Frequently Asked Questions

What are the requirements for license renewal?

Licenses Expire	CE Hours Required	Mandatory Courses
Community Association Managers' licenses expire September 30th of even numbered years.	20 (All can be completed through home-study)	4 hours of Legal Update (2 hrs per year)

How do I complete this course and receive my certificate of completion?

Online	Fax	Mail
Go to ***CAMS.EliteCME.com*** and follow the prompts. Print your certificate immediately.	(386) 673-3563 - Be sure to include your credit card information. Your certificate will be e-mailed to you.	Use the envelope provided or mail to Elite, PO Box 37, Ormond Beach, FL 32175. Your certificate will be e-mailed to you.

How much will it cost?

Course Title	CE Hours	Price
2013 Legal Update (Meets 1st Year Annual Legal Update Requirement)	2	25.00
2014 Legal Update (Meets 2nd Year Annual Legal Update Requirement)	2	25.00
Best Hiring Practices (Meets Human Resource Requirement)	4	35.00
Community Associations and Accessible Housing Law (Meets Elective Requirement)	4	35.00
Dealing with Delinquency and Foreclosure (Meets Insurance/Financial Management Requirement)	4	35.00
Swimming Pool and Spa Laws and Safety (Meets Operation of Physical Property Requirement)	4	35.00
★ **GREAT VALUE** ★ **SAVE $86** ★ **18-hour Course (excludes 2013 Legal Update)**	18	**79.00**
★ **BEST VALUE** ★ **SAVE $91** ★ **Entire 20-hour Course**	20	**$99.00**

Are you a Florida board approved provider?

Yes, Elite is approved by the Regulatory Council of Community Association Managers. Provider number 0001553.

Are my credit hours reported to the Florida board?

Yes, your course will be processed the same day we receive it and electronically reported to the Department of Business and Professional Regulation within one business day.

Is my information secure?

Yes! Our website is secured by Thawte, we use SSL encryption, and we never share your information with third-parties. We are also rated A+ by the National Better Business Bureau.

What if I still have questions? What are your business hours?

No problem, we are here to help you. Call us toll-free at 1-888-857-6920, Monday - Friday 9:00 am - 6:00 pm EST or e-mail us at office@elitecme.com. Please contact us if you have not received your certificate within 7-10 business days. Our company policy is satisfaction guaranteed, or you receive a 100 percent refund.

Important information for licensees:

Always check your state's board website to determine the number of hours required for renewal, and the amount that may be completed through home-study. Also, make sure that you notify the board of any changes of address. It is important that your most current address is on file.

Division of Professions
Regulatory Council of Community Association Managers
1940 North Monroe Street
Tallahassee, FL 32399-0783

Phone: (850) 487-1395 | Website: http://www.myfloridalicense.com/DBPR/pro/cam/index.html

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CE for Florida Community Association Managers

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CE for Florida Community Association Managers

Chapter 1: 2013 Legal Update

2 CE Hours

By: Valerie Wohl

Learning objectives

- Describe changes to Florida State law in 2012 that affect the practice of Community Association Management (CAM).
- List the bodies of law associated with CAM.
- Name five laws from 2012 that may affect you in your role as a Community Association Manager.
- Name the two bills associated with CAM that did not pass into law, and will likely be reintroduced in 2013.
- Describe the purpose of an estoppel letter.
- Explain the significance of an "offsite improvement" in Ch. 2012-161, Residential Construction Warranties.
- Describe the main purpose of Ch. 2012-076, Timeshares.
- Explain under what conditions Ch. 2012-202, Sovereignty Submerged Lands, applies.
- List 2012 revisions related to CAM licensing and continuing education.
- Define "bulk buyer" in regard to condominium units.

Introduction

The course will introduce and explain the most significant changes to State of Florida Laws and Rules created or revised in 2012 and relevant to your role as a Community Association Manager. It also provides instruction regarding Chapters 455, 468, Part VIII, 617, 718, 719, and 721, F.S., and other legislation, case law, and regulations affecting Community Association Management. CAM licensees successfully completing this course will fulfill the 2-hour legal update seminar continuing education requirement specified in 61E14-4.001 (Continuing Education Renewal Requirements) of the Florida Administrative Code (FAC).

The Department of Business and Professional Regulation applies Community Association Management guidelines to mobile home parks, planned unit developments, homeowners associations, cooperatives, timeshares, condominiums, or other residential units, which are part of a residential development scheme and are authorized to impose a fee that may become a lien on the parcel.[1]

2012 Legislative Session

The 2012 Legislative Session was contentious with regard to community association legislation and tense for many, as the final status of some bills was not known until the last day of Session. In the end, few changes affecting community association managers, owners, and residents passed into law.

The following laws are the most likely to be relevant to you as a CAM:

- Ch. 2012-049 (SB 1050): Fiduciaries Uniform Principle and Income Act
- Ch. 2012-061 (HB 517): Reducing and Streamlining Regulations
- Ch. 2012-208 (HB 693): Business and Professional Regulation
- Ch. 2012-076 (HB 1001): Timeshares
- Ch. 2012-161 (HB 1013) Residential Construction Warranties
- Ch. 2012-202 (HB 0013): Sovereignty Submerged Lands
- Ch. 2012-72 (HB 887): Business and Professional Regulation
- Ch. 2012-13 (SB 704): Building Construction and Inspection
- Ch. 2012-165 (HB 249): Public Lodging Establishments

Two bills of special interest to CAMs, HB 319/SB 680, Relating to Residential Properties, and HB 213/SB 1890, Relating to Mortgage Foreclosures, did not become law, but will likely be reintroduced in 2013.

No changes were made to the Florida Administrative Code (F.A.C.) in 2012, but it should be reviewed carefully, as much of the text was revised in 2010.

Chapter organization

The Statutes and Rules that govern Community Association Managers are largely addressed in Chapter 468, Part VIII, of the Florida Statutes (F.S.) and Rule 61E14 (formerly 61-20) of the Florida Administrative Code (F.A.C.).

- Changes to the Florida Statutes associated with Community Association Management are presented in Part I: Florida Statutes. Each section in Part I is organized in the following way:

- The section title provides the Statute's identification number (2012-etc), followed by either the Senate or House Bill Number (SB for Senate Bill; HB for House Bill), and the name associated with it.
- The first part of the section is a summary of the new legislation followed by a discussion of its implications for CAMs.
- The last part of the section provides pertinent text of the new law. The first paragraph is a list of the changes that follows. The text that follows highlights 2012 additions and deletions to the earlier text. Words ~~crossed out~~ are deletions; words underlined are additions.

- Information relating to Rule 61E14 is presented in Part II: Florida Administrative Code (FAC). Each section is Part II is organized in the following way:
  - The title provides the Rule's identification number (61E14-etc) and the name associated with it.
  - The full current text of the rule is presented after its title.

PART I: FLORIDA STATUTES

The Florida Statutes (found at http://www.leg.state.fl.us/STATUTES/) are a permanent collection of State laws organized by subject area into a code made up of titles, chapters, parts, and sections. The Florida Statutes are revised each year by new laws that create, amend, or repeal statutory material. Legislative changes to the Florida Statutes, effective up to and including January 1, 2013, are treated as current for publication of the 2012 Florida Statutes. This means that some material in the 2012 Session may not have taken effect until January 1, 2013.

Ch. 2012-049 (SB 1050): Fiduciaries Uniform Principle and Income Act

Summary
This new law allows a record title owner of a property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property to obtain an estoppel letter.

To receive the information, these authorized individuals must provide a copy of the instrument proving title in the property ownership interest or lawful authorization. Once a request is made, the mortgagee must provide the total unpaid balance on a per-day basis, but may also include additional information in the estoppel letter.

The following amendments provide more detailed information on the process:

- **Section 701.04(1), FS,** permitting the record title owner of the property or a fiduciary or trustee lawfully acting on behalf of the record title owner to request an estoppel letter setting forth the unpaid loan balance due under a mortgage. The estoppel letter must be provided within 14 days after receipt of the written request. The previous law only permitted a mortgagor/debtor to request an estoppel letter.
- **Section 701.04(1)(a), FS,** requiring the estoppel letter to include an itemization of the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.
- **Section 701.04(1)(b), FS,** providing that if a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request:
  - The request must include a copy of the instrument showing title in the property or lawful authorization.
  - The estoppel letter may include the itemization of information required when the mortgagor makes the request, per Section 701.04(1)(a), but must at a minimum include the total unpaid balance due under or secured by the mortgage on a per-day basis.
  - A mortgage holder may provide the financial information notwithstanding Section 655.059, Florida Statutes, dealing with disclosure of confidential financial information.

Existing law allows mortgagors to request and receive, within 14 days, information about their loan, including unpaid balance, from the mortgagee. This information is provided by a mortgagee and is known as an estoppel letter. This new law allows certain other lawfully authorized individuals to act on behalf of a mortgagor or record title owner of the property to obtain an estoppel letter.

The amendments to Section 701.04(1), FS, can assist community associations that have taken title to a unit through foreclosure of its lien to request information from the lender regarding the balance of the loan. Before this law was passed, lenders would not communicate with the association, even if the association was the current property holder. Knowing the loan balance provides the association more options, such as the possibility of negotiating a short sale with the lender.

This law became effective January 1, 2013.

Pertinent Text – Ch.2012-49

An act relating to fiduciaries; amending s. 701.04, F.S.; requiring a mortgage holder to provide certain information within a specified time relating to the unpaid loan balance due under a mortgage if a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property makes a written request under certain circumstances; allowing financial institutions to release certain mortgagor information to specified persons without penalty;

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 701.04, Florida Statutes, is amended to read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) Within 14 days after receipt of the written request of a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, the holder of a mortgage shall deliver or cause the servicer of the mortgage to deliver to the person making the request ~~mortgagor~~ at a place designated in the written request an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage.

(a) If the mortgagor, or any person lawfully authorized to act on behalf of the mortgagor, makes the request, the estoppel letter must include an itemization of the ~~including~~ principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.

(b) If a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request:

1. The request must include a copy of the instrument showing title in the property or lawful authorization.
2. The estoppel letter may include the itemization of information required under paragraph (a), but must at a minimum include the total unpaid balance due under or secured by the mortgage on a per-day basis.
3. The mortgagee or servicer of the mortgagee acting in accordance with a request in substantial compliance with this paragraph is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter.

(c) A mortgage holder may provide the financial information required under this subsection to a person authorized under this subsection to request the financial information notwithstanding s. 655.059.

(2) Whenever the amount of money due on any mortgage, lien, or judgment has been ~~shall be~~ fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom the ~~such~~ payment was ~~shall have been~~ made, shall execute in writing an instrument acknowledging satisfaction of the ~~said~~ mortgage, lien, or judgment and have the instrument ~~same~~ acknowledged, or proven, and duly entered ~~of record in the book provided by law for such purposes~~ in the official records of the proper county. Within 60 days after ~~of~~ the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of ~~the provisions of~~ this section, the prevailing party is ~~shall be~~ entitled to attorney ~~attorney's~~ fees and costs.

(3) ~~(2)~~ Whenever a writ of execution has been issued, docketed, and indexed with a sheriff and the judgment upon which it was issued has been fully paid, it is ~~shall be~~ the responsibility of the party receiving payment to request, in writing, addressed to the sheriff, return of the writ of execution as fully satisfied.

Ch. 2012-061 (HB 517): Reducing and Streamlining Regulations

This law's objective is reducing and streamlining regulations within the Department of Business and Professional Regulation (DBPR), but it addresses many other subjects as well:

The law:

- Changes professional standards, certification and continuing education requirements for certified public accountants, real estate brokers, sales associates, real estate schools, appraisers, architects, and interior designers.
- Waives the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for military veterans who apply to the department for a license within 24 months of being honorably discharged from service.
- Reduces the continuing education hours required to reactivate an inactive license to only one renewal cycle of hours, instead of the hours required for each year the license was inactive, for the following professions: community association managers, home inspectors, providers of mold-related services, cosmetologists, architects, landscape architects, construction contractors, and electrical and alarm system contractors.
- Changes criminal penalty provisions governing auctioneers, real estate professionals, barbers, and cosmetologists.
- Revises regulations for management company according to the Federal Dodd Frank Act (exempting banks, credit unions, or other lending institutions that own and operate an internal appraisal office, business unit, or department, from state regulation).
- Extends the time period for classification as a bulk buyer or bulk assignee from July 1, 2012, to July 1, 2015, in the context of the Distressed Condominium Relief Act in ch. 718, part VII, F.S., delineating s the warranty and other obligations of "bulk buyers," persons who purchase more than seven units in a single condominium but were not assigned developer rights or other specified rights.
- Removes the requirement that individuals repairing, maintaining, removing, or disposing of an asbestos-containing pipe or conduit used for gas service be licensed as an asbestos consultant or contractor.
- Expands exemptions for landscape architects not licensed in mold remediation.
- Provides an exception to the prohibition against the sale and processing of distilled spirits greater than 153 if they are bottled, packaged, or processed for export or sale outside the state.
- Revises and reorganizes the Florida Drug and Cosmetic Act (Ch. 499, Part I, F.S.), administered by the Drugs, Devices and Cosmetics Program within the Department of Business and Professional Regulation, making changes to procedures for transferring prescription drugs to specific entities.

Two main portions of this law have significance to CAMs:

- **Bulk Buyer Law Extension**
  Section 36 extends the bulk buyer exception in the Condominium Act (Section 718.707, known as the "Distressed Condominium Relief Act") from July 1, 2012, to July 1, 2015. This provision clarifies some of the rights and obligations of "bulk buyers," individuals who purchase more than seven units in a single condominium, but who may not have developer rights or other specified rights.

