

Summary of Changes to Chapter 719, *Florida Statutes*, Governing Cooperatives

What follows is a summary of the changes to Chapter 719 of the Florida Statutes governing cooperatives.

Section 719.104(2)(b) - Official Records

This section was amended to provide that the official records of the association must be maintained within the state of Florida for at least seven years at a location which is within forty-five miles of the cooperative property or within the county where the cooperative property is located. Further, the amendment allows the association to make official records available via the internet or by allowing records to be viewed in electronic format on a computer screen and printed upon request.

Section 719.104(2)(c) - Inspection of Official Records

This section was amended to delete the following language: “Failure to permit inspection of the association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorneys fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection.” Note that the deleted language was replaced with the following:

The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorneys fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to Section 719.501(1)(d).

Additionally, the following was added to this section:

An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her

authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of the portable device.

This section was further amended to add subsections 3, 5, 6 and 7. These subsections provide that various records are exempt from review by members of the association as they are now considered exempt records which include, but are not limited to personnel records of the association or the management company employees, social security numbers, drivers license numbers, credit cards, email addresses, telephone numbers, facsimile numbers and emergency contact information other than as provided to fulfill the association's notice requirements. This section further authorizes an association to publish a directory of official member addresses and phone numbers unless the member objects to the disclosure of the member's phone number in the association's directory list.

Section 719.1055 - Amendments

This section governs amendments to cooperative documents. This change modifies the requirements for obtaining mortgagee consent. The change to the statute makes it clear that a mortgagee has a right to consent to amendments to the cooperative documents that will affect the mortgagee's rights. Any amendment adopted by the cooperative without a mortgagee's consent will not be enforceable against that mortgagee should the mortgagee object to the amendment to the cooperative documents affecting the mortgagee's rights. The amendments further allow the cooperative association to rely on information that is contained in the public records regarding mortgagees holding mortgages on a member's share of the cooperative.

Section 719.106(1)(c) - Bylaws

Subsection (1)(c) was amended to provide that the requirement that board meetings and committee meetings be open to the members does not apply to board or committee meetings held for the purpose of discussing personnel matters.

Section 719.106(1)(d)1(a) and (b) - Shareholder Meeting

These sections were amended to provide that any challenge to the election process must be commenced within sixty (60) days after the election results are announced. Additionally, a new subsection (b) was added to require that "board members certify in writing to the secretary of the association that he or she has read the association's bylaws, articles of incorporation, proprietary lease and current written policies; that he or she will work to uphold such documents and policies to the best of his or her abilities; and that he or she will faithfully discharge his or her fiduciary responsibilities to the association's members within ninety (90) days after being elected or appointed to the board. In lieu of this written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by an approved education provider." This section further provides that a director who fails to timely file the written certification or educational certificate is suspended from the board and the cooperative is permitted to fill that vacancy until such time as the director satisfies the certification or educational certification requirement.

Section 719.106(1)(f) - Recall

This section was amended by adding a new subsection 5 which provides that if the board fails to duly notice and hold a required meeting after receiving notice of a recall that the unit owner representative may file a petition pursuant to Section 719.1255. The petition must be filed within sixty (60) days after the expiration of the applicable five-full business day period. Additionally, the section was amended to provide that a recalled board member may file a petition under Section 719.1255 challenging the validity of the recall and that such petition must be filed within sixty (60) days. Lastly, this section was amended to provide that if there are sixty (60) or fewer days left until the scheduled reelection of the board member sought to be recalled or when sixty (60) or fewer days have not elapsed since the election of the board member sought to be recalled, the division is prohibited from acting on the recall petition.

Section 719.106(1)(k) - Education

This section was amended to provide that the Division shall provide educational programs for cooperative associations which may include, in the Division's discretion, web based electronic media, live training seminars in various locations throughout the state.