# WHAT LAWS DOES THE STATE WITH THE MOST CONDOS & HOAS (FLORIDA) HAVE THAT YOU CAN LEARN FROM?

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Community Financials

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# FLORIDA HAS THE MOST COMMUNITY ASSOCIATIONS NATIONWIDE

with a total of 47,000 as per Community Associations Institute's (CAI) 2017 statistical report. Compared to Arizona that is ranked as having the 10th most associations, 9,600, and Oregon ranked 25th with 3,850 associations. This is not the number of parcels, homes or units this is the total number of associations (for example Florida has 9,753,000 residents living in its 47,000 associations). So what laws does Florida, the state with the most condos & HOAs have that you can learn from? Here is Community Financials' synopsis of the salient points:

## Board Members

Five or fewer unit associations require a minimum of 3 board members. Six or more unit associations requires 5 board members.

## Board Training

Within 90 days of being elected or appointed to the board, each new board member shall certify in writing to the secretary of the Association that he or she has read the Association's

declaration of condominium/covenants, articles of incorporation, bylaws, and current written rules and policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Association's members. In lieu of this written certification, within 90 days of election or appointment, the director may submit a certification of satisfactory completion of the education curriculum administered by a state approved condominium education provider (If your state doesn't have something we suggest Community Association's Institute Board Course) within one year before or 90 days after the election/appointment.

## Compensation for Services

Unless otherwise provided in the bylaws, Association officers and directors shall serve without compensation. Normally, the documents do not allow compensation. However, Directors/Officers can be reimbursed for any duties that they perform that are not a part of their duties as an officer and for out of pocket expenses.

## Board Meetings

A member of the Board may participate in the meeting by presence and speaker phone – they cannot participate if absent by proxy. Board members need to be noticed 48 hours in advance of a board meeting unless the meeting will discuss a budget in which case the notice must be 14 days and include a copy of the proposed budget.

A system of noticing for Board of Directors meetings should be instituted so that the membership as a whole is informed of the meetings of the board. You do not have to mail a notice to all of the members of the association. A notice on the bulletin board will suffice and it should be posted continuously and conspicuously for at least two days (48 hours) before the meeting.

All Board of Directors meetings are open meetings and any member of the association may attend. All meetings of committees or any other group assisting in association business are open meetings. Owners may not vote at board meeting but may address the board on all agenda items when recognized by the chair.

## Annual Meeting

An annual meeting of the unit owners is required. A written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting.

## Board Member Removal

Grounds for automatic removal of a Board member include – over 90 days delinquent in payment of assessments (it is considered abandonment of position and a vacancy is created.

Pending charges of embezzlement of association funds and pending felony charges. Keep in mind that the board is accountable to the members and that a board member can be recalled, without cause, by the members.

## Records of Outgoing Board Member

If a cooperative or condominium board member is removed, all records in his or her possession must be turned over to the board within 5 days. For an HOA, when a board member is removed, he or she must turn over all documents to the board within 3 days (72 hours).

## Record Keeping

Meeting minutes should be reduced to writing within thirty days of the meeting. The board is the custodian of all official records and the official records must be open for inspection by any member during reasonable hours.

Most official records are kept for a period of at least seven years except voting ballots nad unaccepted bids which must be kept for one year or board certifications which must be kept for five years or the term of the director whichever is longer.

## Unit Owner Roster

Each community association must maintain a roster of members. It contains the name of the member, current address, current telephone number and the property owned (unit number).

## Annual State Filing

The articles of incorporation get amended every time there is a new board member or registered agent. For some associations, this means an amendment every year. The association must file an annual report with the State identifying the corporate officers and registered agent for the association.

## Owner access to Records

If a member has requested, by certified mail, to inspect the association the board must make the records available, within 45 miles of the property, within 5 working days after receiving the request.

Unit owners who are denied access to the official records 10+ days after a written request are eligible for damages no lesser than $50 per day and reimbursement of any attorney's fees.

The unit owner may make a second request after 10 days. If another 10 days has elapsed after the second request, and the board has failed to provide access, the Division of Florida Condominiums, Timeshares and Mobile Homes will issue a subpoena requiring production of the requested records.

