association Finances – 25%;
 - (d) Insurance matters relating to Community Associations – 12%; and
 - (e) Management and maintenance – 18%;
- (3) Applicants who can document to the Council that they suffer from a disability or hardship shall be permitted to complete prelicensure education by either correspondence or online courses. Such documentation must be received and approved by the Council prior to enrolling and completing any correspondence or online prelicensure courses.
- (a) The following shall constitute acceptable “hardships” as used in this rule:
 - 1. The applicant’s residence is more than 70 miles from the nearest physical location where prelicensure education is taught.
 - 2. Providers are not offering any in-person prelicensure education courses within the twelve months preceding the next available examination.
 - (b) “Disability” as used in this rule shall mean a physical or mental impairment that substantially limits one or more of the major life activities of the applicant that would preclude the applicant from attending in-person prelicensure courses.

F.A.C. CHAPTER 61E14-4.001 – Effective August 15, 2019

CONTINUING EDUCATION

61E14-4.001 Continuing Education Renewal Requirements.

- (1) All community association manager licensees must satisfactorily complete a minimum of 15 hours of continuing education per biennial renewal cycle. Each hour shall consist of 50 minutes of student involvement in approved classroom, correspondence, interactive, distance education or internet courses. No license shall be renewed unless the licensee has completed the required continuing education.
- (2) Only continuing education courses approved by the Council shall be valid for purposes of licensee renewal.
- (3) The required 15 hours of continuing education shall be comprised of courses approved pursuant to Rule 61E14-4.003, F.A.C., in the following areas:
 - (a) 3 hours of legal update seminars. The legal update seminars shall consist of instruction regarding changes to Chapters 455, 468, Part VIII, 617, 718, 719, 720, and 721, F.S., and other legislation, case law, and regulations impacting community association management. Licensees shall not be awarded continuing education credit for completing the same legal update seminar more than once even if the seminars were taken during different years.
 - (b) 3 hours of instruction on insurance and financial management topics relating to community association management.
 - (c) 3 hours of instruction on the operation of the community association's physical property.
 - (d) 3 hours of instruction on human resources topics relating to community association management. Human resources topics include, but are not limited to, disaster preparedness, employee relations, and communications skills for effectively dealing with residents and vendors.
 - (e) 3 hours of additional instruction in any area

described in paragraph (3)(b), (c) or (d) of this rule or in any course or courses directly related to the management or administration of community associations.

- (4) No licensee will receive credit, for purposes of meeting the continuing education requirement, for completing the same continuing education course more than once during a biennial renewal cycle.
- (5) Course instructors may receive continuing education credit hours in the amount of hours approved by the Council for licensees only once every biennial renewal cycle for each approved course taught by the instructor.
- (6) Anyone licensed for more than 24 months at renewal time will be required to have complied with the continuing education requirements set forth in subsection (1), above, prior to license renewal. "More than 24 months" means 24 months plus 1 day. Licensees licensed for 24 months or less at renewal time are exempt from compliance with the continuing education requirements set forth in subsection (1) above, until the end of the next renewal cycle.

Rulemaking Authority 455.2123, 455.2124, 468.4315(2), 468.4336, 468.4337 FS. Law Implemented 455.2123, 455.2124, 468.4336, 468.4337 FS. 45 History—New 5-5-88, Amended 3-22-89, 2-5-91, 12-28-92, Formerly 7D-55.008, 61B-55.008, Amended 10-18-99, 3-13-00, 2-21-01, 7-21-03, 4-25-05, 46 2-28-07, Formerly 61-20.508, Amended 2-1-15, 5-18-15, 8-15-19.

Summary

In 1866, Gideon John Tucker, Surrogate of New York, in an 1866 will case decision, wrote, "No man's life, liberty, or property are safe while the legislature is in session." As CAMs, we can and should participate in the legislative process, through membership in political and civic organizations, or on our own initiative, to prevent any possibility of the quotation becoming applicable to the State of Florida, especially as it effects laws relating to community associations.



Legal Update 2019-2020

FINAL EXAMINATION

1. A member of the armed forces is on active duty. They have a CAM license and want to keep it active. What must they do?

- a. Pay any required license renewal fees
- b. Complete legal update continuing education only
- c. Meet all required licensure renewal, except remitting the license renewal fee
- d. A member of the armed forces is exempt from meeting all licensure renewal requirements

Ref: HB 29, Licensure of Armed Forces Members

2. Johnny Jones, an owner at the Golden Arms Condominium, sends a letter to the manager asking to review the minutes from last month's meeting. Within what period after Mr. Jones' written request must Golden Arms provide access to the minutes?

