



# HOA BOARD CERTIFICATION

Provider #0006792

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## COURSE OUTLINE

### Learner Objectives

The purpose of this course is to provide learners with the fundamental knowledge required to effectively serve on the board of directors of homeowners' associations (HOAs). By the end of this course, participants will understand the essential principles of community living, the legal obligations that govern HOAs, and the statutory requirements for meeting procedures, financial management, record keeping, and the levying of fines.

### Subject Matter

This course covers the essential responsibilities and legal aspects of serving on the board of a homeowners' association (HOA). It emphasizes the critical areas mandated by state law, including record-keeping, financial transparency, levying fines, and meeting requirements, to provide a comprehensive understanding of effective HOA governance.

### Materials and Methods

This course is delivered entirely online, utilizing a comprehensive course textbook that covers all relevant topics. To reinforce learning and ensure understanding, the course concludes with a 15-question final evaluation quiz. This format is designed to provide a solid foundation in HOA governance, helping board members confidently navigate their roles and responsibilities.

## I. INTRODUCTION

Welcome to AACC Online's HOA Board Certification Course! So, you've just been elected or appointed to your community's board—congratulations! Now you're probably wondering, "What have I gotten myself into?" Don't worry, you're in the right place. This course is designed to arm you with the knowledge and tools you'll need to not just survive but thrive during your term as a board member.

We'll start by reviewing some basic concepts about community living, covering the benefits and challenges that come with life in a homeowners' association. From there, we'll dive into the legal and procedural aspects of being on the board—things like fiduciary duties, financial management, and the oh-so-important record-keeping. And yes, we'll tackle the tricky business of enforcing rules and levying fines, because sometimes being on the board means making those tough calls.

Our goal is to leave you feeling confident and prepared to serve your community effectively. Whether your community has a licensed community association manager (LCAM) or is self-managed, it's crucial that you understand your responsibilities so you can work together to make your neighborhood a place everyone is proud to call home. This isn't just about ticking off a certification requirement; it's about becoming a leader in your community. Let's get started!

## II. COMMUNITY LIVING: ADVANTAGES & DISADVANTAGES

With the growth of urban areas and our increasing desire to live closer to one another, it wasn't just the physical structures—like apartments, condos, and sprawling suburbs—that needed careful planning. We also needed rules, and lots of them, to ensure we could all get along in these new, tightly-knit communities. Enter common interest communities, governed by the almighty “declarations of covenants,” which are essentially the rulebooks that keep everything in check.

Now, picture this: you're living the dream in a peaceful rural county, with acres of land to your name. Your neighbor decides to buy a helicopter and fly it around his property. Annoying? Maybe. But there's not much you can do about it—after all, it's his land. But what happens when you swap those acres for a condo unit in a bustling urban center? Suddenly, that helicopter is more than just an annoyance—it's a full-blown violation of the community's declaration. A judge in Florida even backed this up in a 1977

case involving a condominium, where it was ruled that using condominium property to land a helicopter violated the community's rules.

While this is a condominium example, the concept is very much applicable to HOAs. Just like in a condo, an HOA would likely not allow a helicopter pad in your backyard, because living in close proximity means that your actions impact your neighbors. Whether in a condo or an HOA, you're giving up some freedoms for the greater good—ensuring everyone enjoys a peaceful, orderly community.

As the judge in the 1977 case eloquently put it,

“...inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property. Condominium unit owners comprise a little democratic sub society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization.”

Living in a common interest community means accepting that your actions might directly impact your neighbors. You're giving up some freedoms, but you're also gaining a lot in return. Think about it—shared maintenance, beautiful landscaping, and amenities you'd never afford on your own, like that fancy pool or tennis court. It's a trade-off, but a fair one, for most folks.

#### **Advantages:**

- **Protection of Property Values:** Your investment is safeguarded by community standards.
- **Orderly and Assigned Parking:** No more fighting for a parking spot.
- **Shared Amenities:** Pools, gyms, tennis courts—luxuries that become affordable through shared ownership.
- **Uniformity and Attractiveness:** The community maintains a cohesive, pleasing aesthetic.
- **Dispute Resolution:** There's a system in place for handling those inevitable neighborly disagreements.

- **Shared Maintenance Costs:** The burden of upkeep doesn't fall solely on your shoulders.
- **Community Involvement:** A sense of belonging and collective responsibility.

**Disadvantages:**

- **Loss of Some Freedoms:** Rules, rules, and more rules—modifying your home or landscape requires approval.
- **Assessment Fees:** Regular dues are required to keep everything running smoothly.

Sure, you might have to get approval before you can paint your front door that bold shade of red, but in return, you get a community that's well-maintained, visually appealing, and (hopefully) free of helicopters buzzing around your backyard. All in all, it's a give-and-take that keeps everyone on the same page and the community thriving.

### III. GENERAL STANDARD FOR DIRECTORS

Serving as a director or officer in a homeowners' association (HOA) is a role that comes with significant responsibilities. You're not just overseeing the community; you're entrusted with a fiduciary duty to act in the best interests of your neighbors. This means every decision you make should be guided by good faith, trust, and a commitment to fairness. In essence, you're wearing multiple hats—part advocate, part decision-maker, and always a protector of the community's values. Rest assured, we're here to guide you through the essentials, ensuring you know how to fulfill these duties with integrity and confidence.

#### **Fiduciary Duties**

According to Florida Statutes, a director must discharge their duties as follows:

- **In good faith;**
- **With the care that an ordinarily prudent person in a similar position would exercise under similar circumstances;** and
- **In a manner the director reasonably believes to be in the best interests of the corporation.**

A director's fiduciary duty does not mean they must always act according to the preferences of the association's members. Instead, the director's responsibility is to uphold the directives set forth in the association's governing documents, comply with the law, and protect the interests of the association. As long as the director fulfills their duties in good faith, with care, and in a manner they believe to be in the best interests of the association, they are generally protected by the business judgment rule.

### **The Business Judgment Rule**

The business judgment rule serves as a legal safeguard for board members, protecting them from personal liability for decisions that, in retrospect, may seem unwise. For example, if a board chooses the lowest bid for constructing a seawall, only to later discover that the contractor used substandard materials, resulting in damage to the property, the business judgment rule would shield the board members from liability. This protection applies as long as the decision was made in good faith, with the care that an ordinarily prudent person would exercise in a similar situation, and with the reasonable belief that the decision was in the best interests of the association.

However, this rule does not protect against fraudulent behavior. If a conflict of interest influenced the decision, the conflicted board member, and any others aware of the conflict, would lose this protection.

When performing their duties, directors may rely on information, opinions, reports, or statements from reliable sources, such as competent employees, legal counsel, or professional advisors. However, directors cannot rely on such information if they have knowledge that contradicts it. For example, if a director knows that financial statements are falsified, they cannot use those statements to justify their decisions, as doing so would breach their fiduciary duty.

### **Conflicts of Interest**

Managing conflicts of interest is crucial to maintaining the integrity of board decisions within homeowners' associations (HOAs). A conflict of interest arises when a director, officer, or their relative has a financial interest in a contract, transaction, or activity involving the association.

Under **Section 720.3033 of the Florida Statutes**, if such a conflict exists, it must be fully disclosed to the board. The law mandates that the conflicted individual recuse themselves from any voting related to the matter to prevent undue influence on the decision-making process. However, HOAs are granted some flexibility in handling these situations.