  The bulk buyer law extension was originally part of a large community association bill (HB 319/SB 680) which did not pass. At the last minute, this single section was place at the end of HB 517, becoming law. Extending the bulk buyer protections of the Distressed Condominium Relief Act (set to expire in July 2012), for three more years assists bulk buyers of condominium units avoid a variety of developer obligations, such as construction warranties for pre-existing improvements and other turnover requirements, as well as keep a lower profile as "successor developers."

- **Licensing Provisions**
  The law amends:
  - Section 455.413, Florida Statutes, to waive the initial licensing fee, application fee, and unlicensed activity fee for military veterans who apply within 24 months after being honorably discharged.
  - Various sections in Chapter 468 Florida Statutes, making changes to continuing education requirements, such as reducing the continuing education requirement for reactivation of a CAM license to no more than one renewal cycle of continuing education. (Previously, the Regulatory Council for Community Association Managers had the authority to require CAMs take as many as10 hours of continuing education for each year the license was inactive.) Section 8 authorizes the DBPR to require individuals reactivating a license to take specific continuing education courses to ensure that CAMs are familiar with revised laws.

This law became effective July 1, 2012

Pertinent Text – Ch. 2012-61

An act relating to reducing and streamlining regulations; amending s. 455.213, F.S.; waiving initial licensing, application, and unlicensed activity fees for certain military veterans; amending ss. 455.271, 468.4338, 468.8317, 468.8417, 475.615, 475.617, 475.6175, 477.0212, 481.209, 481.211, 481.213, 481.217, 481.315, 489.116, and 489.519, F.S.; revising certain licensure requirements and continuing education requirements for reactivating a license, certificate, or registration to practice certain professions and occupations regulated by the Department of Business and Professional Regulation or a board or council within the department, including community association management, employee leasing, home inspection, mold-related services, real estate appraisal, cosmetology, architecture and interior design, landscape architecture, construction contracting, and electrical and alarm system contracting; amending s. 718.707, F.S.; extending the time period within which persons who acquire condominium parcels may be classified as bulk assignees or bulk buyers; providing an effective date.

Section 2. Subsection (12) is added to section 455.213, Florida Statutes, to read:
455.213 General licensing provisions.—
12. The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license, in a format prescribed by the department, within 24 months after discharge from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged.

Section 3. Subsection (10) of section 455.271, Florida Statutes, is amended to read:
455.271 Inactive and delinquent status.—
(10) The board, or the department if there is no board, may not require ~~Before reactivation,~~ an inactive or delinquent licensee, except for a licensee under chapter 473 or chapter 475, to complete more than one renewal cycle of ~~shall meet the same~~ continuing education to reactivate a license ~~requirements, if any, imposed on an active status licensee for all biennial licensure periods in which the licensee was inactive or delinquent~~. ~~This subsection does not apply to persons regulated under chapter 473.~~

Section 5. Section 468.4338, Florida Statutes, is amended to read:
468.4338 Reactivation; continuing education.—
The council shall prescribe by rule continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license may not exceed one renewal cycle of continuing education ~~10 classroom hours for each year the license was inactive~~.

Section 6. Subsection (2) of section 468.8317, Florida Statutes, is amended to read:
468.8317 Inactive license.—
(2) A license that becomes ~~has become~~ inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education to reactivate ~~requirements for reactivating~~ a license ~~may not exceed 14 hours for each year the license was inactive~~.

Section 8. Subsection (2) of section 468.8417, Florida Statutes, is amended to read:
468.8417 Inactive license.—
(2) A license that becomes ~~has become~~ inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education to reactivate ~~requirements for reactivating~~ a license ~~may not exceed 14 hours for each year the license was inactive~~.

Section 36. Section 718.707, Florida Statutes, is amended to read:

718.707 Time limitation for classification as bulk assignee or bulk buyer.—
A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2015 ~~2012~~. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Ch. 2012-208 (HB 693): Business and Professional Regulation

Summary
This law addresses a range of issues related to departmental regulation of specific fields, including barbers and real estate professionals. Its application to community association management is related to its repeal of the departmental provisions related to licensing requirements, specifically that professional licensees of the Department who change from inactive to active status during the renewal of their license must complete a licensure cycle on active status before they can return to inactive status.

The law also repeals the following licensing requirements:
- The requirements for the chief administrators of real estate schools;
- The requirement that applicants for licensure as a nonresident real estate broker, sales associate, appraisal management company, and appraiser to file an irrevocable consent for service through which a plaintiff may serve process against the non-resident license by sending the process to the director of the agency as well as to the licensee's principal place of business by certified mail with return receipt. This law would require plaintiffs to obtain service of process against a nonresident licensee with a process server;
- The requirement that an applicant for a barber's license must apply with the department at least 30 days before taking a license examination and furnish two photographs with the application; and
- The requirement that alcoholic beverages licenses be issued in duplicate.

Additionally, the law repeals:
- Provisions related to the use of metering machines for placing tax stamps on cigarette packages to evidence payment of excise taxes. According to the Department of Business and Professional Regulation (department), such machines are no longer in use.
- The prohibition against the processing of distilled spirits that are greater than 153 proof. The law maintains the current prohibition against the sale or consumption of a distilled spirit that is greater than 153 proof. However, the law permits distilled spirits that are greater than 153 proof to be distilled, bottled, packaged, or processed for export or sale outside of the state.

This law became effective May 4, 2012

Pertinent Text – Ch.2012-208

An act relating to the Department of Business and Professional Regulation; amending s. 455.271, F.S.; deleting a provision that provides that a licensee of the department who changes from inactive to active status is not eligible to return to inactive status until the licensee thereafter completes a licensure cycle on active status; amending s. 475.02,F.S.; conforming a provision to changes made by the act…

Section 8. Subsection (2) of section 455.271, Florida Statutes, is amended to read:
455.271 Inactive and delinquent status.—
(2) Each board, or the department when there is no board, shall permit a licensee to choose, at the time of licensure renewal, an active or inactive status. ~~However, a licensee who changes from inactive to active status is not eligible to return to inactive status until the licensee thereafter completes a licensure cycle on active status.~~

Ch. 2012-076 (HB 1001): Timeshares

Summary
This law requires the full and fair disclosure of terms, conditions, and services offered by timeshare resale service providers, which includes brokers and advertisers who offer unsolicited telemarketing, direct mail, or e-mail in connection with the offering of resale brokerage services or resale advertising services to consumer owners of timeshares who wish to sell their interest in a timeshare. It provides exceptions for sales by consumers and licensed real estate brokers.

Section 721.05 redefines and expands the term "resale service provider" to include advertisers and those who offer or use telemarketing, direct mail, e-mail or any other means of communication to offer resale time sales. This section also defines "consumer resale timeshare interest," "consumer timeshare reseller," "resale broker," "resale brokerage services," "resale advertiser," and "resale advertising service."

The law:
- Specifies the information that resale service providers must provide to the consumer timeshare resellers before engaging in resale brokerage services or resale advertising services, including a description of any fees or costs; a description of when such fees or costs are due; and the ratio or percentage of the number of timeshare resale interests sold or rented versus the number of timeshare resale interests listed for

sale or rent by the timeshare resale broker for each of the previous two calendar years. Resale service providers may not engage in those activities of a real estate broker unless they are a licensed real estate broker.

- Prohibits timeshare resale service providers from:
  - Representing that they will provide any type of direct sales or resale brokerage services;
  - Representing that another person has a preexisting interest in the timeshare without providing identifying information for that person;
  - Representing that sales or rentals have been achieved or generated, unless the resale provider substantiates the statement at the time of representation;
  - Representing that a specific number of sales or rentals have been sold or rented without providing the consumer with the ratio or percentage timeshare interests advertised that have actually resulted in a sale or rental for each of the previous two calendar years;
  - Representing that a timeshare interest has a specific resale value;
  - Collecting any payment that exceeds an aggregate total of $75 or more in any 12-month period without first receiving a written contract; and
  - Failing to honor a cancellation notice sent by the consumer timeshare reseller.
- Specifies the information that must be included in a written contract for resale advertising services, which includes a conspicuous statement that the consumer has the right to cancel the contract for advertising services within 10 days after the date the contract is signed. The law also requires that resale advertisers provide a full refund within 20 days of the consumer's cancellation of the agreement, or five days after the consumer's check has cleared, whichever is later.

  If the contract for resale advertising services fails to comply with the provisions in the law, the contract would be voidable at the option of the consumer for one year after the date it is executed by the consumer. If a violation of the provisions in the law occurs during an offering of resale services, both the resale service provider and the person who actually commits the violation would be considered to have violated this section.
- The law provides that persons who provide resale advertising services for timeshare interest have submitted to the jurisdiction of the state courts. The law provides a civil penalty of $15,000 per violation in addition to the penalties and remedies provided in the Unfair and Deceptive Trade Practices Act in part II of ch. 501, F.S.

CAMs who have a business or personal interest in timeshare property will find this information relevant, but it applies to all CAMs as the Department of Business and Professional Regulation places the body of law relating to timeshares under the CAM umbrella. This legislation takes a strong ethical stand and should provide greater transparency and consumer protection in regard to the purchase and sales of timeshares.

This law became effective July 1, 2012

Pertinent Text – Ch. 2012-076

An act relating to timeshares; amending s. 721.02,F.S.; revising purposes of the chapter to include the provision of certain disclosure; amending s. 721.05,F.S.; revising the definition of the term "resale service provider"; defining the terms "consumer resale timeshare interest," "consumer timeshare reseller," "resale broker," "resale brokerage services," "resale advertiser," and "resale advertising service"; amending s. 721.20, F.S.; deleting a provision requiring resale service providers to provide certain fee or cost and listing information to timeshare interest owners; creating s. 721.205, F.S.; specifying information a resale service provider must provide to the consumer timeshare reseller; prohibiting unlicensed resale service providers from engaging in certain activities; prohibiting certain services related to the offering of resale advertising by resale advertisers; providing certain restrictions on the offering of resale advertising services by resale advertisers; providing voidability of certain contracts; providing duties of a resale service provider; providing that the provision of resale advertising services in this state constitutes operating, conducting, engaging in, or carrying on a business or business venture for purposes relating to jurisdiction of the courts of this state; providing penalties; providing an effective date.

Because the vast majority of this law is new, and the complete text is too long to include here, it is highly recommended you review the entirety of the 2012 revisions, which can be found at: http://laws.flrules.org/files/Ch_2012-076.pdf

Ch. 2012-161 (HB 1013) Residential Construction Warranties

Summary
This law provides that a purchaser of a new home or a homeowners' association does not have a cause of action for damages based on an implied warranty of fitness and merchantability or habitability, relating to an offsite improvement for a new home. It applies to all forms of ownership including homeowners' associations, condominiums, co-ops, timeshares and mobile home parks, but exempts statutory warranties under Chapters 718 and 719.

Under the law, an "offsite improvement" includes a street, driveway, road, sidewalk, drainage, utilities, or any other improvement or structure that does not immediately and directly support the fitness and merchantability or habitability of the home itself.

The law defines "offsite improvement" as:

(1) The street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is not located on or under the lot on which a new home is constructed, excluding such improvements that are shared by and part of the overall

structure of two or more separately owned homes that are adjoined or attached whereby such improvements affect the fitness and merchantability or habitability of one or more of the other adjoining structures; and

(2) The street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is located on or under the lot but that does not immediately and directly support the fitness and merchantability or habitability of the home itself.

It provides:

- That there is no cause of action in law or equity available to a purchaser of a home or to a homeowners' association based upon the idea of implied warranty of fitness and merchantability or habitability for damages to offsite improvements.
- That the new law does not alter or limit the existing rights of purchasers of homes or homeowners' associations to pursue any other cause of action arising from defects in offsite improvements based upon contract, tort, or statute, including but not limited to, Sections 718.203 and 719.203, Florida Statutes.
- That the new law applies to all cases accruing before, pending on, or filed after July 1, 2012.

This law marks a reverse from a recent case law [*Lakeview Reserve HOA v. Maronda Homes, Inc.*, 48 So.3d 902 (Fla. 5th DCA, 2010)] in which a homeowners' association' sued a developer and was found to have a claim for breach of common law implied warranties. In practical terms, this means if problems occur with 'off-site improvements' (including such community areas as driveways, playgrounds, drains, or swimming pools) that you suspect are due to faulty construction by the general contractor, the developer may no longer be held responsible. The law is expected to limit the number of claims by homeowners and homeowner associations. This, however, does not limit the association's ability to file other legal actions such as code violations, negligence, and/or breach of contract.

Without the protection of implied warranty, CAMs may need to establish a budget for property inspections or engineering studies to definitively diagnose certain issues. Individuals considering the purchase of a home in a homeowners' association are also more likely to purchase a home inspection to ensure the home is sound. Those who oppose the law suggest it will hurt community associations because it can take years before faulty construction is evident. Home inspections rarely address off-site improvements, Not only are many defective conditions, such as the inadequate storm drains and pipes, unlikely to be discovered in a home inspection, most inspections give little time or attention to off-site improvements.