- a. 5 working days
- b. 10 working days
- c. 10 calendar days
- d. 15 calendar day

Ref: HB 841, Condominiums/Cooperatives/HOAs

3. Which of the following records must condominiums permanently maintain from the inception of the association?

- a. Minutes
- b. Annual financial reports
- c. Copies of bids for capital projects
- d. Ballots for annual election

Ref: HB 841, Condominium Official Records

4. A condominium director may now serve a maximum of eight consecutive years, unless which of the following occurs?

- a. The condominium articles of incorporation prohibits term limits
- b. The condominium bylaws provide for longer consecutive years of service
- c. There are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy
- d. A majority of unit owners voting at the election vote to retain the director in office

Ref: HB 841, Condominium Board Director Terms of Office

5. How must an alarm monitoring company confirm a residential or commercial intrusion/burglar alarm?

- a. by calling or texting a message to the owner, occupant, or authorized designee.
- b. by asking a neighbor of the property where the alarm is sounding.
- c. by asking the local police if the owner has not responded to the first attempt.
- d. by doing nothing. No confirmation is required if the property is operating an auditory sensor only.

Ref: HB 539, Requirements for Alarm Confirmation

6. In order to prohibit local governments from requiring notices, applications, approvals, permits, fees, or mitigation for the pruning, trimming, or removal of trees on their residential property, what documentation must the property owner obtain?

- a. Certification from the International Society of Arboriculture that the tree presents a danger to persons or property.
- b. Certification from a Florida licensed landscape architect that the tree is no longer essential to a landscape plan
- c. Certification from the association landscaper that the tree is an invasive species
- d. Certification from a Florida licensed landscape architect that the tree is an invasive species

Ref: HB 1159, Tree Trimming

7. To encourage the development of sustainable cultivation of vegetables and fruits, what does Chapter 2019-120 prohibit?

- a. Associations from prohibiting owners from growing vegetables in common elements
- b. Homeowners from planting vegetables, unless they are for use at community events
- c. Local governments from regulating vegetable gardens on residential properties
- d. Local governments from prohibiting vegetable gardens within local government rights-of-way

Ref: SB 82, Vegetable Gardens

8. A local government having jurisdiction may not require an association to complete retrofitting of a fire sprinkler or engineered life safety system in high-rise condominiums before which date?

- a. January 1, 2020
- b. January 1, 2022
- c. January 1, 2024
- d. January 1, 2026

Ref: HB 7103, Condominium Retrofit (Fire Sprinklers)

- 9. Sammy Lemieux, the manager of Treetop Condominium, filed a workers' compensation claim for maintenance worker, Henry Blue, who claims he injured his back when he fell from a ladder while touching up paint on the front sign. However, Sammy is concerned that this will increase the workers' comp rate, and Henry's injury only resulted in a few doctor's visits. Therefore, Sammy omits this claim to keep Treetop's rates lower. Which statement about this situation is correct?**
- a. Workers' comp rates do not consider the number or types of claims filed by an entity.
 - b. Sammy could be convicted of a third-degree felony for filing false information to avoid a workers' comp premium increase.
 - c. Sammy could be convicted of a second-degree felony for filing false information to avoid a workers' comp premium increase.
 - d. Sammy could be convicted of a first-degree felony for filing false information to avoid a workers' comp premium increase.

Ref: HB 301, Insurance

- 10. How many hours of continuing education must all community association manager licensees satisfactorily complete per biennial renewal cycle?**
- a. 20
 - b. 16
 - c. 24
 - d. 15

Ref: F.A.C. 61E14-4.001 Continuing Education Renewal Requirements





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- Verify that your name and license number are correct on the Certificate of Completion. We use this information to report your education to the DBPR. Education is reported the next business day.
- Check your DBPR account at www.MyFloridaLicense.com to ensure that you have satisfied your continuing education requirements for the CURRENT license period. It may take up to three business days from the date your education is reported by Bert Rodgers Schools for it to be visible in your DBPR account.
- Pay your license renewal fee to the DBPR. To pay online, log into or set up your DBPR account at www.MyFloridaLicense.com. The DBPR mails your new license when all renewal requirements are fulfilled.