To approve a transaction involving a conflict of interest, the board must follow a transparent process. This includes:

1. **Disclosure:** The conflict must be disclosed to the board and documented in the meeting minutes.
2. **Recusal:** The conflicted director or officer must recuse themselves from both the discussion and the vote on the matter.
3. **Board Deliberation:** The remaining board members must thoroughly discuss the potential conflict and assess whether proceeding with the transaction is in the best interest of the association.
4. **Documentation:** The board's decision, including the rationale for approving the transaction, must be clearly documented in the meeting minutes. This ensures transparency and provides a record of the board's due diligence.

By following these procedures, the board can approve a contract or transaction even when a conflict of interest is present, provided that the decision is made openly and is clearly in the best interests of the association.

### **Prohibition on “Kickbacks”**

Kickbacks pose a significant threat to the integrity and trust required for effective governance within community associations. The law explicitly prohibits any officer, director, or manager from soliciting, offering, or accepting anything of value in exchange for preferential treatment in association matters.

- **Prohibition on Kickbacks:** Any officer, director, or manager of an HOA is strictly prohibited from soliciting, offering to accept, or accepting any item or service of value without proper consideration, either for their own benefit or for the benefit of a member of their immediate family, from any person providing or proposing to provide goods or services to the association. (Section 720.3033, Florida Statutes)
- **Legal Consequences:** If an officer, director, or manager knowingly engages in such behavior, they are guilty of a third-degree felony. This reflects the severity of penalties under the law and underscores the state's commitment to preventing corruption and maintaining ethical standards within community associations.
- **Immediate Removal:** If the board finds that an officer or director has violated this rule, the individual must be immediately removed

from office, and the resulting vacancy must be filled according to the association's governing documents until the end of the officer's or director's term. In addition to removal, those found guilty of accepting kickbacks may face severe criminal penalties, including imprisonment and fines, as well as monetary damages under **Section 617.0834, Florida Statutes**.

- **Exceptions:** There are limited exceptions to this prohibition. An officer, director, or manager may accept food to be consumed at a business meeting with a value of less than \$25 per person, or a service or good received in connection with a trade fair or educational program.

### Final Thought

As you navigate the waters of HOA governance, remember that your role is pivotal in shaping the community's future. The decisions you make and the integrity with which you handle your responsibilities will not only impact the association but also foster trust and harmony among your neighbors. Upholding your fiduciary duty isn't just about following rules—it's about leading with transparency, fairness, and a commitment to the greater good. So, as you move forward, carry these principles with you, and you'll find that fulfilling your role is not just a duty, but a rewarding way to contribute to the place you call home.

## IV. RECORD KEEPING: ACCESS & MAINTENANCE

Keeping a homeowners' association (HOA) running smoothly requires more than just good intentions; it hinges on meticulous record-keeping. From bylaws to meeting minutes, every document plays a role in ensuring transparency and accountability within the community. As a board member, you're not just a steward of these records—you're the gatekeeper who ensures they're kept in compliance with Florida law and accessible to those who need them. Think of this as the backbone of your association's operations; when it's strong and well-managed, everything else tends to fall into place.

### Record Retention Requirements

Florida Statutes require that HOAs maintain a variety of records for specified periods:

- **Seven Years:** The following records must be maintained for at least seven years:



- **Plans, Specifications, Permits, and Warranties:** Related to improvements on common areas.
- **Bylaws and Articles of Incorporation:** Including any amendments.
- **Declaration of Covenants:** Along with all amendments.
- **Meeting Minutes:** For all board and membership meetings.
- **Membership Information:** A current roster of all members, including their mailing addresses and parcel identifications, as well as any electronic contact information provided for receiving notices.
- **Insurance Policies:** Copies of all association insurance policies.
- **Contracts:** All current contracts to which the association is a party, including management agreements and leases.
- **Financial and Accounting Records:** Accurate, detailed records of all receipts and expenditures, member account statements, tax returns, and financial statements.
- **Disclosure Summary:** A copy of the association's disclosure summary.
- **One Year:** The following records must be retained and updated for at least one year:
  - **Voting-Related Documents:** Including ballots, sign-in sheets, and proxies.
  - **Bids for Work:** Bids received for work to be performed on behalf of the association.
- **Current Copies:** The following records must be kept as current copies and readily accessible:
  - **Membership Roster:** Including parcel identification numbers and mailing addresses.
  - **Electronic Contact Information:** Email addresses and fax numbers for members.
  - **Contracts:** Current copies of management agreements and other contracts.
  - **Rules and Regulations:** A current copy of all association rules.

- **Director Certifications:** Certifications required for each director under Florida law.

### **Electronic Record Keeping and Accessibility**

Starting January 1, 2025, HOAs with 100 or more parcels are required to adhere to specific electronic record-keeping standards. These include:

- **Electronic Access:** Official records must be accessible to members either physically or electronically. This includes making records available for viewing on a computer screen, via the internet, or in physical form within the community.
- **Protection of Sensitive Information:** The association must ensure that sensitive personal information, such as social security numbers, email addresses, and phone numbers, is protected. Disclosure of such information is only permissible with the member's consent or under specific legal conditions.
- **Retention Policies:** The HOA must adopt written policies governing the retention of official records, ensuring that they are preserved for the required periods and made available for member inspection as mandated by law.

### **Inspection and Copying of Records**

Board members must ensure compliance with the following procedures regarding record inspection and copying:

- **Physical and Electronic Access:** Records must be maintained within the state for at least seven years and made available for inspection or photocopying within 45 miles of the community or within the county in which the association is located. Alternatively, records can be provided electronically.
- **Timeliness of Access:** Upon receipt of a written request, access to records must be granted within 10 business days. Failure to comply within this timeframe creates a rebuttable presumption of willful non-compliance.
- **Use of Portable Devices:** Members or their authorized representatives are allowed to use portable devices (e.g., smartphones, tablets) to make electronic copies of the records during an inspection without incurring any fees.
- **Damages for Denied Access:** If a member is denied access to official records, they are entitled to actual damages or minimum damages

of \$100 per calendar day, up to 10 days, starting on the 11th business day after the written request.

- **Criminal Penalties:** Directors or managers who knowingly and willfully violate access requirements with the intent to harm the association or its members may face criminal penalties, including misdemeanors and felonies, depending on the severity and frequency of the violation.
- **Adoption of Inspection Rules:** The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections. However, these rules cannot limit a member's right to inspect records more than once per month.
- **Exemptions from Disclosure:** Certain records are exempt from member inspection, including:
  - Records protected by lawyer-client privilege
  - Information related to the approval of a lease, sale, or transfer
  - Guest visit information (specific to HOAs)
  - Medical records
  - Social security numbers
  - Driver's license numbers
  - Credit card numbers
  - Emergency contact information
  - Electronic security software and operating systems
  - Employee compensation records and other personnel records
  - All affirmative acknowledgments
- **Compliance with Law Enforcement:** If the association receives a subpoena from law enforcement, it must provide the requested records within five business days unless specified otherwise by the agency.

### Final Thought

Proper record-keeping might not be the most glamorous part of serving on an HOA board, but it's certainly one of the most important. By staying on

top of these requirements, you're helping to build a foundation of trust, transparency, and good governance within your community. So, while it might feel like a lot of paperwork, remember that every document is a brick in the sturdy structure of your HOA's future.