This law became effective July 1, 2012

Pertinent Text – Ch. 2012-161

An act relating to residential construction warranties; creating s. 553.835, F.S.; providing legislative findings; providing legislative intent to affirm the limitations to the doctrine or theory of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home; providing a definition; prohibiting a cause of action in law or equity based upon the doctrine or theory of implied warranty of fitness and merchantability or habitability for damages to offsite improvements; providing that the existing rights of purchasers of homes or homeowners' associations to pursue certain causes of action are not altered or limited; providing for applicability of the act; providing for severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 553.835, Florida Statutes, is created to read:

1. The Legislature finds that the courts have reached different conclusions concerning the scope and extent of the common law doctrine or theory of implied warranty of fitness and merchantability or habitability for improvements immediately supporting the structure of a new home, which creates uncertainty in the state's fragile real estate and construction industry.
2. It is the intent of the Legislature to affirm the limitations to the doctrine or theory of implied warranty of fitness and merchantability or habitability associated with the construction and sale of a new home.
3. As used in this section, the term "offsite improvement" means:
   a. The street, road, driveway, sidewalk, drainage,utilities, or any other improvement or structure that is not located on or under the lot on which a new home is constructed, excluding such improvements that are shared by and part of the overall structure of two or more separately owned homes that are adjoined or attached whereby such improvements affect the fitness and merchantability or habitability of one or more of the other adjoining structures; and
   b. The street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is located on or under the lot but that does not immediately and directly support the fitness and merchantability or habitability of the home itself.
4. There is no cause of action in law or equity available to a purchaser of a home or to a homeowners' association based upon the doctrine or theory of implied warranty of fitness and merchantability or habitability for damages to offsite improvements. However, this section does not alter or limit the existing rights of purchasers of homes or homeowners' associations to pursue any other cause of action arising from defects in offsite improvements based upon contract, tort, or statute, including, but not limited to, ss. 718.203 and 719.203.

Section 2. If any provision of the act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Ch. 2012-202 (HB 0013): Sovereignty Submerged Lands

Summary
This law:

- Creates Section 253.0347, Florida Statutes, regarding the lease of sovereignty submerged lands for private residential docks and piers.
- Provides that the term for the initial lease and renewals is 10 years for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock.
- Provides that the standard lease contract for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multi-slip dock must specify the amount of lease fees as established by the Board of Trustees of the Internal Improvement Trust Fund.
- Exempts the lessees of private residential multifamily docks and structures from paying a fee on 10 square feet or less of sovereignty submerged lands for each linear foot of shoreline in which the lessee has a sufficient upland interest.
- Exempts the lessees of private residential multifamily docks and structures that require a submerged land lease from paying 6% sales tax on the value of a boat slip when the unit is sold, as long as the unit was homestead property.
- Requires the lessee of private residential multifamily docks to pay a lease fee on any income derived from a wet slip, dock, or pier in the preempted area under lease in an amount determined by the Board of Trustees of the Internal Improvement Trust Fund.
- Requires the Department of Environmental Protection (DEP) to inspect private residential multifamily docks at least once every 10 years.

This law benefits landholders by setting renewal terms at 10 years, exempting private residential multi-family docks from sales tax, and exempting 10 square feet of dock space from fees for every linear foot of shoreline in which the lessee "has a sufficient upland interest." It affects residential waterfront landowners who want to build, or have built, docks or related structures on sovereign submerged lands, and applies to condominium limited common element boat slips in cases where the unit to which the boat slip is appurtenant is homestead property. If this is the case, the unit owner is not required to pay the sales tax on the value of the boat slip when the unit is sold.

This law became effective July 1, 2012

Pertinent Text - Ch. 2012-202

An act relating to sovereignty submerged lands; creating s. 253.0347, F.S.; providing for the lease of sovereignty submerged lands for private residential single-family docks and piers, private residential multifamily docks and piers, and private residential multislip docks; providing for the term of the lease and lease fees; providing for inspection of such docks, piers, and related structures by the Department of Environmental Protection; clarifying the authority of the Board of Trustees of the Internal Improvement Trust Fund and the department to impose additional fees and requirements; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:
Section 1. Section 253.0347, Florida Statutes, is created to read:
253.0347 Lease of sovereignty submerged lands for private residential docks and piers.

1. The maximum initial term of a standard lease of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock is 10 years. A lease is renewable for successive terms of up to 10 years if the parties agree and the lessee complies with all terms of the lease and all applicable laws and rules.

2.

a. A standard lease contract for sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must specify the amount of lease fees as established by the Board of Trustees of the Internal Improvement Trust Fund.

b. If private residential multifamily docks or piers, private residential multislip docks, and other private residential structures pertaining to the same upland parcel include a total of no more than one wet slip for each approved upland residential unit, the lessee is not required to pay a lease fee on a preempted area of 10 square feet or less of sovereignty submerged lands for each linear foot of shoreline in which the lessee has a sufficient upland interest as determined by the Board of Trustees of the Internal Improvement Trust Fund.

c. A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock is not required to pay a lease fee on revenue derived from the transfer of fee simple or beneficial ownership of private residential property that is entitled to a homestead exemption pursuant to s. 196.031 at the time of transfer.

d. A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must pay a lease fee on any income derived from a wet slip,dock, or pier in the preempted area under lease in an amount determined by the Board of Trustees of the Internal Improvement Trust Fund.

3. The Department of Environmental Protection shall inspect each private residential single-family dock or pier, private residential multifamily dock or pier, private residential multislip dock, or other private residential structure under lease at least once every 10 years to determine compliance with the terms and conditions of the lease.

4. This section does not prohibit the Board of Trustees of the Internal Improvement Trust Fund or the Department of Environmental Protection from imposing additional application fees, regulatory permitting fees, or other lease requirements as otherwise authorized by law.

Section 2. Beginning with the 2012-2013 fiscal year, the sum of $1 million in recurring funds is appropriated from the General Revenue Fund to the Internal Improvement Trust Fund for purposes of administration, management, and disposition of sovereignty submerged lands.

Ch. 2012-72 (HB 887): Business and Professional Regulation

Summary

This law revises the following provisions and requirements related to the department's professional licensing processes. Its significance to community association management is related to changes in provisions for licensing under the Department of Business and Professional Regulation that apply to CAMs. This law:

- Waives the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for military veterans who apply to the department for a license within 24 months of being honorably discharged from service;
- Authorizes the department, in lieu of a board, to approve applications for reinstatement of a void license if the department determines that the individual failed to comply due to illness or economic hardship;
- Authorizes the department to send the license renewal notice to the licensee's last known e-mail address if provided;

Two provisions affect continuing education in the field. The law:

- Authorizes the department to approve continuing education providers and courses without a review by the appropriate board if the provider or course application does not require expert review or denial;
- Permits continuing education instructors to complete their continuing education through distance learning;

The following provisions relate to the regulation of other professions, including contractors, tobacco dealers, real estate appraisers and appraisal management companies, cosmetologists and boxers, among others. The law:

- Repeals the license requirement for glass and glazing contractors;
- Extends from November 1, 2005, to November 1, 2014, the period for registered contractors, who are limited to practicing within the county or counties in which they are registered, to qualify for state-wide certification;
- Permits wholesale tobacco dealers to extend credit to retail dealers, and authorizes the Division of Alcoholic Beverage and Tobacco to suspend or deny the renewal of the tobacco permit of a retail dealer after the wholesale dealer submits proof to the division that the dealer has failed to satisfy a civil judgment for failure to pay for tobacco products purchased from a wholesale dealer. The permit would remain suspended until the retailer entered into a payment plan or satisfied the civil judgment in full;
- Permits applicants for a real estate appraiser's certification to the results of national examinations required for the license that were obtained more than 24 month after the date of the examination;
- Revises the provisions related to the regulation of appraisal management companies banks, credit unions, or other lending institutions that own and operate an internal appraisal office, business unit, or department. This is consistent with the federal Dodd Frank Act, which exempts from state regulation financial institutions that own or operate an internal appraiser office, business, unit, or department and appraisal management companies that are owned and controlled by a subsidiary of a financial institution;
- Prohibits appraisal management companies from requiring that appraisers agree to an indemnity agreement;
- Permits cosmetology applicants, if licensed in another state, to qualify for a license without having to submit proof of completing their required educational hours if the state's requirements include 1200 pre-licensure hours and passage of a written examination;
- Permits cosmetologists and specialists to perform cosmetology and specialty services at special events held outside of salons if they are employed by a licensed salon and appointments for such services are made through a licensed salon;
- Exempts amateur boxing, martial arts or kickboxing matches from the prohibition against blows to the head in such matches unless the match is sanctioned by an amateur sanctioning organization when the matches are conducted or sponsored by nonprofit schools or education programs, a company or detachment of the Florida National Guard or by the Fraternal Order of Police, and held in conjunction with a charitable event. This provision would take effect upon becoming law; and
- Repeals the five percent tax on closed circuit television broadcasts of pugilistic matches to matches originating within and out-of-state.

This law became effective October 1, 2012.

Pertinent Text - Ch. 2012-72

Section 3. Subsection (12) is added to section 455.213, Florida Statutes, to read:

455.213 General licensing provisions.—

12. The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license, in a format prescribed by the department, within 24 months after discharge from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged.

Section 4. Subsection (1) of section 455.2179, Florida Statutes, is amended to read:

455.2179 Continuing education provider and course approval; cease and desist orders.—

(1) If a board, or the department if there is no board, requires completion of continuing education as a requirement for renewal of a license, the board,or the department if there is no board, shall approve the providers and courses for of the continuing education. Notwithstanding this subsection or any other provision of law, the department may approve

continuing education providers or courses even if there is a board. If the department determines that an application for a continuing education provider or course requires expert review or should be denied, the department shall forward the application to the appropriate board for review and approval or denial. The approval of continuing education providers and courses must be for a specified period of time, not to exceed 4 years. An approval that does not include such a time limitation may remain in effect pursuant to the applicable practice act or the rules adopted under the applicable practice act. Notwithstanding this subsection or any other provision of law, only the department may determine the contents of any documents submitted for approval of a continuing education provider or course.

Section 5. Paragraph (b) of subsection (6) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(6) (b) Notwithstanding the provisions of the professional practice acts administered by the department, ~~the board,~~ or the department ~~if there is no board,~~ may, at its discretion, reinstate the license of an individual whose license has become void if the ~~board or~~ department~~, as applicable,~~ determines that the individual ~~has made a good faith effort to comply with this section but has~~ failed to comply because of illness or ~~unusual~~ economic hardship. The individual must apply to ~~the board, or~~ the department ~~if there is no board,~~ for reinstatement ~~in a manner prescribed by rules of the board or the department, as applicable,~~ and ~~shall~~ pay an applicable fee in an amount determined by rule. The ~~board, or~~ the department ~~if there is no board,~~ shall require that such individual meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

This subsection does not apply to individuals subject to regulation under chapter 473.

Section 6. Section 455.273, Florida Statutes, is amended to read:

455.273 Renewal and cancellation notices.—

~~1~~ At least 90 days before the end of a licensure cycle, the department ~~of Business and Professional Regulation~~ shall:

1 ~~(a)~~ Forward a licensure renewal notification to an active or inactive licensee at the licensee's last known address of record or e-mail address provided to with the department.

2 ~~(b)~~ Forward a notice of pending cancellation of licensure to a delinquent status licensee at the licensee's last known address of record or e-mail address provided to with the department.

~~2 Each licensure renewal notification and each notice of pending cancellation of licensure must state conspicuously that a licensee who remains on inactive status for more than two consecutive biennial licensure cycles and who wishes to reactivate the license may be required to demonstrate the competency to resume active practice by sitting for a special purpose examination or by completing other reactivation requirements, as defined by rule of the board or the department when there is no board.~~

Section 7. Subsections (1) and (2) of section 455.275, Florida Statutes, are amended to read:

455.275 Address of record.—

1 Each licensee of the department is solely responsible for notifying the department in writing of the licensee's current mailing address, e-mail address, and place of practice, as defined by rule of the board or the department when there is no board. A licensee's failure to notify the department of a change of address constitutes a violation of this section, and the licensee may be disciplined by the board or the department when there is no board.

2 Notwithstanding any other provision of law, service by regular mail or e-mail to a licensee's last known mailing address or e-mail address of record with the department constitutes adequate and sufficient notice to the licensee for any official communication to the licensee by the board or the department except when other service is required pursuant to s. 455.225.

Ch. 2012-13 (SB 704): Building Construction and Inspection

This law amends a number of provisions related to building construction and inspection in Florida. The law:

- Modifies how local government code enforcement boards serve notices on property owners;
- Requires public bodies to open sealed bids for construction and repairs to public buildings at a public meeting;
- Revises permitting measures, establishes title transfer procedures, and provides for the applicability of rules governing on-site sewage treatment and disposal systems;
- Authorizes building and fire code administrators to accept electronically transmitted construction plans and related documents for permit approval purposes;
- Includes fire safety inspectors among those eligible to take the building code inspector or plans examiner certification exam and shortens the time length of a provisional certificate for newly employed or promoted inspectors or examiners;
- Includes landscape architecture in the mold assessment exemption;
- Clarifies that a landscape design practitioner may submit planting plans independent of, or as a component of, construction documents;
- Creates an owner-as-contractor licensure exemption for persons engaged in solar panel projects through the U.S. Department of Energy's Sunshot Initiative; provisions to facilitate the electronic submission of permitting applications for these solar projects are created;
- Expands the meaning of 'demolish' as it is used to define licensed contractors;
- Modifies plumbing contractor scope of services to include drain cleaning and clearing, and installation or repair of rainwater catchment systems;
- Expands the roofing contractor licensure scope of work to include skylights;
- Expands air conditioning and mechanical contractor licensure to include the testing and evaluation of ventilation systems and duct work;
- Clarifies the responsibilities of certified contractors and registered contractors, specifically clarifying that

contractors can perform and supervise all work which falls within the scope of their license, whether that work is performed by a subcontractor or a business entity hired by and supervised by the licensed contractor;
- Eliminates the division II glass and glazing contractor license;
- Establishes the remedial nature and retroactive application of contracts related to the sale of manufactured or factory-built buildings;
- Specifies that certain Florida Building Code permit fee surcharges be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program; beginning in fiscal year 2013-2014, funds allocated to the Compliance and Mitigation Program shall be $925,000;
- Exempts specified hunting structures from the Florida Building Code;
- When denying a building permit, requires local enforcing agencies and local building code administrators and inspectors to provide denied applicants with the specific building codes or sections that were out-of-compliance;
- Extends an expiration provision from the 2010 Florida Building Code to the 2013 Florida Building Code related to exposed mechanical equipment or appliances fastened to a roof or installed on the ground;
- Directs the Florida Building Commission to adopt a rule outlining an alternative method of screen enclosure design and establishes a workgroup to assist the commission in developing a rule for implementing the design.