Unit owners may take photos of official records with a camera, phone or other electronic device.

Associations can charge a reasonable rate for copies, HOAs can charge 25 cents per pate for copies made on their copier, for more than 25 copies, HOAs can charge actual outside service costs.  If the time to retrieve and copy records takes longer than one-half hour than an hourly fee can be charged.

The following documents are protected and NOT available to unit owners: (1) documents protected by lawyer-client privilege; (2) information associated with the sale of a unit; (3) homeowner medical records and other confidential information such as Social Security Numbers; (4) association security information (e.g., passwords); and (5) personnel records (if the association has employees).

## Lender Questionnaires & Resale Certificates

If a condominium owner or mortgage holder requests a certificate confirming his assessments, the association must deliver the certificate within 15 days and may charge a reasonable fee.

The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the property or the association other than an estoppel and may charge a fee not to exceed $150 plus reasonable copying and attorney costs.

## Rules & Regulations

When developing rules and regulations, the Board of Directors must use the rule of "STANDARD OF REASONABLENESS AND FAIRNESS".  Rules and Regulations may not be arbitrary or discriminatory and their application must be fair and uniform among the owners and members.

## Fines

Condominium Associations (answer is different for HOA).  Regardless of what's in the association's docs, a fine may not exceed $100 per violation or $1,000 in the aggregate. A fine may not become a lien against a condominium unit or owner. The association's governing documents may cap the daily fees at $25 or $50 and may cap the aggregate fine at something lower than $1,000.  HOAs can charge up to $100/day and $1000 in aggregate, unless the docs say they can charge more. So if the HOA docs say the daily fine can be $200 and the aggregate is $2,500, that's fine.

# FINANCIAL

## Assessments

In condos and coops Assessments shall be made against units not less frequently than quarterly in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses.  Reserves are part of the annual budget and are collected with each assessment.

## Special Assessments

Unless the documents state otherwise, the Board of Directors can approve a special assessment.

## Delinquent Owners

The Association may suspend the right to use some of the common elements
The Association may suspend the owner's voting rights
The suspension must be approved at a properly noticed meeting

## Late Fees & Interest on Late Payments

If the documents provide, interest may be charged on delinquent assessments. If not stated otherwise, 18% may be charged. Also, an administrative late fee of $25.00 or 5% may be charged, whichever is greater, for each delinquent installment if the documents so provide.

## Reducing Delinquent Owner Past Due Fees

When settling a payment for late assessments collection fees, late fees and interest may be reduced.  The assessment itself may not.

When paying late on an assessment the priority of order, from highest to lowest, in which the payment is applied is: interest, late fee, collection cost, assessment.

## Liens on Delinquent Owners

A written notice at least 45 days for homeowner associations and 30 days for condominium and cooperative associations prior to filing a claim of lien must be given. This written notice must be sent via registered/certified mail, return receipt requested and by first-class mail to the address listed in the association records and to the parcel address.

An assessment lien on a condominium, if foreclosure is not commenced, becomes ineffective 1 year after the claim of lien was recorded at the clerk of the county court's office.  For HOA's, the general statute of limitations requires action to be brought within 5 years from due date of debt.

## Competitive Bids

Condos and Co-ops with more than 10 units must obtain competitive bids if the contract exceeds 5% of the association's total annual budget including reserves. Condos or co-ops with 10 or less units may opt out this requirement if approved by two-thirds of the owners. For an HOA multiple bids are required if the cost of the contract exceeds 10% of the budget.

## Annual Financial Statements to ALL Owners

An association of over 50 units and $150,000 in revenues must provide a complete set of financial statements in accordance with generally accepted accounting principles; compiled, reviewed, or audited, depending upon the size of the association.