## V. FINANCIAL LITERACY AND TRANSPARANCY

Welcome to the heart of your HOA's operations—record keeping. It might not have the excitement of community events or the visibility of landscaping projects, but it's the foundation that keeps everything else standing tall. As a board member, your job is to ensure that these records are not just stored, but safeguarded and easily accessible. Think of it as being the gatekeeper of the community's history and its future—every document you manage is a piece of the puzzle that keeps your neighborhood running smoothly and transparently. Handle it well, and you'll keep the wheels turning without a hitch.

### **Understanding the Budget**

The budget is the financial plan that outlines how much money the association needs to collect from members in the form of assessments to cover the maintenance, operations, and other expenses associated with running the community. It serves as the association's roadmap for the upcoming year, detailing projected revenues and anticipated expenses.

For board members, the budget is a crucial tool in fulfilling their fiduciary duty to the association. The budget ensures that all necessary expenses are covered, and it determines the amount each member must contribute through assessments, which are often collected annually, bi-annually, or quarterly. Throughout the year, board members should frequently compare actual financial statements to the budget to ensure the association is operating within its means. If the association exceeds the budget, adjustments may be necessary, following statutory procedures and the community's governing documents.

### **The Budget Preparation Process**

The budget process should begin well in advance of the meeting where it will be reviewed and approved—typically about three months prior. This preparation involves analyzing historical financial data, such as past budgets, maintenance contracts, and utility costs, as well as considering any anticipated future expenditures. This thorough analysis ensures that the budget is as accurate as possible, minimizing the likelihood of needing

amendments or additional assessments later in the year. The budget must also include an estimate of the surplus or deficit at the end of the current year.

In older communities, prior budgets often serve as reliable templates for future financial planning. However, newer associations may face more challenges, as they might need to rely on the developer's initial budget, which can sometimes underestimate costs. Board members should carefully review all available data to project the most accurate budget possible.

**Expenditure Categories** Expenditures within the budget are generally divided into two main categories: operating expenses and reserves.

- **Operating Expenses:** These are the day-to-day costs associated with running the association, such as utilities, maintenance, management fees, and insurance. These expenses are often listed as “line items” in the budget.
- **Reserves:** Reserves are funds set aside for large, infrequent expenses, such as major repairs or replacements of community assets. While reserves are a subset of operating expenses, they are often treated as a separate category due to their importance in ensuring the long-term financial stability of the association.

HOAs in Florida are not always required to maintain reserves unless specified in their governing documents, but doing so is a best practice to avoid unexpected special assessments for major repairs.

### **Budget Adoption Procedures**

The budget adoption process is a key responsibility for the board. It involves careful planning, transparent communication, and strict adherence to legal requirements. Whether the budget is handled directly by the board or by a budget committee, the process must include proper notice to members, opportunities for member participation, and thorough documentation. This transparency ensures that all members are informed about and involved in the financial decisions affecting the community.

### **Financial Reporting**

HOAs are required to prepare financial reports to keep members informed about the association's financial status. These reports come in two main forms:

- **Monthly Financial Statements:** These provide a regular update on the association's financial health and are usually reviewed at board

meetings. The statements include an income statement, detailing income and expenses, and a balance sheet, showing the association's assets, liabilities, and capital (equity).

- **Year-End Financial Statements:** Depending on the size and revenue of the association, the year-end financial report may be a compiled, reviewed, or audited statement, prepared according to generally accepted accounting principles (GAAP). These reports are crucial for ensuring financial transparency and accountability.

## Year-End Financial Reporting

Annual financial reporting is a crucial obligation for Homeowners' Associations (HOAs) to maintain transparency and accountability with their members. Florida law mandates that each HOA prepare and distribute an annual financial report that summarizes the association's financial activities and status for the prior fiscal year. This report serves as a comprehensive overview of the association's financial health and includes detailed information on income, expenses, and the overall financial position of the association.

## Types of Financial Reports

1. **Compiled Financial Statements:** For associations with revenues between \$150,000 and \$299,999. These are basic statements with no assurance from a CPA.
2. **Reviewed Financial Statements:** For revenues between \$300,000 and \$499,999. These provide limited assurance from a CPA.
3. **Audited Financial Statements:** Required for revenues of \$500,000 or more. These involve a thorough review and verification by a CPA.
4. **Report of Cash Receipts:** For associations with revenues under \$150,000. This informal report does not meet GAAP standards but provides a basic overview of cash flow.

## Statutory Deadlines for Financial Report Distribution

The financial report must be prepared within 90 days after the end of the fiscal year. Following its completion, the association has a statutory obligation to make the report available to all members within 21 days or, at the latest, within 120 days after the fiscal year's end. Members must either receive a copy of the report or be notified that the report is available upon request, and this must be provided at no charge.

Below is how a typical process might look like:

1. **Preparation and Board Review:** After the fiscal year concludes, the HOA's management company or financial consultant compiles the necessary financial data to prepare the annual financial report. This report is then reviewed and approved by the board of directors to ensure accuracy and completeness.
2. **Notification and Distribution:** Once approved, the association proceeds with notifying all members about the availability of the report. The report can be distributed in various forms:
  - **Email:** Sent directly to members who have consented to receive documents electronically.
  - **Facsimile:** For members who have provided a fax number for official communications.
  - **Mail to Address on File:** For those who prefer or require hard copies.
  - **Personal Delivery:** Upon request, the report can be hand-delivered to members. Additionally, a notice may be sent to inform members that the report is available and can be requested in any of the above formats.
3. **Online Access:** HOAs with a secure website or online portal must ensure the report is available online, accessible only to members. Florida law requires HOAs with 150 or more parcels to maintain a website, and these financial reports must be included in the documents available on the site. This ensures that members can easily access the information while maintaining the security and privacy of sensitive financial data.

**Owner Requests for Financial Reports** Members have the right to request copies of the association's financial reports. HOAs are required to provide these reports within 10 business days of receiving a written request. Failure to comply can result in penalties, emphasizing the importance of transparency and responsiveness in financial management.

#### **Additional Provisions**

- **Audit Requirement for Large HOAs:** Associations with at least 1,000 parcels are required to prepare audited financial statements, regardless of their total annual revenues.
- **No Consecutive Years of Downgraded Reporting:** After preparing an audited financial statement, an association cannot opt for a less rigorous financial report, such as a compiled or reviewed

statement, in the following year. This rule ensures ongoing financial transparency and accountability.

### **Final Thought**

Handling the financials for your HOA might not be the most glamorous part of your board duties, but it's where you can make a real difference. It's like being the wizard behind the curtain—keeping everything running smoothly while the rest of the community enjoys the show. Stay on top of those budgets, keep an eye on the reserves, and remember: when it comes to money, transparency is your best friend. Do it right, and you'll have a community that runs as smoothly as a well-oiled machine—and you might just avoid a few financial nightmares along the way.

## **VI. LEVYING OF FINES**

In the world of homeowners' associations (HOAs), enforcing the rules laid out in the governing documents is crucial for maintaining the community's appearance, safety, and harmony. However, the power to levy fines—a topic that often stirs up frustration among homeowners—must be handled with care, precision, and fairness. This section dives into the nitty-gritty of how fines are levied, but not before we explore the types of violations that commonly lead to these penalties. After all, you can't talk about fines without understanding what actions (or inactions) can trigger them. While levying fines might seem like the "stick" in the HOA's toolkit, the process also comes with its own set of rules and safeguards designed to protect homeowners and ensure that enforcement is fair and transparent. So, let's break it all down, and along the way, we'll sprinkle in some wisdom on how to navigate these responsibilities without becoming the community's villain.