This law became effective July 1, 2012.

Pertinent Text – Ch. 2012-13

An act relating to building construction and inspection; amending s. 162.12, F.S.; revising the authorized methods of sending notices to violators of local codes; creating s. 255.0518, F.S.; requiring a county or municipality, a department or agency of the state, a county, or a municipality, or any other public body or institution to open a sealed bid and announce the name of each bidder and the price submitted in the bid at a public meeting and make such information available upon request; amending s. 381.0065, F.S.; revising the definition of the term "bedroom" for purposes of requirements governing onsite sewage treatment and disposal systems; conforming a cross-reference; providing that a permit for the installation, modification, or repair of an onsite sewage treatment and disposal system approved by the Department of Health transfers along with the title to the property in a real estate transaction; prohibiting the transferred title from being encumbered by new permit requirements; providing criteria for an abandoned onsite sewage treatment and disposal system; providing guidelines for the reconnection of an abandoned system; providing for the applicability of rules to the construction of an onsite sewage treatment and disposal system; providing certain exemptions for a remodeled singlefamily home; amending s. 468.604, F.S.; authorizing a building code administrator or building official to approve the electronic filing of building plans and related documents; amending s. 468.609, F.S.; revising the eligibility requirements of a building code inspector or plans examiner; revising criteria for the issuance of provisional certificates; amending s. 468.841, F.S.; including a person or a business organization acting within the scope of a landscape architecture license in the exemption from certain provisions related to mold assessment; amending s. 481.329, F.S.; clarifying the authority of a landscape design practitioner to submit planting plans; amending s. 489.103, F.S.; providing an exemption from construction contracting requirements for an owner who installs, removes, or replaces solar panels on certain residences while acting as the contractor; providing for an electronic signature on the permit application; requiring the building permit application and disclosure statement to include a declaration statement by the owner; providing that the issuing authority is not liable in any civil action for inaccurate information submitted by the owner using the authority's electronic permitting system; amending s. 489.105, F.S.; revising the definition of the term "demolish" for purposes of describing the scope of work of a contractor to include all buildings or residences of certain heights; clarifying the definition of the terms "roofing contractor," "Class A air-conditioning contractor," "Class B air-conditioning contractor," "mechanical contractor," and "plumbing contractor"; removing the term "glazing contractor" from within the definition of the term "contractor" for purposes of licensing by the Department of Business and Professional Regulation; reenacting s. 489.105(6), F.S., relating to the definition of the term "contracting"; clarifying the intent of the Legislature in the adoption of certain amendments to s. 489.105(6), F.S., and specifying that the amendments were intended to be remedial in nature, clarify existing law, and apply retroactively to any contract for the sale of manufactured or factory-built buildings that will be completed on site and otherwise comply with the requirements under state law; amending s. 489.113, F.S.; clarifying that subcontractors may perform construction work under the supervision of a person who is certified or registered; amending s. 553.5041, F.S.; correcting a cross-reference; amending s. 553.721, F.S.; allocating a portion of the funds derived from a surcharge on permit fees to the Florida Building Code Compliance and Mitigation Program; making technical and grammatical changes; amending s. 553.73, F.S.; exempting certain buildings or structures used for hunting from the Florida Building Code; amending s. 553.79, F.S.; requiring that a building code enforcing agency, administrator, and inspector provide certain information to a permit applicant upon a finding of noncompliance with the Florida Building Code; amending s. 553.844, F.S.; extending the expiration date to 2013 for exemption of certain equipment installation meeting the 2007 building code; amending s. 633.0215, F.S.; authorizing the electronic filing of certain construction plans for approval by the fire code administrator or fire official; amending s. 713.135, F.S.; providing that an owner or contractor is not required to personally appear and provide a notarized signature when filing a building permit application for a solar project if certain conditions are met; providing that the issuing authority is not liable in any civil action for inaccurate information submitted by the owner using the authority's electronic permitting system; requiring the Florida Building Commission to establish a workgroup to assist in the development of rules for an alternative design method for screen enclosures; providing for membership of the workgroup;

providing factors that must be included in the rule; providing dates for appointment of the workgroup and adoption of a rule; requiring the commission to incorporate the alternative design method for screen enclosures into the Florida Building Code; providing conditions for expiration of the provision; providing effective dates.

Because the text of this law is too long to include here, it is highly recommended you review the entirety of the 2012 revisions, which can be found at: http://laws.flrules.org/files/Ch_2012-013.pdf

Ch. 2012-165 (HB 249): Public Lodging Establishments

Summary
This law exempts apartment buildings from regulation by the Division of Hotels and Restaurants within the Department of Business and Professional Regulation that are:
(1) Inspected by the U.S. Department of Housing and Urban Development (HUD), or other entity acting on its behalf, and
(2) Designated primarily as housing for persons age 62 or older.

The Division of Hotels and Restaurants may require the operator of the building to attest in writing that the apartment meets the criteria to qualify for the exemption. The bill also authorizes the division to adopt rules to implement this exemption.

The law exempts rooming houses, boarding houses, or other sleeping facilities that are not classified as a hotel, motel, vacation rental, non-transient apartment, bed and breakfast inn, or transient apartment from the definition for the term "public lodging establishment." The amended definition would exempt these locations from regulation by the division.

The law would also expand the definition of the term "vacation rental" to include three-family houses or dwelling units in addition to the single-family, two-family, and four-family houses or dwelling units that are currently included in the definition.

This law became effective October 1, 2012.

Pertinent Text - Ch. 2012-165

An act relating to public lodging establishments; amending s. 509.013, F.S.; revising the definition of the term "public lodging establishment" to exclude certain apartment buildings designated primarily as housing for persons at least 62 years of age and certain roominghouses, boardinghouses,and other living or sleeping facilities; authorizing the Division of Hotels and Restaurants to require written documentation from an apartment building operator that such building is in compliance with certain criteria; authorizing the division to adopt certain rules; amending s. 509.242, F.S.; revising public lodging establishment classifications; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:
Section 1. Subsection (4) of section 509.013, Florida Statutes, is amended to read:
509.013 Definitions.—As used in this chapter, the term:
(4) (a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.
1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.
2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.
(b) The following are excluded from the definitions in paragraph (a):
1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.;
2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services or other similar place regulated under s. 381.0072.;
3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.;
4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.;
5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.;
6. Any establishment inspected by the Department of Health and regulated by chapter 513.; and
7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.
9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

Section 2. Subsection (1) of section 509.242, Florida Statutes, is amended to read:

509.242 Public lodging establishments; classifications.—

(1) A public lodging establishment shall be classified as a hotel, motel,nontransient apartment, transient apartment, roominghouse, bed and breakfast inn, or vacation rental if the establishment satisfies the following criteria:

(a) **Hotel.**–A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

(b) **Motel.**–A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

(c) **Vacation rental.**–A vacation rental is any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment.

(d) **Nontransient apartment or roominghouse.**–A nontransient apartment or roominghouse is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.

(e) **Transient apartment or roominghouse**.–A transient apartment or roominghouse is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

~~(f) Roominghouse.—A roominghouse is any public lodging establishment that may not be classified as a hotel, motel, nontransient apartment, bed and breakfast inn, vacation rental, or transient apartment under this section. A roominghouse includes, but is not limited to, a boardinghouse.~~

(f) ~~(g)~~ Bed and breakfast inn.—A bed and breakfast inn is a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

PART II: FLORIDA ADMINISTRATIVE CODE (FAC)

Community Association Management is addressed in the Department of Business and Professional Regulations, Chapter 61E14, Regulatory Council of Community Association Managers (formerly Chapter 61-20 CAMs; See https://www.flrules.org/gateway/Division.asp?DivID=835)

No changes were made to the Florida Administrative Code in 2012. The following Table lists the Chapters and Sections for Chapter 61E14, Community Association Management. The current text for 2012 is presented in the following table.

61E14 Chapter/Section Title	Rule number
Chapter 61E14-1: Licensure	
Prelicensure Education Requirements	61E14-1.001
Examination for Manager's License	61E14-1.002
Reexamination	61E14-1.003
Examination Review	61E14-1.004
Chapter 61E14-2: Professional Conduct	
Standards of Professional Conduct	61E14-2.001
Chapter 61E14-3: Fees and Assessments	
Fees	61E14-3.001
Special Assessment	61E14-3.002
Chapter 61E14-4: Continuing Education	
Continuing Education Renewal Requirements	61E14-4.001
Continuing Education Provider Approval	61E14-4.002
Continuing Education Course Approval	61E14-4.003
Reactivation Continuing Education	61E14-4.004
Prelicensure Education Provider Approval	61E14-4.005

Chapter 61E14-1: Licensure

61E14-1.001 Prelicensure Education Requirements.

(1) All community association manager applicants must satisfactorily complete a minimum of 18 in-person classroom hours of instruction of 50 minutes each within 12 months prior to the date of examination. No applicant shall be allowed to take the licensure examination unless the applicant provides documentation of completion of the requisite prelicensure education. Each contact hour shall consist of at least 50 minutes of classroom instruction.

(2) The 18 hours of prelicensure education shall be comprised of courses in the following areas:
   (a) State and federal laws relating to the operation of all types of community associations, governing documents, and state laws relating to corporations and nonprofit corporations – 20%;
   (b) Procedure for noticing and conducting community association meetings – 25%;
   (c) Preparation of Community Association Budgets and Community Association Finances – 25%;
   (d) Insurance matters relating to Community Associations – 12%; and
   (e) Management and maintenance – 18%;

(3) Applicants who can document to the Council that they suffer from a disability or hardship shall be permitted to complete prelicensure education by either correspondence or on-line courses. Such documentation must be received and approved by the Council prior to enrolling and completing any correspondence or on-line prelicensure courses.
   (a) The following shall constitute acceptable "hardships" as used in this rule:
      1. The applicant's residence is more than 70 miles from the nearest physical location where prelicensure education is taught.
      2. Providers are not offering any in-person prelicensure education courses within the twelve months preceding the next available examination.
   (b) "Disability" as used in this rule shall mean a physical or mental impairment that substantially limits one or more of the major life activities of the applicant which would preclude the applicant from attending in-person prelicensure courses.

61E14-1.002 Examination for Manager's License – REVISED 1/5/2010

(1) An examination candidate must achieve a scaled score of 75 or higher in order to achieve a passing grade on the examination.

(2) The examination for a community association manager's license as approved by the Council must test the applicant's knowledge of the subjects in subsection 61E14-1.001(2), F.A.C., with the corresponding approximate percentages of questions to the examination as a whole.

61E14-1.003 Reexamination

If an examination candidate fails to achieve a passing grade on the examination, the candidate may re-apply in writing for reexamination with the (appropriate fees) fees provided in Rule 61E14-3.001, F.A.C. An examination candidate may only apply for reexamination within one year from the date of certification of the original application for a community association manager's license by the Department.

61E14-1.004 Examination Review

(1) The Council hereby adopts by reference Rule 61-11.017, F.A.C., as its rule governing examination review.

(2) Notwithstanding the provisions of Rule 61-11.017, F.A.C., examination reviews may also be conducted at other times and places as established by the Department. For purposes of this rule, a representative of the Department conducting the examination review shall also include a representative of the contract vendor for the examination.

Chapter 61E14-2: Professional Conduct

61E14-2.001 Standards of Professional Conduct

Licensees shall adhere to the following provisions, standards of professional conduct, and such provisions and standards shall be deemed automatically incorporated, as duties of all licensees, into any written or oral agreement for the rendition of community association management services, the violation of which shall constitute gross misconduct or gross negligence:

(1) Definitions. As used in this rule, the following definitions apply:
   (a) The word "control" means the authority to direct or prevent the actions of another person or entity pursuant to law, contract, subcontract or employment relationship, but shall specifically exclude a licensee's relationship with a community association, its board of directors, any committee thereof or any member of any board or committee.
   (b) "Licensee" means a person licensed pursuant to Sections 468.432(1) and (2), F.S.
   (c) The word "funds" as used in this rule includes money and negotiable instruments including checks, notes and securities.

(2) Honesty. During the performance of management services, a licensee shall not knowingly make an untrue statement of a material fact or knowingly fail to state a material fact.

(3) Professional Competence. A licensee shall undertake to perform only those community association management services which he or it can reasonably expect to complete with professional competence.

(4) Due Professional Care.
   (a) A licensee shall exercise due professional care in the performance of community association management services.
   (b) A licensee shall not knowingly fail to comply with the requirements of the documents by which the association is created or operated so long as such documents comply with the requirements of law.

(5) Control of Others. A licensee shall not permit others under his or the management firm's control to commit on his or the firm's behalf, acts or omissions which, if made by either licensee, would place that licensee in violation of Chapter 455, 468, Part VIII, F.S., or Chapter 61-20, F.A.C. or other applicable statutes or rules. A licensee shall be deemed responsible by the department for the actions of all persons who perform community association management related functions under his or its supervision or control.

(6) Records.

(a) A licensee shall not withhold possession of any original books, records, accounts, funds, or other property of a community association when requested by the community association to deliver the same to the association upon reasonable notice. Reasonable notice shall extend no later than 10 business days after termination of any management or employment agreement and receipt of a written request from the association. The manager may retain those records necessary for up to 20 days to complete an ending financial statement or report. Failure of the association to provide access or retention of accounting records to prepare the statement or report shall relieve the manager of any further responsibility or liability for preparation of the statement or report. The provisions of this rule apply regardless of any contractual or other dispute between the licensee and the community association. It shall be considered gross misconduct, as provided by Section 468.436(2), F.S., for a licensee to violate the provisions of this subsection.