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| 2. (A) (B) (C) (D) | 7. (A) (B) (C) (D) |
| 3. (A) (B) (C) (D) | 8. (A) (B) (C) (D) |
| 4. (A) (B) (C) (D) | 9. (A) (B) (C) (D) |
| 5. (A) (B) (C) (D) | 10. (A) (B) (C) (D) |

Course Evaluation

- | | Poor | Good | Excellent |
|--|--------------------------|--------------------------|--------------------------|
| Learning objectives were clearly stated. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Course content was clear and organized. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Course material was relevant to my profession. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Instructor support (if needed) was satisfactory. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| I felt prepared for the final examination. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

ELE Birds, Bats, Bees, and Beasts**Course #9629676 (OL-XD 9-17-21) #9629675 (C-XD 9-4-21)**

- | | |
|--------------------|---------------------|
| 1. (A) (B) (C) (D) | 6. (A) (B) (C) (D) |
| 2. (A) (B) (C) (D) | 7. (A) (B) (C) (D) |
| 3. (A) (B) (C) (D) | 8. (A) (B) (C) (D) |
| 4. (A) (B) (C) (D) | 9. (A) (B) (C) (D) |
| 5. (A) (B) (C) (D) | 10. (A) (B) (C) (D) |

Course Evaluation

- | | Poor | Good | Excellent |
|--|--------------------------|--------------------------|--------------------------|
| Learning objectives were clearly stated. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Course content was clear and organized. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Course material was relevant to my profession. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Instructor support (if needed) was satisfactory. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| I felt prepared for the final examination. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

HR Policies & Procedures**Course #9629680 (OL-XD 9-4-21) #9629671 (C-XD 9-3-21)**

- | | |
|--------------------|---------------------|
| 1. (A) (B) (C) (D) | 6. (A) (B) (C) (D) |
| 2. (A) (B) (C) (D) | 7. (A) (B) (C) (D) |
| 3. (A) (B) (C) (D) | 8. (A) (B) (C) (D) |
| 4. (A) (B) (C) (D) | 9. (A) (B) (C) (D) |
| 5. (A) (B) (C) (D) | 10. (A) (B) (C) (D) |

Course Evaluation

- | | Poor | Good | Excellent |
|--|--------------------------|--------------------------|--------------------------|
| Learning objectives were clearly stated. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Course content was clear and organized. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Course material was relevant to my profession. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Instructor support (if needed) was satisfactory. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| I felt prepared for the final examination. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

OPP Maintenance and Capital Expenditures**Course #9629678 (OL-XD 9-4-21) #9629679 (C-XD 9-4-21)**

- | | |
|--------------------|---------------------|
| 1. (A) (B) (C) (D) | 6. (A) (B) (C) (D) |
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| 3. (A) (B) (C) (D) | 8. (A) (B) (C) (D) |
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| 5. (A) (B) (C) (D) | 10. (A) (B) (C) (D) |

Course Evaluation

- | | Poor | Good | Excellent |
|--|--------------------------|--------------------------|--------------------------|
| Learning objectives were clearly stated. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Course content was clear and organized. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Course material was relevant to my profession. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Instructor support (if needed) was satisfactory. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| I felt prepared for the final examination. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Legal Update 2019-2020**Course #9629733 (OL-XD 10-6-2021) #9629734 (C-XD 10-6-2021)**

- | | |
|--------------------|---------------------|
| 1. (A) (B) (C) (D) | 6. (A) (B) (C) (D) |
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| 3. (A) (B) (C) (D) | 8. (A) (B) (C) (D) |
| 4. (A) (B) (C) (D) | 9. (A) (B) (C) (D) |
| 5. (A) (B) (C) (D) | 10. (A) (B) (C) (D) |

Course Evaluation

- | | Poor | Good | Excellent |
|--|--------------------------|--------------------------|--------------------------|
| Learning objectives were clearly stated. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Course content was clear and organized. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Course material was relevant to my profession. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Instructor support (if needed) was satisfactory. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| I felt prepared for the final examination. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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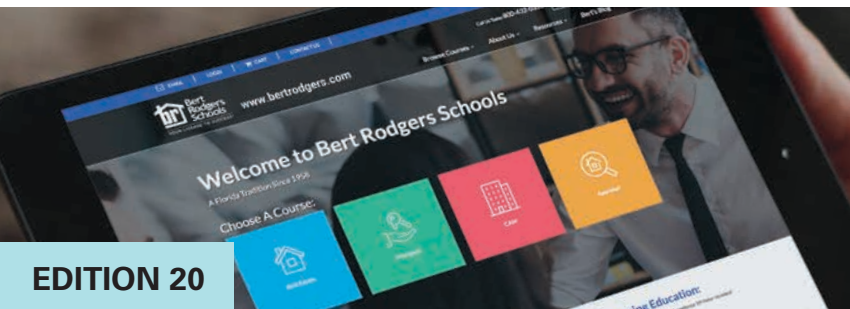
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