### **Enforcing Governing Documents**

The community's governing documents are where the responsibilities of individual homeowners and the association are clearly outlined. The declaration acts as the community's Constitution and Bill of Rights, setting the foundation for what is expected of both homeowners and the association. This document typically includes a section that details the responsibilities of homeowners to maintain their properties and another section that defines the association's responsibilities to maintain common areas and easements. Compliance with these covenants and restrictions is mandatory for the association, the members, and the directors.



In many communities, the responsibility for inspecting homeowners' properties to ensure compliance with these governing documents is often assigned to a community association manager (CAM). This allows the board of directors to remain a neutral party, reducing the potential for direct conflict between board members and homeowners cited for violations. However, when board members themselves are tasked with property inspections, there is a risk of creating antagonistic relationships with neighbors. Board members should be mindful of this responsibility and take proactive steps to manage interactions carefully. Later in this section, we will discuss strategies to address these challenges and ensure that the inspection process is handled with fairness and sensitivity.

Some common examples of potential CCR (Covenants, Conditions, and Restrictions) violations include:

1. **Trash and Clutter Visible from the Street** Maintaining an aesthetically pleasing and orderly neighborhood is critical for preserving property values and fostering community pride. Many CCRs prohibit homeowners from leaving trash or clutter visible from the street, such as unkempt yards, discarded appliances, or accumulated waste. Such clutter detracts from the community's visual appeal and can attract pests, creating health and safety concerns. However, it's important to note that HOAs cannot restrict owners or their tenants from storing items on a parcel that aren't visible from the frontage or an adjacent parcel. This means that as long as items like trash or clutter are not visible from these vantage points, their presence may be permissible. (§720.3045, Fla. Stat.)
2. **Failure to Maintain Lawn; Overgrown and Patchy Grass** Well-maintained lawns are a hallmark of many Florida communities. Overgrown or patchy grass can quickly become an eyesore, negatively impacting the community's appearance. Many HOAs have strict guidelines about lawn maintenance, specifying things like maximum grass height or requiring homeowners to address disease or pest issues promptly. Enforcement typically begins with a courtesy notice to the homeowner, followed by formal warnings and potential fines if the situation isn't rectified. Some HOAs might also have provisions allowing them to undertake necessary yard maintenance and bill the homeowner for the cost.
3. **Ban on Large Breed Dogs** Pets, particularly dogs, are a common focus of HOA regulations. Many associations enforce breed restrictions or size limits to ensure safety and minimize nuisances. These bans often arise from concerns about aggressive behavior or

noise disturbances. While the intention behind these restrictions is understandable, it is crucial to enforce them consistently. Selective enforcement, such as allowing one homeowner to keep a large breed while prohibiting another, can lead to conflicts and potential legal disputes.

4. **Unapproved Construction and Home Modifications** Unsanctioned construction or modifications can severely disrupt a community's aesthetics and may also pose safety concerns. Many HOAs require homeowners to submit plans for any significant exterior changes, such as fences, additions, or sheds. The approval process often involves the HOA's architectural review committee, which evaluates the proposed changes based on the community's architectural guidelines, considering factors like design, color, size, and placement. If a homeowner proceeds with construction without approval, the HOA can mandate alterations or even removal at the homeowner's expense.
5. **Signage and Decorations** Many associations have guidelines regarding the size, type, and placement of signs and decorations. These might include restrictions on political signs, holiday decorations, or other displays that could impact the community's visual appeal. For instance, Florida law protects homeowners' rights to respectfully display certain flags, such as the United States flag, flags representing first responders, military branches, and the POW-MIA flag. These flags must be displayed respectfully and may be subject to reasonable standards regarding size, placement, and safety, as adopted by the HOA, consistent with Title 36 U.S.C. Chapter 10 and any local ordinances.

### **Enforcement Considerations**

Homeowners are at the heart of every community, and each individual brings a unique set of experiences and challenges. It's rare for homeowners to intentionally violate community CCRs. Oftentimes, owners are unaware of certain CCRs or become so involved in their daily lives that they unintentionally fall out of compliance. Tasks such as lawn maintenance or pressure washing might be unintentionally delayed due to personal crises or financial setbacks. Each homeowner's journey is different, and some may face significant life challenges that temporarily impact their ability to comply with community rules.

However, consistent application of community guidelines is vital. When restrictions aren't upheld, the visual appeal of the community can diminish, leading to declining property values. Moreover, inconsistency in

enforcing CCRs can create an imbalance in community relations, causing unintended frictions. Emphasizing regular maintenance and adherence to community standards is not just about aesthetics but about preserving harmony, trust, and mutual respect among neighbors.

Often, communities will develop policies of lax enforcement of the CCRs. The decision not to strictly enforce the CCRs is well-intentioned and usually arises out of a desire for the board not to create friction with neighbors. Some board members may be sympathetic because they had been on the receiving end of a CCR violation before becoming board members. Despite board members' good intentions, policies that do not enforce the community's covenants can negatively impact the community as a whole. Allowing owners to violate restrictions can lead to unsightly home modifications or homes falling into disrepair, both of which may cause property values to decrease.

Further, inconsistent enforcement of CCRs can lead to disharmony within a community. For example, allowing an owner to violate a "large pets" restriction may rouse resentment in those owners who choose to follow the community's restrictions or, worse, create a domino effect where other owners begin to keep large pets in violation of the covenants. Even worse, owners may interpret the lack of enforcement of one policy (pets in this example) as tacit permission to ignore other restrictions (e.g., no parking on the grass).

### **Selective Enforcement**

Courts have recognized the concept of "selective enforcement" as a valid defense to rule violation accusations. Selective enforcement prevents associations from enforcing specific covenants against some owners and not others. To argue selective enforcement, the restriction being enforced that gave rise to the dispute must be the same restriction that the association has chosen not to enforce against other homeowners. For example, a homeowner will lose an argument that she should be allowed to violate a parking restriction because the association allows some homeowners to keep pets. Instead, she must point to an instance where the association allowed an owner to violate the same parking restriction that is being applied to her. This has been called the "apples to apples" approach.

The problem with the "apples to apples" approach is that while being a simple logical way for the courts to deal with selective enforcement, it does nothing for the disgruntled homeowner who received a violation letter for not cutting her grass while her next-door neighbor has excessive mold and dirt on the front of their home. It is easy to see why this may

seem unfair to the owner who forgot to cut her grass. Nothing arouses anger more than the sense that something is unfair or unjust. Being able to tell that angry homeowner that all of the CCRs are being enforced throughout the community will help bring the homeowner's issue to a resolution. As a board member, you can tell the owner that you are simply following the guidelines in the declaration, and you can point to your record of fairly enforcing all of the guidelines and not just a few.

### **Alternatives to Enforcement**

The easiest way to avoid conflicts is to enforce all of the community's restrictions uniformly for all owners. The board must uphold the covenants contained in the community's governing documents. However, this does not mean there aren't ways for the board to make the restrictions less burdensome if it chooses to do so. Below are some examples:

- **Amend The Declaration:** The board, in conjunction with community members and with the assistance of an attorney, may amend the restrictions in the CCRs using the amendment procedures outlined in the governing documents and Florida Statutes.
- **Rules & Regulations:** Often, the restrictions contained in the declaration leave some ambiguity as to how they should be applied. These ambiguities can be further defined by the board through the community's rules and regulations. For example, if the declaration states that "Each unit and all improvements thereupon shall be kept neat and clean," the board can decide within the rules and regulations how to define what it means to be "kept neat and clean."
- **Grace Periods and Warning Notices:** Implementing a grace period or issuing warning notices before enforcing fines or other penalties allows homeowners a chance to rectify the issue without immediate punishment. This method encourages compliance without creating unnecessary tension between homeowners and the board.