(b) A licensee shall not deny access to association records, for the purpose of inspecting or photocopying the same, to a person entitled to such by law, to the extent and under the procedures set forth in the applicable law.

(c) A licensee shall not create false records or alter records of a community association or of the licensee except in such cases where an alteration is permitted by law (e.g., the correction of minutes per direction given at a meeting at which the minutes are submitted for approval).

(d) A licensee shall not, to the extent charged with the responsibility of maintaining records, fail to maintain his or its records, and the records of any applicable community association, in accordance with the laws and documents requiring or governing the records.

(7) Financial Matters. A licensee shall use funds received by him or it on the account of any community association or its members only for the specific purpose or purposes for which the funds were remitted.

(8) Other Licenses.

(a) A licensee shall not commit acts of gross negligence or gross misconduct in the pursuit of community association management or any other profession for which a state or federal license is required or permitted. It shall be presumed that gross negligence or gross misconduct has been committed where a licensee's other professional license has been suspended or revoked for reasons other than non-payment of fees or noncompliance with applicable continuing education requirements.

(b) A licensee shall not perform, agree to perform or hold himself or itself out as being qualified to perform any services which, under the laws of the State of Florida or of the United States, are to be performed only by a person or entity holding the requisite license for same, unless the licensee also holds such license or registration; provided, however, that no violation hereof shall be deemed to have occurred unless and until the authority administering the license or registration in question makes a final determination that the licensee or registrant has failed to obtain a license or registration in violation of the law requiring same.

(c) A licensee shall reveal all other licenses or registrations held by him or it under the laws of the State of Florida or the United States, if, as a result of such license or registration, a licensee receives any payment for services or goods from the community association or its board.

(d) Violation of any provision of Section 455.227(1), F.S., or of any part of this rule shall subject the licensee to disciplinary measures as set out in Section 468.436, F.S.

Chapter 61E14-3: Fees and Assessments

61E14-3.001 Fees.

The following fees are adopted by the Council:

(1) Application fee for a Community Association Manager's License $50.00

(2) Fingerprint processing fee $47.00

(3) Examination fee: When the examination is not conducted by a professional testing service pursuant to Section 455.2171, F.S., $100.00 payable to the Department. When the examination is conducted by a professional testing service pursuant to Section 455.2171, F.S., $73.00 payable to the Department plus $27.00 payable to the testing service.

(4) Re-examination fee: When the examination is not conducted by a professional testing service pursuant to Section 455.2171, F.S., $100.00 payable to the Department. When the examination is conducted by a professional testing service pursuant to Section 455.2171, F.S., $73.00 payable to the Department $27.00 payable to the testing service.

(5) Examination review fee $50.00

(6) Initial license fee $100.00

(7) Renewal fees.

(a) The biennial renewal fee for a licensee renewing as active $100.00

(b) The biennial renewal fee for a licensee renewing as inactive $100.00

(8) Delinquent license fee. A delinquent status licensee shall pay a delinquent license fee when the licensee applies for active or inactive status $50.00

(9) Unlicensed activity fee for initial licensure and license renewal $5.00

(10) Reactivation fee for reactivating an inactive license $25.00

(11) Change of status processing fee. A licensee shall pay a change of status processing fee to change the licensee's status at any time other than the beginning of a licensure period $15.00

(12) Duplicate license fee in event of loss or destruction $25.00

(13) Application fee for continuing education providers $250.00
(14) The renewal fee for continuing education providers $250.00
(15) Application fee for prelicensure education providers $250.00
(16) The renewal fee for prelicensure education providers $250.00

61E14-3.002 Special Assessment.

(1) Each Community Association Manager licensee licensed on or before January 1, 2002, whether active or inactive, shall pay a special assessment fee of $200.00 to the Department. Payment of the fee must be received by the Department no later than 5:00 p.m. on September 30, 2002.
(2) The special assessment fee applies to all licensees including those whose licenses have been suspended and/or placed on probation by the Department.
(3) Failure to pay the special assessment fee as required above shall constitute grounds for disciplinary action. Licensees who fail to pay the special assessment fee as required above shall be charged with violating Section 468.436(1)(b)2., F.S.

Chapter 61E14-4: Continuing Education

61E14-4.001 Continuing Education Renewal Requirements.

(1) All community association manager licensees must satisfactorily complete a minimum of 20 hours of continuing education. Each hour shall consist of 50 minutes of student involvement in approved classroom, correspondence, interactive, distance education or internet courses which courses shall include the required hours at an approved update seminar. No license shall be renewed unless the licensee has completed the required continuing education during the preceding licensing period.
(2) Only continuing education courses approved by the Council shall be valid for purposes of licensee renewal.
(3) The 20 hours of continuing education shall be comprised of courses approved pursuant to Rule 61E14-4.003, F.A.C., in the following areas:
    (a) 4 hours of legal update seminars. Licensees shall satisfactorily complete a 2-hour legal update seminar during each year of the biennial renewal period. The legal update seminars shall consist of instruction regarding changes to Chapters 455, 468, Part VIII, 617, 718, 719, and 721, F.S., and other legislation, case law, and regulations impacting community association management. Licensees shall not be awarded continuing education credit for completing the same legal update seminar more than once even if the seminars were taken during different years.
    (b) 4 hours of instruction on insurance and financial management topics relating to community association management.
    (c) 4 hours of instruction on the operation of the community association's physical property.
    (d) 4 hours of instruction on human resources topics relating to community association management. Human resources topics include, but are not limited to, disaster preparedness, employee relations, and communications skills for effectively dealing with residents and vendors.
    (e) 4 hours of additional instruction in any area described in paragraph (3)(b), (c) or (d) of this rule or in any course or courses directly related to the management or administration of community associations.
(4) No licensee will receive credit, for purposes of meeting the continuing education requirement, for completing the same continuing education course more than once during a biennial renewal period.
(5) Course instructors may receive continuing education credit hours in the amount of hours approved by the Council for licensees only once every renewal period for each approved course taught by the instructor.
(6) Anyone licensed for more than 24 months at renewal time will be required to have complied with the CE requirements set forth in subsection (1), above, prior to renewal. More than 24 months, means 24 months plus 1 day. Licensees licensed for 24 months or less at renewal time are exempt from compliance with the CE requirements set forth in subsection (1), above, until the end of the next renewal cycle.
(7) A licensee shall retain, and make available to the Department and its representatives upon request, continuing education course certificates of completion that comply with paragraph 61-6.015(4)(a), F.A.C., for three years following course completion.
(8) All licensees shall comply with all applicable provisions of subsections 61-6.015(2) and (3), F.A.C.

61E14-4.002 Continuing Education Provider Approval

(1) A continuing education provider is a person or entity approved pursuant to this rule to conduct continuing education courses for community association managers.
(2) Entities or individuals who wish to become approved providers of continuing professional education shall make application to the Council, on Forms DBPR 0020-1 – Master Organization Application (Eff. 05/10), DBPR 0060-1 – General Explanatory Description (Eff. 05/10), and DBPR CAM-4302 – Continuing Education Provider and Course Approval Application (Rev. 05/10), all of which are hereby incorporated by reference into this rule. These forms are available as a single application packet with instructions, a copy of which may be obtained from the Department's website at https://www.myfloridalicense.com/intentions2.asp?SID=&page=intentions2.asp.
(3) Each provider application shall contain the following information, and shall be accompanied by the following documentation and other information as required by the Council:
    (a) The name, address, telephone number, fax number, and e-mail address of a contact person who will fulfill the reporting and documentation requirements for provider approval. The provider shall notify the Council of any change of contact person within ten (10) days of the actual change.
    (b) The identity and qualifications of all instructors who will be presenting courses during the period of providership. These qualifications at a minimum shall include instructional experience and:

1. A bachelor's degree and 2 years experience in the subject matter being taught; or
2. An associate's degree and 4 years experience in the subject matter being taught; or
3. Six years experience in the subject matter being taught.

Should additional instructors be added during the period of providership, the provider shall notify the Council in writing of the new instructor's qualifications at least 30 days prior to actually conducting the course.

(c) The appropriate continuing education provider application fee pursuant to subsection 61E14-3.001(13), F.A.C.

(4) Continuing education provider status shall be valid from the date of approval until May 31 of every odd numbered year. Providers may renew their provider status within 90 days of May 31 of the odd numbered year. Those seeking renewal of provider status must reapply in a format acceptable to the Council and submit the appropriate renewal fee pursuant to subsection 61E14-3.001(14), F.A.C. Providers who fail to renew their provider status on a timely basis in accordance with this rule shall not offer or advertise a course as an approved course for continuing education. Renewal of provider status shall be for a two year period until May 31 of the next odd numbered year.

(5) Once approved, providers shall comply with the following requirements:

(a) When advertising approved courses, providers shall disclose the course approval number and the number of contact hours assigned by the Council and the course subject area. Providers shall not advertise courses as approved courses until they are actually approved by the Council.

(b) Providers shall maintain a system of recordkeeping which provides for storage of approved course offerings information.

(c) Records of individual courses shall be maintained by the provider for 6 years and shall be available for inspection by the Council and the Department or the Department's designee.

(d) An attendance record shall be maintained by the provider for 6 years and shall be available for inspection by the Council and the Department or the Department's designee. Providers must electronically provide to the Department a list of attendees taking a course within five (5) business days of the completion of the course. For home study courses, the provider must electronically supply the list of those individuals successfully completing the course by the 5th of the month following the calendar month in which the provider received documentation and was able to determine the successful completion of the course by the individual. The list and a certificate of attendance provided to the participant shall include the provider's name, the name and license number of the attendee, the date the course was completed and course approval number and the total number of hours successfully completed in each type of continuing education credit granted as described in subsection 61E14-4.001(3), F.A.C. If the instructor is receiving credit as set forth in subsection 61E14-4.001(5), F.A.C., the instructor shall be listed as an attendee with the same information required above. Providers shall maintain security of attendance records and certificates.

(e) All information or documentation, including electronic course rosters, submitted to the Council or the Department shall be submitted in a format acceptable to the Council and the Department. Failure to comply with the time and form requirements will result in disciplinary action taken against the provider. No provider may reapply for continuing education provider status until at least two (2) years have elapsed since the entry of the final order against the provider.

(f) Providers shall assure that sales presentations shall not be conducted during, immediately before or after the administration of any courses approved pursuant to this rule.

(6) A continuing education provider initially approved during the last 90 days prior to May 31 of an odd numbered year, shall not be required to reapply as a condition for renewing provider status.

(7) The Council shall deny continuing education provider status to any applicant who submits false, misleading or deceptive information or documentation to the Council.

(8) The Council retains the right and authority to audit courses offered by any provider approved pursuant to this rule.

(9) The Council shall rescind the provider status or reject individual courses offered by a provider if the provider disseminates any false or misleading information in connection with the continuing education course, or if the provider or its instructor(s) failed to conform to and abide by the rules of the Council or the Department or are in violation of any of the provisions of Chapter 468, Part VIII or 455, F.S.

(10) The Council shall utilize expert groups or individuals as appropriate in implementing these rules.

61E14-4.003 Continuing Education Course Approval

(1) Continuing education courses shall be valid for purposes of the continuing education requirement only if such courses have been approved by the Council. The Council shall approve a course as a continuing education course for the purpose of this rule when the following requirements are met:

(a) Application for course approval shall be received by the Council prior to the date the course is offered, on Forms DBPR 0020-1 – Master Organization Application (Eff. 05/10), DBPR 0060-1 – General Explanatory Description (Eff. 05/10), and DBPR CAM-4302 – Continuing Education Provider and Course Approval Application (Rev. 05/10). These forms are available as a single application packet with instructions, a copy of which may be obtained from the Department's website at https://www.my floridalicense.com/intentions2.asp?SID=&page=intentions2.asp.

(b) A course outline is submitted to the Council, along with the application, which describes the course's content and subject matter. A course outline shall address the following:

1. **Learner Objectives.** Objectives shall describe expected learner outcomes, how learner outcomes will be evaluated, and describe how the objectives

will be obtained. The objectives shall describe the content, teaching methodology and plan for evaluation.

2. **Subject Matter.** The content shall be specifically designed to meet the objectives and the stated level and learning needs of community association managers. Specifically, it shall address one or more of the subject areas outlined in subsection 61E14-4.001(3), F.A.C.
3. **Materials and Methods.** It shall be demonstrated to the Council that:
   a. Learning experiences and teaching methods are appropriate to achieve the objectives;
   b. Time allotted for each activity shall be sufficient for the learner to meet the objectives;
   c. Principles of adult education are utilized in determining teaching strategies and learning activities; and
   d. Currency and accuracy of subject matter will be documented by references or bibliography.
4. Evaluation. Participants are given an opportunity to evaluate learning experiences, instructional methods, facilities and resources used for the course.

(c) A list of all instructors for the course, which shall include names, addresses, e-mail addresses and telephone numbers, shall accompany the course approval application.

(d) The course approval application must be accompanied by an approved provider number or the applicant must simultaneously apply for continuing education provider status pursuant to Rule 61E14-4.002, F.A.C.