Within **90 days** after the end of the fiscal year or annually on the date provided in the bylaws, associations shall prepare and complete or contract for the preparation and completion of a financial report for the preceding year. Within **21 days** after receiving but **not more than 120 days** after the end of the fiscal year, the association shall mail to each owner a copy of the report or a notice that a copy is available to all owners without charge. In other words, the financial report must be at least contracted for by the end of March. Not later than the end of April, the report needs to be sent to the owners. If the report is completed earlier, it must be sent to the owners not more than 21 days after receiving it. The association may also just sent a notice to the owners that the report is available at no charge. This notice has the same time requirements as noted above.

An association with annual revenues less than $150,000 or fewer than 50 parcels/units is only required to prepare a report of cash receipts and expenditures.
Associations with 50 or more units/ lots and annual revenue between $150,000 and $300,000 must file an annual COMPILED statement by a CPA.

If the annual revenues are between $300,000 to less than $500,000 a REVIEWED statement is required.

If the annual revenues are $500,000 or more an AUDITED statement is required.

## Budget

The community's budget should be adopted 45 days before the beginning of the fiscal or budget year.

If the budget exceeds 115% of the previous year's assessments, excluding reasonable reserves for repair or replacement (these are the three main reserve categories (Painting, Paving, Roof), so they won't be included in the calculation.), anticipated expenses which the Board does not expect to be incurred on a regular/annual basis, or betterments to the property, 10% of the voting members may petition the board to reconsider it.

## Limited Common Element Repair Costs

The association may maintain limited common elements, with the cost to be shared only by those entitled to their use. In this case the budget or an attached schedule must show those amounts separately.

## Reserves

Roof, paving, painting and items greater than $10,000 or any other item that the Board deems appropriate need to have reserve accounts.

Can reserve funds in one account be used to fund expenses in another account? Yes, if approved by the owners in advance. Reserve funds and any interest accruing thereon shall remain in the reserve account(s) and may be used only for authorized reserve expenses unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. The reserve funds belong to the owners and only they can approve using them for a purpose which is different than intended.

Interest earned on reserve funds shall remain in the reserve account and may only be used only for authorized reserve expenses.

If the owners do not desire to fully fund the reserves for the coming year, then they may vote not to do so. The vote requires a majority of the owners present in person and with proxy at the meeting to approve the budget, or the annual owners' meeting. They may vote to waive the collection of monies for reserves or reduce any amounts to be collected, if they so desire. This must be done each year if they do not want to collect the full amount for reserves.

A reserve study should contain the remaining useful life of each item, an estimate of the current cost to repair, replace or restore each item and an estimate of the total annual contribution necessary to defray the cost of the repair for each item.

How often should a board update an association's reserve study? Unless costs are rising or falling very quickly, an update every three to five years should be sufficient.

## Comingling of Reserve Funds

Reserve funds may be comingled with operating funds for investment purposes only.

## Surplus Income

Surplus income is Income that unexpectedly exceeded expenses for the year. In a not-for-profit corporation, a surplus cannot be distributed to the members. It can be allocated to reserves or used to reduce the following year's assessment. However, if the surplus results from unused special assessment funds, it can be returned to the members.

## Tax Returns

All community associations whether organized for profit or not-for-profit must file an annual income tax return with the Internal Revenue Service. Federal tax returns, or extensions, are due 75 days after the end of the fiscal year. Normally, this is March15th. If the association files a Form 1120, it must also file a Florida Form 1120. If the association files a Form 1120H, then a Florida return is not necessary. Please consult your CPA for the best option. Associations should consult an accountant for advice as to the best reporting method. This is always good advice. When in doubt, consult an expert in that field.

# INSURANCE

## Directors and Officers Insurance

Provides liability coverage for wrongful acts by the association, the board, officers, and certain other volunteers, such as committee members. Coverage is typically written for $1,000,000 and above. D&O coverage does not cover fraud, ignorance of the law or lack of due caution.

## Fidelity Insurance

The association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. As used in this paragraph, the term “persons who control or disburse funds of the association” includes, but is not limited to, those individuals authorized to sign checks on behalf of the association, AND the president, secretary, and treasurer of the association. The association shall bear the cost of any such bonding.

## Insurance Appraisal

Adequate property insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, must be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months.

## Association Employee Insurance

If your association has 4 or more employees, full-time or part-time, you are required to carry workers’ compensation coverage.