CCR violations should never be used as a weapon by board members against homeowners. It is inappropriate for board members to abuse their position of power by searching for reasons to fine homeowners with whom they hold a personal grudge. It is also inappropriate to actively search for CCR violations because a homeowner spoke negatively about the board or because a homeowner repeatedly neglects to pay their dues on time.

Homeowners often feel that they are being singled out or picked on by the association when receiving a letter of non-compliance. In most cases, there is no targeting of neighbors for CCR violations, but it is important to understand that the natural response is for homeowners to feel that way. This underscores the importance of the association enforcing the CCRs uniformly and fairly for all owners.

### **Architectural Control Procedures**

In the previous section, we discussed how one common type of CCR violation involves unapproved home modifications. Architectural Control (ARC) is the process that homeowners must follow to obtain approval for such modifications, ensuring that changes to properties align with the community's aesthetic standards and governing documents.

Architectural control is a critical function within community associations, designed to maintain the visual harmony and structural integrity of the neighborhood. When a homeowner wishes to make alterations to their property—such as building a new fence, adding a deck, or changing exterior paint colors—they must first seek approval through the association's architectural review process. This process ensures that all modifications comply with the community's established guidelines and do not negatively impact property values or the overall appearance of the neighborhood.

1. **Approval Process and Timeliness:** As a board member, it's essential to ensure that requests for architectural modifications are handled promptly. The association must respond to such requests within a specified time frame, typically 45 days. If the association fails to respond within this period, the request may be automatically approved by default. This requirement underscores the importance of timely decision-making and helps prevent unnecessary delays that could frustrate homeowners.
2. **Transparency in Decision-Making:** Transparency is key to maintaining trust within the community. Associations are required to keep detailed records of all architectural control decisions, including documentation of requests, the rationale for approvals or denials, and any related communications. Additionally, clear, standardized criteria for evaluating architectural requests should be included in the association's governing documents and communicated to all members. This approach ensures fairness and consistency, and helps homeowners understand the basis for decisions made by the board or architectural review committee.

- 3. Request Denial Process:** When denying a homeowner's request for modifications, it's crucial that the board or architectural review committee provides a written notice to the parcel owner. This notice must specifically state the rule or covenant on which the decision was based, and clearly identify the specific aspect or part of the proposed improvement that does not conform to such rule or covenant. Providing a detailed explanation not only promotes transparency but also helps homeowners understand the reasons behind the denial, potentially avoiding conflicts and fostering a cooperative environment.

Architectural control procedures are essential for maintaining the aesthetic and structural integrity of a community. By following a streamlined approval process and maintaining transparency in decision-making, associations can ensure that modifications are consistent with community standards while respecting the rights of homeowners. These processes help to create a harmonious living environment where all members of the community feel respected and valued.

## **LEVYING OF FINES**

Now let's examine the mechanisms and procedures that provide HOAs with the authority to enforce compliance with the community's governing documents.

### **1. Legal Authority for Fines**

Unlike governmental entities, homeowners' associations do not have police power—they cannot arrest or imprison individuals for violating the community's rules. However, HOAs are empowered by Florida law to levy fines against homeowners who do not comply with the association's governing documents. The specific fining procedures and the maximum fines that may be imposed are outlined in the governing documents and supported by Florida Statutes.

It is common practice for HOAs to provide homeowners with a warning and a period to correct the violation before imposing fines. The Florida Statutes require that homeowners be given notice and an opportunity to be heard before fines can be collected.

### **2. Accruing Violations and Fine Ceilings**

A homeowners' association may levy reasonable fines of up to \$100 per violation against any member or any member's tenant, guest, or invitee for failing to comply with any provision of the declaration, association bylaws, or reasonable rules of the association. A fine may be imposed for

each day a violation continues, but the total fines cannot exceed \$1,000 in the aggregate unless otherwise provided in the governing documents.

Florida law prohibits HOAs from placing a lien on a parcel for fines less than \$1,000. However, if the fines exceed this amount, the HOA may place a lien on the property.

### **3. Attorney's Fees**

In any legal action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the non-prevailing party, as determined by the court. This rule incentivizes both homeowners and associations to resolve disputes outside of court to avoid the risk of paying the other party's legal fees.

### **4. Procedures for Imposing Fines and Penalties**

The authority for an HOA to impose fines for violations is rooted in the association's governing documents. These documents will outline the specific obligations of homeowners and the procedures for enforcing those obligations, including timelines for correcting violations, fine amounts, and hearing procedures.

Fines can be imposed for each day a violation continues, following a single notice and opportunity for a hearing. Many HOAs have policies that provide multiple notices before moving forward with fines.

### **5. Hearing Committee & Fine and Suspension Waivers**

HOAs must follow strict procedures when imposing fines and suspensions to ensure the process is fair, transparent, and consistent with Florida law.

- **Fining Committee Composition:** The committee must consist of at least three members appointed by the board who are not officers, directors, employees, or related to any officer, director, or employee of the association. This helps maintain impartiality and avoids conflicts of interest.
- **Notice and Hearing Requirements:** Homeowners must receive at least 14 days' written notice before a hearing. The notice must include the date, time, and location of the hearing and must be sent to the parcel owner's designated mailing or email address as listed in the association's official records. The hearing must be held within 90 days after the notice is issued. ***If the hearing is not held within this timeframe, the association may lose the ability to impose the proposed fine or suspension for that specific violation, allowing the homeowner to proceed without further penalty.***

- **Curing Violations:** If a homeowner rectifies the violation before the hearing, the association cannot impose a fine or suspension for that violation.
- **Electronic Hearings:** Hearings can be conducted electronically, such as via telephone or video conferencing, to ensure accessibility for all parties involved.
- **Payment of Fines and Notice Requirements:** If the committee approves a fine, the homeowner must be given at least 30 days to pay. Written notice of the committee’s decision must be provided, including the amount of the fine, payment deadline, and any applicable instructions.

## 6. Suspension of Use Rights

An HOA may suspend a member's right to use common areas for violating the association's rules, but the suspension cannot affect access to the owner’s property or essential services, such as parking or utilities. If a member is more than 90 days delinquent in paying any fee, fine, or other monetary obligation, the HOA may suspend their right to use common areas until the debt is paid in full.

### Final Thought

So there you have it—navigating the fine line between maintaining order and keeping the peace in your community. As a board member, you'll find that enforcing the rules is a bit like walking a tightrope: balance is key. Too lenient, and the community standards may slip; too strict, and you might find yourself at the center of a neighborhood revolt. But with a fair, transparent approach and a dash of understanding, you can help ensure that your community remains not just a collection of houses, but a place that everyone is proud to call home. After all, at the end of the day, it's about building a community, not just enforcing rules. Now, let’s dive into the details of levying fines—because while we hope it never comes to that, it’s best to be prepared.

## VII. NOTICE AND MEETING REQUIREMENTS

Understanding and executing the procedural requirements of community associations is essential to maintaining the democratic spirit within an HOA. Think of your HOA as a small government entity, where the board of directors acts much like elected officials tasked with representing the interests of the community. Just like in larger governmental bodies, a pure democracy—where everyone votes on every issue—would be inefficient



and impractical. That's why we elect board members who can dedicate the time and attention needed to make informed decisions on behalf of the association.