(2) The course provider shall submit to the Council a sample continuing education course certificate of completion that complies with paragraph 61E14-4.002(5)(d), F.A.C., that is given to each course participant if the participant completes the course. In addition to the information required by paragraph 61E14-4.002(5)(d), F.A.C., the certificate shall be provided to the course participant at the completion of the course. The certificate of completion shall contain, on its face, the following statement in capital letters in at least 12 point type:

IF YOU HAVE ANY CONCERNS THAT THE COURSE YOU HAVE JUST COMPLETED DID NOT MEET THE LEARNING OBJECTIVES SET OUT IN THE COURSE MATERIALS, DID NOT COVER THE SUBJECT MATTER OF THE COURSE, OR WAS A SALES PRESENTATION; PLEASE CONTACT THE COUNCIL'S OFFICE IN WRITING AT:

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
REGULATORY COUNCIL OF COMMUNITY ASSOCIATION MANAGERS
1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399-1040

(3) Course approvals are valid for 24 months from the date of issuance. Providers must reapply for course approval within 90 days from the expiration of the 24 month period. Written application and course approval shall be in the same form as set forth in paragraph (1)(a) above. The Council shall be notified of any substantive changes made to approved courses during this period. Course approval shall be rescinded by the Council if such notification is not made or the changes fail to otherwise conform to this rule. Course approvals shall be automatically rescinded if the provider approval expires or is rescinded by disciplinary action or otherwise.

(4) Continuing education courses approved prior to the effective date of this rule remain valid for the purposes of fulfilling the continuing education requirement until the course approval expires.

61E14-4.004 Reactivation Continuing Education

(1) As a condition for reactivating an inactive or delinquent license, an inactive status licensee shall be required to satisfactorily complete ten (10) classroom hours of continuing education instruction of 50 minutes each for each year or any portion of a year the license was inactive. Two (2) hours shall consist of the legal update seminar for the year in which the licensee is reactivating. The remaining hours of reactivation continuing education may be in any of the areas described in Rule 61E14-4.001, F.A.C., as appropriate.

(2) Notwithstanding subsection (1) of this rule, no inactive status licensee shall be required to satisfactorily complete more than twenty (20) classroom hours of continuing education, at least 50% of which must have been completed within the year prior to application for reactivation, in order to reactivate a license. An inactive licensee must take the two most recent legal update courses prior to reactivation.

61E14-4.005 Prelicensure Education Provider Approval

(1) A prelicensure education provider is a person or entity approved pursuant to this rule to conduct prelicensure education courses for community association managers.

(2) Entities or individuals who wish to become approved providers of prelicensure education shall make application on Forms DBPR 0020-1 – Master Organization Application (Eff. 05/10) and DBPR CAM-4306 – Prelicensure Provider Application (Rev. 05/10). Forms DBPR 0020-1 and DBPR CAM-4306 are hereby incorporated by reference into this rule. These forms are available as a single application packet with instructions, a copy of which may be obtained from the Department's website at https://www.myfloridalicense.com/intentions2.asp?SID=&page=intentions2.asp.

(3) Each provider application shall contain the following information, and shall be accompanied by the following documentation and other information as required.

(a) The name, address, telephone number, fax number, and e-mail address of a contact person who will fulfill the reporting and documentation requirements for provider approval. The provider shall notify the Council of any change of contact person within ten (10) days of the actual change.

(b) The identity and qualifications of all instructors who will be presenting courses during the period of providership. These qualifications at a minimum shall include instructional experience; and

1. A bachelor's degree and 2 years experience in the subject matter being taught; or

2. An associate's degree and 4 years experience in the subject matter being taught; or
3. Six years experience in the subject matter being taught.

Should additional instructors be added during the period of providership, the provider shall notify the Council in writing of the new instructor's qualifications at least thirty (30) days prior to actually conducting the course.

(c) The appropriate prelicensure education provider application fee pursuant to subsection 61E14-3.001(15), F.A.C.

(d) A course outline which describes the course's content and subject matter. A course outline shall address the following:

1. **Learner Objectives.** Objectives shall describe expected learner outcomes, how learner outcomes will be evaluated, and describe how the objectives will be obtained. The objectives shall describe the content, teaching methodology and plan for evaluation.
2. **Subject Matter.** The content shall be specifically designed to meet the objectives and the stated level and learning needs of community association managers. Specifically, it shall address one or more of the subject areas outlined in subsection 61E14-1.001(2), F.A.C.
3. **Materials and Methods.** It shall be demonstrated to the Council that:
   a. Learning experiences and teaching methods are appropriate to achieve the objectives;
   b. Time allotted for each activity shall be sufficient for the learner to meet the objectives;
   c. Principles of adult education are utilized in determining teaching strategies and learning activities; and
   d. Currency and accuracy of subject matter will be documented by references or bibliography.
4. **Evaluation.** Participants are given an opportunity to evaluate learning experiences, instructional methods, facilities and resources used for the course.

(4) Prelicensure education provider status shall be valid from the date of approval until May 31 of every even numbered year. Those seeking renewal of provider status must reapply on Forms DBPR 0020-1 and DBPR CAM 4306, referenced in subsection (2) above, to the Council and submit the appropriate renewal fee pursuant to subsection 61E14-3.001(16), F.A.C. Providers who fail to renew their provider status on a timely basis in accordance with this rule shall not offer or advertise a course as an approved course for prelicensure education.

(5) Once approved, providers shall comply with the following requirements:

(a) When advertising courses, providers shall disclose the number of hours assigned by the Council and the course subject area. Providers shall not advertise courses until they are actually approved by the Council.

(b) Providers shall maintain a system of record keeping which provides for storage of course offerings information.

(c) Records of individual courses shall be maintained by the provider for 4 years and shall be available for inspection by the Council.

(d) Providers shall furnish each participant with an individual certificate of attendance and completion of the course. A roster of participants shall be maintained by the provider for 4 years and shall be available for inspection by the Council. Providers shall maintain security of attendance records and certificates.

(e) The course provider shall submit to the Council a sample certificate of course completion that the course instructor shall provide each course participant if the participant completes the course. Such certificate shall include the course participant's name, the title of the course, prelicensure education category, date completed and number of hours. The certificate shall be provided to the course participant at the completion of the course. The certificate of course completion shall contain, on its face, the following statement in capital letters in at least 12 point type:

IF YOU HAVE ANY CONCERNS THAT THE COURSE YOU HAVE JUST COMPLETED DID NOT MEET THE LEARNING OBJECTIVES SET OUT IN THE COURSE MATERIALS, DID NOT COVER THE SUBJECT MATTER OF THE COURSE, OR WAS A SALES PRESENTATION; PLEASE CONTACT THE COUNCIL'S OFFICE IN WRITING AT: DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, REGULATORY COUNCIL OF COMMUNITY ASSOCIATION MANAGERS, 1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399-1040.

(f) All information or documentation submitted to the Council or the Department shall be submitted in a format acceptable to the Council and the Department.

(g) Providers shall assure that sales presentations shall not be conducted, immediately before or after the administration of any courses pursuant to this rule.

(6) A prelicensure education provider initially approved during the last 90 days prior to May 31 of an even numbered year, shall not be required to reapply as a condition for renewing provider status.

(7) The Council shall deny prelicensure education provider status to any applicant who submits false, misleading or deceptive information or documentation to the Council.

(8) The Council shall rescind the provider status if the provider disseminates any false or misleading information in connection with the prelicensure education course, or if the provider or its instructor(s) failed to conform to and abide by the rules of the Council or are in violation of any of the provisions of Chapter 468, Part VIII or 455, F.S.

References

1. http://www.myflorida.com/dbpr/pro/cam/documents/cam_faq.pdf

2013 LEGAL UPDATE

Final examination questions

Select the best answer for each question and mark your answers on the Final Examination Answer Sheet found on page 128 or complete your test online at **CAMS.EliteCME.com**.

1. Ch. 2012-049, allows a record title owner of a property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property to obtain an estoppel letter.

   ○ True ○ False

2. The estoppel letter discussed in Ch. 2012-049 must be provided within one month after receipt of the written request.

   ○ True ○ False

3. Military veterans who apply to the department for a license within 24 months of being honorably discharged from service will have their initial licensing fee, application fee, and unlicensed activity fee waived.

   ○ True ○ False

4. The Federal Dodd Frank Act revises and reorganizes the Florida Drug and Cosmetic Act administered by the Drugs, the Drugs, Devices and Cosmetics Program within the Department of Business and Professional Regulation.

   ○ True ○ False

5. Ch. 2012-202 requires the lessee of private residential multifamily docks to pay a lease fee on any income derived from a wet slip, dock, or pier.

   ○ True ○ False

CAMFL02LUE13

Chapter 2: 2014 Legal Update

2 CE Hours

By: Valerie Wohl

Learning objectives

- Describe changes to Florida state law in 2013 that affect you, specifically in your role as a community association manager.
- List the main bodies of law associated with community association management in Florida.
- Describe new provisions for community associations on mortgage foreclosures.
- List substantive changes in community association operations and responsibilities in each of the following laws:
  - 2013-188: Relating to Residential Properties.
  - 2013-218: Relating to Homeowners Associations.
  - 2013-122: Relating to Condominiums.
  - 2013-159: Relating to Vacation and Timeshare Plans.
- Describe legal provisions on landlord and tenant rights and responsibilities that will facilitate evictions.
- Describe changes affecting the Citizens Property Insurance Corporation (Citizens).
- Define the function of a lis pendens.
- Explain the terms "phasing" and "turnover" in this year's legislation for community associations.
- Explain the conditions for homestead property exemptions and terms of abandonment.
- List revisions on disciplinary action for violations of community association management standards of professional conduct.

Introduction

This course will introduce provisions of laws and rules created or revised during the 2013 Florida legislative session. The regulations governing community association managers and management (CAMs) are largely addressed in**:**

- Chapter 468, Part VIII, of the Florida Statutes (FS), "Community Association Management," (Ss. 468.431-468.438).
- Rule 61E14 (formerly 61-20) of the Florida Administrative Code (FAC), Community Association Management.

The course will focus primarily on changes to Chapter 468, FS, Part VIII, and Rule 61E14, as well as the following Florida Statutes, which are also directly relevant to your role as a community association manager:

- Chapter 120, FS, Administrative Procedure Act.
- Chapter 455, FS, Business and Professional Regulation.
- Chapter 617, FS Not for Profit Corporations.
- Chapter 718, FS, Condominiums.
- Chapter 719, FS, Cooperatives.
- Chapter 720, Homeowners Associations.
- Chapter 721, F.S., Vacation and Timeshare Plans.

The 2013 Legislative Session

The 2013 session of the Florida Legislature was a very busy one for legislation affecting community associations. Four sizable companion bills relating to residential property became law:

- HB 73 (Law 2013-188): Relating to Residential Properties.
- HB 7119 (Law 2013-218): Relating to Homeowners Associations.
- SB 120 (Law 2013-122): Relating to Condominiums.
- HB 7025 (Law 2013-159): Relating to Vacation and Timeshare Plans.

These laws made substantial revisions to condominium, cooperative, homeowners association, and timeshare laws, with 2013-188 and 2013-218 bringing homeowners associations within the Division of Florida Condominiums, Timeshares and Mobile Homes. Revisions to the Cooperative Act create consistency with existing provisions in the Condominium Act and Homeowners Association Act, such as procedures for maintenance of official records.

Chapter 2013-218, while mostly relevant to homeowners associations, provides an important amendment to Chapter 468, Part VIII, stating that disciplinary action can be taken against any community association manager who violates any provision of Chapters 718, 719 or 720 when performing community association management services pursuant to a contract with a community association, as defined in Section 468.431(1). Chapter 641E14.2 FAC, "Standards of Professional Conduct," was also substantially amended.

Many other laws have important information for community association managers. The course will also present pertinent amendments to the following laws:

- Chapter 2013-028 (SB 286): Relating to Design Professionals.
- Chapter 2013-060 (SB 1770): Relating to Property Insurance.
- Chapter 2013-064 (SB 342): Relating to Rental of Homestead Property.
- Chapter 2013-077 (HB 277): Relating to Assessment of Residential and Nonhomestead Real Property.
- Chapter 2013-092 (HB 999): Environmental Protection (Submerged Land Leases).
- Chapter 2013-136 (HB 77): Relating to Landlords and Tenants.
- Chapter 2013-137 (HB 87) Relating to Mortgage Foreclosures.
- Chapter 2013-227 (SB 050) Relating to Public Meetings.
- Chapter 2013-246 (HB 903): Relating to Adverse Possession.

CAM regulation and continuing education

Licensed community association managers are regulated by two main agencies:

- Chapter 455 FS, Business and Professional Regulation, establishes the enforcement authority of the Department of Business and Professional Regulation (The department, or DBPR), responsible for regulating community association managers working for the following types of residential units:
  - Mobile home parks.
  - Planned unit developments.
  - Homeowners associations.
  - Cooperatives.
  - Timeshares.
  - Condominiums.
  - Other residential units that are part of a residential development scheme and are authorized to impose a fee that may become a lien on the parcel.[1]
- The Regulatory Council of Community Association Managers, a group of seven members, including five community association managers (one of them employed by a timeshare) and two consumer members. The Council oversees duties relate to licensure examination, continuing education requirements, continuing education providers, fees and professional practice standards related to the profession. It also interprets rules, as necessary, to implement the law.

CAM licensees successfully completing this course fulfill the 2-hour legal update seminar continuing education requirement specified in **61E14-4.001** (Continuing Education Renewal Requirements) of the Florida Administrative Code (FAC). These requirements apply to all licensed community association managers.

Chapter organization

Changes to the Florida Statutes (Laws) associated with Community Association Management are presented in **Part I: Florida Statutes:** Each section in Part I provides a summary of the new law, and is organized in the following way: The section title provides the statute's identification number (2013-etc), followed by either the Senate or House bill number (SB for Senate Bill; HB for House Bill), and the name associated with it. Laws are presented in ascending numerical order. The section presents a brief summary of the new law. When text is drawn directly from the new law, changes are noted as follows: Words ~~crossed out~~ are deletions; words <u>underlined</u> are additions.