Board members are entrusted with the responsibility of managing the community's affairs, a role that comes with significant obligations, including adhering to fiduciary duties. When board members act in the best interest of the community, backed by thorough knowledge and preparation, they help ensure the community runs smoothly, fairly, and transparently.

### **The Importance of Notice in a Democratic System**

Notice is a cornerstone of any functional democracy, including within an HOA. It ensures that all members of the community have the opportunity to be informed, present, and participate in the decision-making process. Without proper notice, the democratic process breaks down, as members are deprived of their right to be heard and to influence the decisions that affect their lives and their property. By ensuring that notice is given adequately and in the required manner, HOAs uphold the principles of fairness and transparency, enabling a governance system that reflects the will and best interests of the community as a whole. That is why it is considered an official board meeting that requires proper notice whenever a quorum is present.

**What is a Quorum?** A quorum for a board meeting is typically a majority of the board members unless the bylaws or articles of incorporation specify otherwise. For example, a quorum might be 3 out of 5, 2 out of 3, or 4 out of 7 members. The purpose of a quorum is to ensure that decisions are made with adequate representation. Imagine if only two members of a seven-member board held a meeting and decided to spend \$100,000 of the association's funds on a medieval-style moat at the community entrance. While this might appeal to a few, most homeowners would prefer their dues to be spent more wisely. This illustrates why it's crucial to have sufficient board participation before making significant decisions.

Another reason that the concept of quorum is important is that members have the right to be present at meetings where important topics are discussed. Therefore, any meeting of the board must be properly noticed. Even a casual dinner party could be considered a board meeting if a quorum of the board were present. If such a gathering were to occur, without the association members being given proper notice, then the members of the board would have to be careful not to discuss any issues related to the association.

## Types of Meetings

HOAs conduct several types of meetings, each with its own set of rules:

1. **Annual Meetings:** These are statutorily required meetings of the members where key association matters are discussed, and board members are elected. A quorum, usually 30% of the total voting interests (unless the bylaws specify otherwise), is required to proceed with the meeting.
2. **Board Meetings:** Regular meetings where the board discusses and decides on the association's affairs.
3. **Budget Meetings:** Meetings specifically held to discuss and approve the association's annual budget, including assessments.
4. **Special Meetings:** Called for specific items or urgent matters.
5. **Emergency Meetings:** For genuine emergencies that require immediate board action.
6. **Committee Meetings:** Gatherings of board members or other community members to make recommendations on specific topics.

**Notice Requirements:** Transparency is key, and, as we discussed, that starts with giving proper notice. Florida law requires that board meeting notices be posted in a conspicuous place within the community at least 48 hours in advance. If the notice isn't posted in the community, it must be mailed or delivered to each member at least seven days before the meeting.

Some topics require heightened notice. For example, when discussing the annual budget or proposing special assessments, you must provide at least 14 days' notice, hand-delivered or mailed, so members have ample time to prepare and participate. The below table details the notice requirements for the various meetings:

Type of Meeting	Notice Requirement	Details
Annual Meetings	14 days	Notice must be mailed, delivered, or electronically transmitted to the members.
Board Meetings	48 hours (Regular)	Notice must be posted in a conspicuous place in the community or mailed to each member.

Budget Meetings	14 days	Notice must be mailed or delivered, including a statement that assessments will be considered.
Special Meetings	48 hours (Regular)	Notice must be posted in a conspicuous place in the community or mailed to each member.
Emergency Meetings	As soon as practicable	Notice should be provided as quickly as possible, considering the urgency of the situation.
Committee Meetings	48 hours (if committee can spend association funds)	Same notice requirements as board meetings if the committee can spend association funds.
Meetings with Attorney	No notice required	Meetings to discuss litigation or personnel matters do not require notice to members.

### Conducting Board Meetings

Board meetings are where the magic happens—or at least where the decisions are made that keep the community running. Whether it’s approving a new landscaping contract, setting the annual budget, or deciding on maintenance projects, these meetings are essential.

**Right to Speak:** Members have the right to speak on agenda items at board meetings. It’s important to allow this participation while keeping the meeting focused and orderly.

**Attorney and Personnel Meetings:** Not all meetings need to be open to members. If the board is meeting with its attorney to discuss proposed or pending litigation, or if discussing personnel matters, these meetings can be closed to the general membership.

**Director Voting:** Directors may not vote by proxy or by secret ballot, except in officer elections. If a director abstains from voting, this must be noted in the minutes.

### Minutes and Record Requirements

Minutes are more than just a formality—they’re the official record of what happened during a meeting. These documents need to capture the key points of discussion and the outcomes of votes without recording every word said. Minutes should be detailed enough to reflect the essence of the meeting and provide a transparent account of the board’s actions.

**New Requirements:** Florida's latest laws have introduced stricter requirements for recording votes and discussions:

- **Detailed Voting Records:** Each vote must be recorded, showing how each director voted, including any abstentions.
- **Accurate Summaries:** Discussions must be accurately summarized, reflecting the key arguments and rationales behind decisions.

These records must be accessible to members, and if your association has a website, the minutes should be published there as well.

## **CONDUCTING HOA ANNUAL MEETINGS & BOARD ELIGIBILITY**

Annual meetings in HOAs are where the big decisions happen—electing board members, discussing community concerns, and ensuring everything is running smoothly. To keep things on track, it's crucial to follow specific rules and procedures that make the process transparent, fair, and compliant with Florida law. From understanding how nominations work to knowing who can serve on the board, here's your guide to making your annual meeting both effective and efficient.

### **Nominations**

HOAs are not required to seek candidates for nomination for vacant board seats, so the process typically follows the association's bylaws. According to Chapter 720 of the Florida Statutes, elections of directors must be conducted as outlined in the association's governing documents. If the HOA allows candidates to be nominated in advance, it is not required to permit nominations at the meeting itself. However, if the association does not have an advance nomination process, Chapter 720 mandates that members must be allowed to nominate themselves at the annual meeting.

Typically, nominations at the meeting follow this process:

- First, a quorum must be established (see quorum requirements below).
- The meeting is called to order.
- Nominations are then sought from those in attendance. Members can nominate themselves or other eligible members.
- Nominees may be allowed to speak in support of their candidacy.

### **Location of Annual Meeting**

The annual meeting must be held at a location accessible to physically handicapped persons if requested by someone entitled to attend.

## **Annual Meeting Quorum**

Unless the association's bylaws specify a lower number, the quorum for an annual meeting is 30% of the total voting interests, as per Florida law.

Directors must be elected by a plurality, meaning the candidate with the most votes wins, even if it's not a majority, unless otherwise specified in the governing documents (720.306, F.S.).

## **Proxy Voting**

In HOAs, members can vote in person or by proxy. To be valid, a proxy must:

- Be dated,
- State the time and place of the meeting for which it is given, and
- Be signed by the authorized person who executed the proxy.

A proxy is effective only for the specific meeting for which it was given, including any lawfully adjourned and reconvened sessions. It automatically expires 90 days after the original meeting date. A proxy can be revoked at any time by the person who executed it. If the proxy form allows, the proxy holder may appoint a substitute to act in their place (720.306, F.S.).

## **Suspension of Voting Rights**

HOAs may suspend the voting rights of a member who is more than 90 days delinquent in paying any monetary obligation due to the association. This is different from condominium associations, where the obligation must exceed \$1,000 before voting rights can be suspended (720.305, F.S.).

## **Election Challenges**

Challenges to an HOA election must be initiated within 60 days after the election results are announced, similar to the rules governing condominium associations.

## **Election Misconduct in HOAs**

Florida law imposes strict regulations to ensure the integrity of HOA elections. Misconduct such as tampering with ballots, obstructing the voting process, or engaging in fraudulent activities can lead to significant legal consequences. The Florida Department of Business and Professional Regulation (DBPR) oversees these regulations and can impose fines, suspend or remove board members involved in fraudulent activities, and pursue criminal charges when necessary.

Specific penalties for election misconduct in HOAs, as outlined in Section 720.3065 of the Florida Statutes, include fines and potential imprisonment for actions such as:

- Willfully falsifying voting documents,
- Preventing a member from voting,
- Fraudulently altering ballots, or
- Using intimidation or bribery to influence voting.

### **Eligibility to Serve on the Board**

To ensure integrity, specific statutory requirements determine eligibility for serving on the board. Individuals who do not meet these criteria are ineligible to serve, and if they are already serving, they must be removed.

- 1. Persons in Debt:** A person who is more than 90 days delinquent in paying any fee, fine, or other monetary obligation to the association is ineligible to serve on the board (720.306, F.S.).
- 2. Criminal Convictions:** Anyone convicted of a felony in Florida or an equivalent crime in another jurisdiction is ineligible for board membership unless their civil rights have been restored for at least five years.
- 3. Suspension by the DBPR:** A person suspended or removed by the Department of Business and Professional Regulation (DBPR) is ineligible to serve on the board.

### **Recall of Directors**

Directors may be recalled by a majority of the voting interests, with the recall effective immediately following the meeting where the vote was conducted. A recalled board member must turn over all association records and property within five business days.

### **Removal Due to Delinquency in Payments**

If a board member becomes more than 90 days delinquent in paying any monetary obligation to the association, they are deemed to have abandoned their seat, creating a vacancy that must be filled according to the association's governing documents.

### **Resignation and Filling Vacancies**

A resignation is effective when notice is delivered unless a later date is specified. Vacancies on the board can be filled by a majority vote of the

remaining directors, even if they constitute less than a quorum. The newly appointed member serves for the remainder of the unexpired term.

### **Final Thought**

Navigating the responsibilities and requirements of HOA meetings and board eligibility can feel like a balancing act, but it's all about keeping the community's best interests at heart. Whether it's ensuring proper notice for meetings, understanding the importance of a quorum, or managing the election process, each step plays a crucial role in maintaining a transparent, fair, and effective governance system. As a board member, you're not just following rules—you're upholding the democratic values that make your community a great place to live. By staying informed, adhering to legal requirements, and fostering open communication, you help create a neighborhood where everyone's voice is heard, and the community thrives together.

## **VIII. HOMEOWNERS' ASSOCIATION OPERATIONS**

Managing the day-to-day operations of a homeowners' association (HOA) is no small task—it's like running a small community, where every decision impacts not just individual homes, but the collective wellbeing of the neighborhood. As a board member, you're not just setting policies; you're ensuring that the community remains a well-oiled machine. From overseeing maintenance tasks to managing vendor relationships, your role is multifaceted and essential to keeping the neighborhood in top shape.

Whether your association is self-managed or relies on professional management, it's crucial to understand the operational aspects that keep everything running smoothly. This involves not only the routine maintenance and repairs but also ensuring that every contract and project is handled with the utmost diligence. After all, the decisions made today will affect the community for years to come.

### **Daily Operations and Board Responsibilities**

In the normal operation of an HOA, the board of administration serves as the decision-making body. It's your job to set guidelines, establish policies, and ensure that various tasks are carried out efficiently. In a self-managed association, the officers bear the brunt of these responsibilities, handling everything from scheduling maintenance to overseeing financial management. However, when a board opts to hire professional management, the day-to-day operations are largely delegated, allowing the board to focus on strategic decisions and long-term planning.

But regardless of who handles the day-to-day tasks, the buck stops with the board. You'll need to stay informed about the status of ongoing projects, the financial health of the association, and the overall satisfaction of the community members. This proactive oversight is what keeps the HOA functioning smoothly and helps prevent small issues from becoming big problems.

### **Managing and Maintaining Association Property**

One of the primary duties of the board is to ensure that the community's common property is well-maintained. This includes everything from the landscaping and swimming pools to the roads and community centers. Keeping these assets in good condition is vital not only for the safety and enjoyment of the residents but also for maintaining property values across the community.

**Routine Maintenance:** Regular upkeep is the foundation of property management. This can include tasks like landscaping, cleaning common areas, maintaining lighting, and ensuring that community facilities are in good working order. It's essential to have a clear schedule for these tasks and to ensure that they are performed consistently and to a high standard.

**Repairs and Improvements:** Beyond routine maintenance, the board must also oversee necessary repairs and community improvements. This might involve fixing potholes, repairing roofs, or even overseeing the construction of new amenities. Planning and budgeting for these tasks in advance is crucial, as unexpected repairs can strain the association's finances.

**Inspection Responsibilities:** The board or designated manager should regularly inspect the community to identify any areas in need of maintenance or repair. This proactive approach helps prevent minor issues from escalating into major problems, saving the community time and money in the long run.

### **Bids and Contracts**

When it comes to hiring vendors for maintenance or other projects, the board must follow a structured process to ensure transparency, fairness, and fiscal responsibility.

**Bidding Process:** The bidding process is your opportunity to find the best services at the most reasonable prices. Florida law requires that if a contract for services or materials exceeds 10% of the association's total annual budget (including reserves), you must seek competitive bids. This ensures that the association is getting the best value for its money, while also providing vendors with a fair chance to win the contract.



**Bidding Process:** The bidding process is your opportunity to find the best services at the most reasonable prices. Florida law requires that if a contract for services or materials exceeds 10% of the association's total annual budget (including reserves), you must seek competitive bids. This ensures that the association is getting the best value for its money while also providing vendors with a fair chance to win the contract. However, it's important to note that **there is no requirement to accept the lowest bid**. The board has the discretion to consider other factors such as the quality of services, the vendor's reputation, and previous experiences, ensuring that the decision made is in the best interest of the community.

**Contract Requirements:** Once a vendor is selected, the next step is drafting and signing a contract. It's important to ensure that all contracts are in writing and that they clearly outline the scope of work, deadlines, payment terms, and any other relevant details. While community association managers are not permitted to draft contracts (as this is considered the unlicensed practice of law), they can play a key role in managing the contract process. While not all HOAs choose to employ an attorney due to the associated costs, it's generally advisable to have the final contract reviewed by the association's attorney. This review can help ensure that the contract meets all legal requirements and adequately protects the association's interests, potentially saving the association from costly legal issues down the road.

**Certificates of Insurance:** Before work begins, the board should require the vendor to provide a certificate of insurance. This document proves that the vendor has liability and workers' compensation insurance, which protects the association in case of accidents or injuries during the project. It's a crucial step in mitigating risk and ensuring that the association isn't held liable for any unforeseen incidents.

### **Construction Liens and Performance Bonds**

When dealing with larger construction projects, it's essential to understand the protections available to the association, such as construction liens and performance bonds.

**Performance Bonds:** A performance bond is a type of financial guarantee that ensures the contractor will complete the project as agreed. If the contractor fails to meet their obligations, the bond provides the funds necessary to complete the project, protecting the association from potential losses.

**Construction Liens:** A construction lien, or mechanic's lien, allows contractors, subcontractors, and material suppliers to secure payment for their work. If the association fails to pay for services rendered, the

contractor can file a lien against the property. Understanding the procedures for handling liens is critical to avoiding legal disputes and ensuring that all parties are fairly compensated.