Information on to Rule 61E14 is presented in **Part II: Florida Administrative Code (FAC).** Each section in Part II is organized in the following way: The title provides the rule's identification number (61E14-etc) and the name associated with it. The full current text of the rule is presented after its title.

The full current text of all laws and rules discussed in this chapter can be found at the following Florida state websites:

- Florida Senate home page: www.flsenate.gov
- Florida House of Representatives home page: www.myfloridahouse.com
- Florida Legislature "Online Sunshine" website: www.leg.state.fl.us

PART I: FLORIDA STATUTES

The Florida Statutes (found at http://www.leg.state.fl.us/statutes/) are a permanent collection of state laws organized by subject area into a code made up of titles, chapters, parts, and sections. The Florida Statutes are revised each year by new laws that create, amend, or repeal specific sections of the law.

Legislative changes to the Florida Statutes, effective up to and including Jan. 1, 2014, are treated as current for publication of the 2013 statutes. This means that some material in the 2013 session may have become effective as late as January 1, 2014.

Chapter 2013-028 (SB 286): Relating to Design Professionals

This law created Section II, 558.0035, F.S, Design professionals; contractual limitation on liability, limiting individual liability for a design professional employed by a business entity or an agent of the business entity for damages caused by negligence occurring during the course of contracted work.

- The law defines the term "business entity" to include virtually every type of organization, including: "any corporation, limited liability company, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state."

- The law redefines individuals licensed in the state as geologists as "design professionals," along with architects, interior designers, landscape architects, engineers, and surveyors, as previously defined.

The law states that a design agent is not individually liable for damages resulting from negligence occurring within the course and scope of a professional services contract if:

(a) The contract exists between the business entity and a claimant or with another entity for the provision of professional services to the claimant;
(b) The contract does not name as a party to the contract the individual employee or agent who will perform the professional services;
(c) The contract includes a prominent statement, in uppercase font that is at least 5 point sizes larger than the rest of the text, that, according to this section, an individual employee or agent may not be held individually liable for negligence;
(d) The business entity maintains any professional liability insurance required under the contract; and
(e) Any damages are solely economic in nature and the damages do not extend to personal injuries or property not subject to the contract.

Chapter 2013-060 (SB 1770): Relating to Property Insurance

This law makes a number of changes to the Florida Hurricane Catastrophe Fund, Citizens Property Insurance Corporation ("Citizens"), and public adjusters:

Regarding the Florida Hurricane Catastrophe Fund (CAT Fund):

- Renames the "Florida Hurricane Catastrophe Fund Finance Corporation," the "State Board of Administration Finance Corporation."
- Extends the CAT Fund assessment exemption for medical malpractice until May 31, 2016.
- Repeals outdated language for the $10M additional coverage for specified insurers and the Temporary Emergency Options for Additional Coverage.
- Requires the CAT Fund submit to the Legislature and Financial Services Commission an annual Probable Maximum Loss (PML) report for the upcoming storm season.

Regarding the Citizens Property Insurance Corporation (Citizens):

- Exempts Citizens from "exchange of business" restrictions to facilitate the operations of the clearinghouse.
- Adds a professional structural engineer to the Florida Commission on Hurricane Loss Projection methodology.
- Reduces the maximum Citizens' policy limit from $2 million to $1 million and further reduces this amount by $100,000 a year for three years to $700,000. Allows for an exemption in certain counties in which the Office of Insurance Regulation (OIR) determines do not have a reasonable degree of competition.
- Prohibits Citizens from covering structures commencing construction after July 1, 2014, seaward of the coastal construction control line.
- Allows the governor of Florida to appoint a consumer representative to the Citizens Board of Governors in addition to the current two appointments.
- Clarifies that a private company's offer within 15 percent of Citizens' rate for a new policy and no greater than the current rate for a renewal makes the policy ineligible for coverage with Citizens.
- Requires that Citizens disclose potential surcharge and assessment liabilities with each renewal notice.
- Allows insurers who take policies out of Citizens to use Citizens' policy forms for three years without approval from the OIR to use the forms.
- Establishes the Office of Inspector General at Citizens to be appointed by the Financial Services Commission.
- Requires Citizens to prepare an annual report on Citizens' loss ratio for non-catastrophic losses on a statewide and county basis.
- Subjects Citizens to the purchasing of commodities restrictions under s. 287.057, F.S.
- Establishes the Citizens clearinghouse by January 1, 2014.
- Requires the establishment of a process to divert commercial residential policies.
- Requires that companies participating in the clearinghouse must either appoint the agent of record or offer a limited servicing agreement.
- Requires that agents are to be paid Citizens commission or the company's standard commission, whichever is greater.
- Clarifies that the 45-day notice of nonrenewal applies to policies submitted to the clearinghouse.
- Provides that independent and captive agents are granted and must maintain ownership of records including policies placed in Citizens.
- Allows captive companies to approve their agents limiting servicing agreements with each participating company.
- Requires Citizens to submit to the Legislature and Financial Services Commission an annual PML report for the upcoming storm season.

Regarding public adjusters:

- Prohibits a public adjuster from receiving compensation from any source over the statutory fee cap. Applies disciplinary provisions in current law to public adjusters who violate the statutory fee caps through any maneuver, shift, or device.
- Repeals the current provision that for any claim filed with Citizens, a public adjuster cannot charge more than 10 percent of the difference between Citizens' initial offer and the amount actually paid.
- Requires a public adjuster to meet or communicate with the insurer to try to settle. Prohibits a public adjuster from acquiring any interest in salvaged property without the written consent of the policyholder.

Chapter 2013-064 (SB 342): Relating to Rental of Homestead Property

This law amends Section 1. Section 196.061, FS, regarding the terms of homestead property abandonment. It states that a homestead property may be rented for a period of up to 30 days per calendar year without being considered abandoned and/or without losing its exemption as a homestead property. A homestead property rented for more than 30 days risks loss of the homestead exemption. This section does not apply to in-service members of the armed forces.

The following terms are unchanged: The rental of all or most of a dwelling previously claimed to be a homestead for tax purposes constitutes abandonment until the dwelling is physically occupied by the owner. The abandonment of the homestead after January 1 of any year will not affect the homestead exemption for that specific year, unless the property is rented for more than 30 days each calendar year for two years in a row.

Chapter 2013-077 (HB 277): Relating to Assessment of Residential and Nonhomestead Real Property

This law created Section 193.624, FS, providing that a property appraiser, when he or she is making a determination regarding the assessed value of real property used for residential purposes, may not consider an increase in the just value of the property attributable to the installation of a renewable energy source device. This section applies to the installation of a renewable energy source device installed on or after January 1, 2013, to new and existing residential real property.

The new section defines a "renewable energy source device" as equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits, including the following:

(a) Solar energy collectors, photovoltaic modules, and inverters.
(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
(c) Rockbeds.
(d) Thermostats and other control devices.
(e) Heat exchange devices.
(f) Pumps and fans.
(g) Roof ponds.
(h) Freestanding thermal containers.
(i) Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.
(j) Windmills and wind turbines.
(k) Wind-driven generators.
(l) Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

Chapter 2013-092 (HB 999): Environmental Protection (Submerged Land Lease)

This law amends a number of statutes related to environmental regulations and permitting. Its primary relevance to community associations is the provision of conditions under which single- and multifamily docks over sovereign submerged lands may be exempt from the payment of leasing fees.

The law creates Section 253.0347(2)(f), FS, Lease of sovereignty submerged lands for private residential docks and piers, which exempts multifamily homes with boat docks from paying submerged land lease fees for an area equal to or less than 10 times the riparian shoreline, times the number of units with boat docks. "Riparian" refers to the water's shoreline or banks; where the land meets the water.

The new provision, Section 7 reads:

> 253.0347 (2) (f) A lessee of sovereignty submerged lands for a private residential multifamily dock designed to moor boats up to the number of units within the multifamily development is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected water body times the number of units with docks in the private multifamily development.

Chapter 2013-122 (SB 120): Relating to Condominiums – ILSA

The law amends the Florida Condominium Act to clarify that the point in time a condominium is created is when the declaration is recorded, regardless of any requirement or restrictions in a declaration of condominium that says otherwise. This law was initiated by the Real Property Section of the Florida Bar Association, with the intention of making the Condominium Act consistent with the Interstate Land Sales Acts (ILSA) in regard to phasing and turnover of a condominium.

The law revises the seven-year period for completion of all phases of a condominium project, changing the so-called "trigger" date establishing the beginning of this seven-year period from the date the declaration was recorded to the first of either:

- The recording date of the certificate of a surveyor and mapper (the date the affidavit of substantial completion is recorded).
- The recording of the "first unit owner deed" (a document that transfers title to a unit but is not accompanied by a recorded assignment of developer rights); i.e., the recording of the sale of a unit to a non-developer in the initial phase of the condominium), whichever is first.

These changes allow a developer to record a declaration and provide a description of the property to a prospective buyer in compliance with the federal Interstate Land Sales Full Disclosure Act. The law also creates a mechanism to extend the seven-year time period for an additional three years; within seven years of the earlier of either of the bulleted items above, all phases must be added to the condominium unless the unit owners vote to approve an amendment extending the seven-year period (to not more than 10 years) pursuant to the process and requirements in the statute. The unit owner vote may not occur until the last three years of the seven-year period.

This first recording date, as defined above, is used to determine:

- The deadline to bring an action to correct an omission or error in a declaration, which must be brought within three years after the recording of the first event.
- The beginning of the two-year time period, during which the developer and unit owners, when the developer has not turned over control of the association, may vote to waive the financial reporting requirement.
- The date when the developer's right to waive or reduce the funding of reserves expires during the first two fiscal years.
- The beginning date for the 12-month period during which an association may enter into agreements for leasehold interests or membership rights before such an agreement or leasehold is considered a material alteration or substantial addition to the association property (which would require a majority vote of the total voting interests or as authorized by the declaration).
- The beginning date for specific tasks related to turnover of association control from the developer to the unit owners.

The law extends from three years to five years the period of time that a county clerk is required to hold funds deposited by a developer who has not prepared and provided the surveyors certificate of the land that will be a part of the condominium. This provides additional time for developers to provide the surveyor's certificate of the land to the county clerk.

Specifically**,** Section 8. Subsection (1) of section 718.403, Florida Statutes, is amended to read:

718.403 Phase condominiums.

(1) Notwithstanding the provisions of s. 718.110, a developer may develop a condominium in phases, if the original declaration of condominium submitting the initial phase to condominium ownership or an amendment to the declaration which has been approved by all of the unit owners and unit mortgagees provides for and describes in detail all anticipated phases; the impact, if any, which the completion of subsequent phases would have upon the initial phase; and the time period (which may not exceed seven years from the date of recording the declaration of condominium) within which all phases must be added to the condominium and comply with the requirements of this section and at the end of which the right to add additional phases expires.
   (a) All phases must be added to the condominium within seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, unless the unit owners vote to approve an amendment extending the seven-year period pursuant to paragraph (b) of this section.
   (b) An amendment to extend the seven-year period shall require the approval of the owners necessary to amend the declaration of condominium pursuant to s. 718.110(1)(a). An extension of the seven-year period may be submitted for approval only during the last three years of the seven-year period.
   (c) An amendment must describe the time period within which all phases must be added to the condominium and such time period may not exceed 10 years from the date of the recording of the certificate of a surveyor and mapper pursuant to s.718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.
   (d) An amendment that extends the seven-year period pursuant to this section is not subject to the requirements of s.718.110(4).

Chapter 2013-136 (HB 77): Relating to Landlords and Tenants

This law amends Part II of Chapter 83, Florida Statutes, the Florida Residential Landlord and Tenant Act. The revised law:

- Authorizes the use of the eviction procedures under the Florida Landlord and Tenant Act, instead of foreclosure procedures, to apply to a person who occupies a dwelling pursuant to a lease-purchase agreement in some circumstances.
- Provides that the right of a prevailing party to attorney fees for enforcing a rental agreement may not be waived in the rental agreement.
- Provides that the right to the statutorily required notices before a landlord or tenant may terminate a lease may not be waived in the lease.
- Provides that attorney fees may not be awarded in a claim for personal injury damages based on a breach of duty to maintain the rental premises.
- Revises the notice that a landlord must provide a tenant that describes how advance rent and security deposits will be held and used by the landlord or returned to the tenant.
- Allows landlords to withdraw advance rents when the advance notice period commences without notice to tenants.
- Creates a rebuttable presumption that a new owner of a rental property receives the security deposits paid by a tenant to the previous owner, but limit's the presumption to one-months rent.
- Lessens the duty of landlords of single-family homes and duplexes to maintain screens on windows. A landlord must

ensure that screens are installed in reasonable condition at the beginning of the tenancy and repaired once annually thereafter.
- Provides that a right or duty enforced by civil action under the Florida Landlord and Tenant Act does not preclude prosecution for a criminal offense related to a lease or leased property.
- Eliminates a landlord's obligation to make certain disclosures regarding fire safety to tenants.
- Provides that upon the re-occurrence within 12 months after the initial notice of tenant actions constituting noncompliance under a lease, the landlord is not required to provide an additional notice before initiating an eviction action.
- Provides that a lease must require a landlord to give advance notice of the intent to not renew the lease if the lease requires a tenant to give advance notice to a landlord of the intent to vacate the premises at the end of the lease.
- Revises procedures for restoration of possession of a rental property to a landlord to provide that Saturdays, Sundays, and holidays do not stay the applicable notice period.

The law includes a new provision, amending Section 83.64, Retaliatory Conduct, stating that landlords may not retaliate against a tenant if the tenant has paid rent to a condominium, cooperative, or homeowners association after demand is made by the association in order to pay the landlord's obligation to the association. Note the addition of (1)(e) below.