### **Independent Contractor vs. Employee**

Distinguishing between independent contractors and employees is vital to avoid potential legal pitfalls. Misclassifying workers can lead to issues with workers' compensation, tax withholding, and unemployment taxes. The classification depends on the nature of the relationship, with key factors including behavioral control, financial control, and the overall relationship between the worker and the association.

### **Final Thought**

Running the operations of an HOA is a bit like managing a small city—there's a lot of moving parts, and each decision has a ripple effect throughout the community. From keeping the common areas pristine to ensuring that every contract is airtight, your role on the board is critical to maintaining the community's standards and protecting property values. By staying on top of the details, being diligent with contracts, and ensuring that all legal requirements are met, you're not just keeping the neighborhood looking good—you're ensuring that it thrives for years to come. And while it's a big responsibility, it's also an opportunity to make a lasting impact on the place you call home.

## **IX. DISPUTE RESOLUTION**

Disputes are an inevitable part of any community, and when they arise, it's essential to have a clear, fair, and efficient way to resolve them. That's where dispute resolution comes in—a process that can save everyone a lot of time, money, and stress. In Florida, the Legislature recognized the value of keeping minor disputes out of court by encouraging alternative dispute resolution (ADR) methods, like mediation and arbitration. These methods offer homeowners and associations a way to address issues without the lengthy and often expensive process of litigation. It's particularly helpful for homeowners who might feel outmatched by an association's resources. Let's dive into the various options available for resolving disputes in your community and how they can help keep the peace.

### **Arbitration**

Arbitration is an alternative to a court proceeding where a neutral third person, called an arbitrator, considers the facts and arguments presented

by the parties and renders a decision. An arbitration proceeding may involve a hearing, if there are facts in dispute. If a hearing is held, each party is given an opportunity to present evidence through witnesses and exhibits. If there are no disputed facts, the arbitrator will generally decide the case based on the assertions in the petition for arbitration, the answer/response to the petition, and the applicable law.

- **Binding Arbitration** – The final decision by the arbitrator is final, similar to the decision of a judge or a jury in a trial.
- **Non-Binding Arbitration** - is a type of arbitration in which the arbitrator makes a determination of the rights of the parties to the dispute, but this determination is not binding upon them, and no enforceable arbitration award is issued. The "award" is in effect an advisory opinion of the arbitrator's view of the respective merits of the parties' cases.

## **Mediation**

Mediation, on the other hand, is a process whereby a neutral third person, called a mediator, acts to encourage and facilitate the voluntary settlement of a dispute between two or more parties. It is an informal, non-adversarial, process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, the decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.

Parties to mediation have 30 days to file an appeal in court.

## **Dispute Resolution in Florida Homeowners' Associations**

### **1. Embracing Alternative Dispute Resolution (ADR):**

The Florida Legislature has acknowledged the value of ADR processes like mediation and arbitration. ADR stands out for its potential to streamline legal disputes, offering a pathway that could be faster, more cordial, and cost-effective than traditional court trials.

A key point for homeowners and associations to note: When they opt for arbitration or send out a demand for presuit mediation, it pauses (or "tolls") the clock on the applicable statute of limitations, which defines the time limit within which they must initiate legal action.

## **2. Election and Recall Disputes: A Special Category:**

If disagreements arise about the election or recall of board members, these must either be taken directly to court or submitted for arbitration with the department. Crucially, these specific types of disputes aren't suitable for presuit mediation.

## **3. The Role of Presuit Mediation:**

Before taking many types of disagreements to court, the law requires an attempt at resolution through presuit mediation. This process involves a neutral third-party mediator who helps the disputing parties communicate and hopefully find common ground. Examples of disputes covered include:

- Debates over the use or changes to shared areas or individual parcels.
- Issues arising from attempts to enforce covenants.
- Disagreements on amendments to the association's guiding documents.
- Disputes over board and committee meetings, although election meetings are an exception.
- Conflicts regarding access to the official documents and records of the association.

Some issues, however, skip this mediation step and can proceed directly to legal avenues. These include:

- Matters related to financial obligations such as collecting dues or fines.
- Actions that stem from prior mediation agreements.
- Situations needing immediate (temporary injunctive) relief.
- Enforcing the decision from an arbitration process.
- Property title disagreements.
- Cases where there are claims of breaches of fiduciary duty by board directors.

If, after trying presuit mediation, the parties still have unresolved issues, they can move to a more formal arbitration process or file their case in court. An important reminder: Parties that refuse or neglect to engage in the entire mediation process might find themselves unable to recover attorney fees, even if they eventually win their case in court.

## **4. On Choosing Mediators and Arbitrators:**

When selecting a mediator or an arbitrator, it's essential to ensure they have the required credentials. In Florida, they need to be certified by the

Florida Supreme Court, ensuring they have the skills and knowledge to guide the process effectively.

It's also worth noting that while mediation can result in agreements, these agreements don't set precedents. This means that the outcomes of one mediation process aren't used as standard references in other, separate disputes.

### **5. Cost Considerations:**

When mediation is attempted but doesn't yield a solution, and the dispute moves to court or arbitration, the party that wins (often referred to as the "prevailing party") can seek to recover the costs and attorney's fees they spent during the mediation process. This is something both homeowners and associations should factor into their decision-making processes.

### **6. Special Provisions for Certain Communities:**

There are certain community types in Florida where the use of presuit mediation, as described, is optional. These communities might include situations where:

- Voting is done by parcel owners or individuals representing them.
- Being a member of the governing corporation isn't mandatory for parcel ownership.
- The corporation doesn't have the authority to impose assessments that might become liens on parcels.

You should always consult with an attorney prior to initiating any legal action to determine the correct forum for your specific dispute, to identify any conditions precedent to commencing legal action and for assessing the potential risks of legal action.

### **Final Thought**

Navigating disputes in an HOA is like threading a needle—care, precision, and a steady hand are required. But with the right approach and tools, even the most tangled issues can be resolved efficiently and fairly. Understanding the available dispute resolution options can help keep your community harmonious and prevent minor disagreements from escalating into major conflicts. By engaging in mediation or arbitration, you not only save time and money but also foster a culture of cooperation and understanding. So, when disputes arise—and they will—you'll be well-

prepared to handle them with grace and wisdom, keeping your community a place where everyone can live peacefully.

## X. CONCLUSION

**Congratulations!** You've successfully completed AACC Online's HOA Board Certification Course. By now, you've navigated through a comprehensive curriculum that has equipped you with the knowledge and confidence to lead your community effectively.

### **Reminder: Continuing Education Requirement**

As you continue your service, it's crucial to stay compliant with Florida's continuing education requirements. Here's what you need to know:

- For directors of associations with fewer than 2,500 parcels: You must complete at least four hours of continuing education within one year from today.
- For directors of associations with 2,500 parcels or more: You are required to complete at least eight hours of continuing education within the same timeframe.

By fulfilling these requirements, you'll remain up-to-date with the latest legislative changes and best practices, ensuring that you can continue to serve your community with confidence and compliance. Remember, failure to meet these requirements can result in suspension from the board until compliance is achieved, so mark your calendar!

### **Final Step**

Before you go, there's just one more step: a 15-question quiz. To receive your certificate of completion, you must score 75% or higher. Once you pass, you can view, save, and print your certificate from your My Courses page.

Thank you for your dedication to your community. Your commitment is what makes your neighborhood a great place to live. Best of luck on your quiz and in your ongoing role as a board member!