83.64 Retaliatory conduct.

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:
   (a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;
   (b) The tenant has organized, encouraged, or participated in a tenants' organization;
   (c) The tenant has complained to the landlord pursuant to s. 83.56(1); or
   (d) The tenant is a service member who has terminated a rental agreement pursuant to s. 83.682;
   (e) The tenant has paid rent to a condominium, cooperative, or homeowners association after demand from the association in order to pay the landlord 's obligation to the association; or
   (f) The tenant has exercised his or her rights under local, state, or federal fair housing laws.

Chapter 2013-137 (HB 87) Relating to Mortgage Foreclosures CS/CS/SB 1666

This law was designed to provide some relief to community associations unable to move forward with foreclosure on delinquent properties in their communities. This legislation provides more legal authority to compel banks to pursue foreclosure actions, unless they are able to provide a convincing rationale for not doing so.

Statute of limitations on specific actions

The law reduces the statute of limitations period for a lender to enforce a deficiency judgment following the foreclosure of a one-family to four-family dwelling unit from five years to one year, for any such deficiency action that commences on or after July 1, 2013, regardless of when the cause of action accrued.

Bringing a foreclosure complaint

The law requires that in order to bring a complaint to foreclose a mortgage on residential real property designed principally for occupation by one to four families, including condominiums and cooperatives but excluding timeshare interests under part III of ch. 721, F.S., the complaint must establish that the plaintiff holds the original note or is a person entitled to enforce a promissory note. If a plaintiff has been delegated the authority to institute a foreclosure action on behalf of the person entitled to enforce the note, the complaint must describe with specificity the authority of the plaintiff and the document that grants such authority to the plaintiff.

A plaintiff in possession of the original promissory note must certify, under penalty of perjury, that the plaintiff possesses the original note. An "original note" or "original promissory note" is defined as the signed or executed promissory note, including a renewal, replacement, consolidation, or amended and restated note or instrument that substitutes for the previous promissory note. The term includes a transferrable record, but not a copy of any of the foregoing. The required certification must be submitted contemporaneously with the foreclosure complaint, and set forth the location of the note and other specified information. The original note and all other relevant documents must be filed with the court before the entry of any judgment of foreclosure or judgment on the note.

A plaintiff seeking to enforce a lost, destroyed, or stolen instrument must attach to the complaint an affidavit executed under penalty of perjury, detailing the chain of all endorsements, transfers, or assignments of the promissory note, and setting forth the facts and documents showing that the plaintiff is entitled to enforce the instrument. Adequate protection as required under s. 673.3091(2), F.S., must be provided before final judgment.

Finality of mortgage foreclosure judgment

The law provides that an action to challenge the validity of a final judgment of mortgage foreclosure or to establish or re-establish a lien or encumbrance of property is limited to monetary damages if all of the following apply:
- The party seeking relief from the final judgment of mortgage foreclosure was properly served in the foreclosure lawsuit.
- The final judgment of mortgage foreclosure was entered as to the property.

- All applicable appeals periods have run as to the final judgment with no appeals having been taken or having been finally resolved.
- The property has been acquired for value by a person not affiliated with the foreclosing lender or the foreclosed owner, at a time in which no lis pendens (a notice that shows the property is the subject of litigation) regarding the suit is in the official county records.

The law defines affiliates of the foreclosing lender to include any loan servicer for the loan being foreclosed, and any past or present owner or holder of the loan being foreclosed, and:
- A parent entity, subsidiary, or other person who directly or indirectly controls, is controlled by, or under common control of any such entities; or
- A maintenance company, holding company, foreclosure services company or law firm under contract with such entities.

The law provides that the former owner can continue to pursue money damages against the lender. The claims of the former owner, however, cannot affect the marketability of the property of the new owner.

The law provides that when a foreclosure of a mortgage occurs based upon enforcement of a lost, destroyed, or stolen note, a person who was not a party to the foreclosure action, but claims entitlement to enforce the promissory note secured by the mortgage, has no claim against the foreclosed property once it is conveyed to a person not affiliated with the foreclosing lender or the foreclosed owner. That person may still pursue recovery from any adequate protection given pursuant to s. 673.3091, F.S., or from the party who wrongfully claimed entitlement to enforce the promissory note, from the maker of the note, or any other person against whom a claim may be made.

Deficiency judgments
The law limits the amount of a deficiency judgment on owner-occupied residential property to the difference between the judgment amount and the "fair market value" on the date of the foreclosure sale. Similarly, the deficiency for a short sale may not exceed the difference between the outstanding debt and the fair market value of the property on the date of the sale.

Show cause procedure
The law makes several revisions to the show of cause process. The law provides that after filing a complaint, the plaintiff may request an order to show cause for the entry of final judgment, and the court must immediately review the request and the court file in chambers without a hearing. If the complaint is verified, complies with the requirements in s. 702.015, F.S., and alleges a cause of action to foreclose on real property, the court must issue an order to show cause why a final judgment of foreclosure should not be entered to the other parties named in the action. The law adds a number of elements that must be included in the court's order to show cause, which are sent to the other parties named in the action. The court must set a hearing no sooner than the later of 20 days after service of the order to show cause or 45 days after service of the initial complaint. The hearing is no longer required to be held within 60 days of the date of service, as required by current law. The law specifies that the Legislature intends that the alternative show cause procedure may run simultaneously with other court proceedings.

Before the court can enter a final judgment of foreclosure, and after the court has found that all defendants have waived the right to be heard, the law adds the requirement that the plaintiff must file the original note, establish a lost note, or show the court the obligation to be foreclosed is not evidenced by a promissory note. If the hearing time is insufficient, the court may announce a continued hearing on the order to show cause.

The law exempts foreclosures of owner-occupied residences from provisions authorizing the plaintiff to request the court to:
- Enter an order to show cause why it should not enter an order to make payments while the foreclosure proceedings are pending.
- Enter an order to vacate the premises.

Adequate protections for lost, destroyed, or stolen notes
The law provides that the following may constitute reasonable means of providing adequate protection, if so found by the court:
- A written indemnification agreement by a person reasonably believed sufficiently solvent.
- A surety bond.
- A letter of credit issued by a financial institution.
- A deposit of cash collateral with the clerk of the court.
- Such other security as the court deems appropriate under the circumstances.

The law provides that a person who wrongly claims to be the holder of a note or to be entitled to enforce a lost, stolen, or destroyed note is liable to the actual holder of the note for damages and attorney fees and costs. The law specifies that the actual holder of the note can pursue any other claims or remedies it may have against the person who wrongly claimed to be the holder, or any person who facilitated or participated in the claim.

Application and implementation of law
The act applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, regardless of when executed, except for s.702.015, F.S., which applies only to cases filed on or after July 1, 2013, amendments to s.702.10, F.S., and s.702.11, F.S., which apply to causes of action pending on the act's effective date.

Chapter 2013-159 (HB 7025): Relating to Vacation and Timeshare Plans

This law, which is related to the Florida Vacation Plan and Timesharing Act, revises provisions to the foreclosure process for the foreclosure of liens on timeshare interests, including liens based on unpaid assessments and unpaid mortgage obligations. It provides for the regulation of timeshare interest transfer companies, businesses that provide timeshare owners the ability to transfer ownership of their timeshare to another entity or person for a fee paid by the timeshare owner, to relieve the timeshare owner from paying maintenance fees and other obligations of ownership.

The law requires the following:

- That timeshare transfer companies or their agent must provide an estoppel letter to the managing entity of the timeshare plan. An estoppel letter indicates whether all assessments and other money owed to the managing entity by the timeshare interest owner have been paid.
- That timeshare transfer companies deliver a signed, written resale transfer agreement to the consumer timeshare reseller, and specifies the information that must be included in the agreement. The agreement must contain a statement that no fees or costs will be paid before delivery to the consumer timeshare reseller and managing entity of written evidence that the transfer services have been performed. The agreement must also identify the escrow agent.
- That the person providing transfer services establish an escrow account. The funds or property must be held with the escrow agent until the transfer company has fully complied with the obligations under the agreement. The escrow records must be kept for five years. The law provides that it is a third-degree felony to intentionally fail to comply with the escrow and recordkeeping requirements. Managing entities are allowed to pursue a private right of action to recover actual damages, plus attorney fees and court costs to bring an action for a declaratory judgment, and to bring an action to obtain an injunction. The law also provides exemptions for real estate brokers, licensed attorneys, title insurers, or agents who receive total consideration from a consumer reseller of less than $600, and for transfers from a timeshare reseller to the developer or managing entity of that timeshare plan.

The law:

- Exempts timeshare condominiums from the requirements in the conduct of condominium board member elections.
- Permits timeshare plan reserves to be calculated using the pooling accounting method as an alternative to the straight-line accounting method, as is also currently permitted for condominium associations.
- Revises the definition of the term "timeshare estate" in s.721.05(34), F.S., to include direct and indirect interest in a trust.
- Revises the definition of the term "notice address" to include any address that is known to be the current address of a timeshare mortgagor, owner, or junior interest holder.
- Amends the definition of the term "permitted delivery service" in s. 721.82(11), F.S., to allow the trustee to use a foreign jurisdiction's recognized equivalent of certified or registered mail.
- Requires that the required title search must be conducted and delivered to the trustee prior to the sale of the timeshare interest with an effective date of within 60 days of the date it is delivered to the trustee.
- Provides that the initiation of a foreclosure proceeding against a timeshare interest does not automatically act as a lis pendens, which is a notice recorded in the chain of title to real property showing that the property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome.
- Provides the information that must be included in a notice of lis pendens.
- Provides a good-faith standard for determining whether the obligor is the person who signed the receipt of the notice of default and intent to foreclose.
- Provides that it will not be a third-degree felony, as provided in the previous law, if the trustee makes an incorrect determination of the identity of the signature on the notice receipt, and he or she made a good-faith effort to properly ascertain whether the obligor (the individual or company that owes the debt) signed the return receipt in accordance with the good-faith standards provided in this law.
- Delineates the information that must be included in the publication notice that is required if the obligor cannot be served with a notice of default and intent to foreclose.
- Provides that circumstances in which the attestation that a diligent search and inquiry to ascertain the obligor has been done is not required.
- Permits the notice of default and intent to foreclose to be perfected as to all obligors at the same address, so long as notice is perfected as to at least one obligor at that address.
- Permits the trustee to use a third party to conduct the sale on behalf of the trustee.
- Corrects errors by deleting duplications.

Chapter 2013-188 (HB 73) Relating to Residential Properties

This law revises a number of important provisions on the governance of condominium, cooperative, and homeowners associations.

Regarding condominium, cooperative, and homeowners associations, the law:

- Gives association members the right to use their smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures instead of the association providing copies to the member, and without charge to the member.
- Permits associations to print and distribute a directory with the members' name, parcel address, and telephone number. The association, however, must permit members to exclude their telephone number from the directory by submitting a written request.
- Requires that any challenge to the election process begin within 60 days after the election results are announced.
- Prohibits election recalls when there are less than 60 days before the next election.
- Provides that the suspension of an owner's rights does not apply to limited common elements that are intended to be used only by that owner, common elements needed to access the unit or home, utility services to the unit or home, parking spaces, or elevators, and that suspended interests are not needed for establishing a quorum, conducting an election, or obtaining member approval.

Regarding condominiums, the law:

- Decreases the number of votes required for the purchase of a lease.

- Defines the unit owner's responsibility for the cost of reconstruction of condominium property.
- Clarifies that broadcast notice by closed-circuit television may be made in lieu of a notice posted physically on the condominium property.
- Clarifies that the board must maintain a copy of a board member's post-election certification for at least five years or the duration of the board member's tenure, whichever is longer.
- Revises the hurricane protection provisions to include impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection and clarifies the conditions for a unit owner to receive credit for the prior installation of hurricane protection.
- Extends from seven years to 10 years the period for completion of all phases of a phase condominium.
- Provides for the creation of a secondary condominium within a primary condominium.
- Permits officers or full-time employees of the condominium ombudsman's office to engage in another profession or any other business that is not directly or indirectly related or conflicts with his or her work in the ombudsman's office.
- Provides that 50, rather than 75, or fewer units shall prepare a cash report in lieu of a financial statement.

Regarding cooperative associations, the law:
- Provides that board meetings held for the purpose of discussing personnel matters are not subject to the open meetings requirement.
- Expands the types of official records that are not accessible to members of the association, including records containing specified personal identifying information.
- Requires newly elected or appointed members of the cooperative board to either:
  - Provide a post-election certification that they have read the governing documents of the association, or
  - Submit a certification showing the satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.

Regarding homeowners associations, the law:
- Includes the personnel records of the management company among the records that are not accessible to the association's members.
- Deletes the condition that the parcel owner must submit a written request to speak prior to the meeting in order to exercise his or her right to speak at a meeting.

For condominium, cooperative, and multifamily residential housing, the law prohibits the enforcement of the Phase II Firefighter's Service requirements for existing elevators until an elevator is replaced or the elevator requires major modification. This requirement permits the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment during an emergency.

Regarding cooperative and homeowners associations, the law provides a process for amending association documents without the approval of all mortgagees.

Regarding condominium and homeowners associations, the law increases total annual revenue amounts used to determine the type of financial reporting required:
- Associations with total annual revenues of less than $150,000 must prepare a report of cash receipts and expenditures.
- Associations with total annual revenues between $150,000 and $300,000 must prepare compiled financial statements.
- Associations with total annual revenues from $300,000 to $500,000 must prepare reviewed financial statements.
- Associations with total annual revenues of $500,000 or more must prepare audited financial statements.
- Associations operating fewer than 50 units, regardless of annual revenues, must prepare a report of cash receipts and expenditures in place of financial statements.

Chapter 2013-218 (HB 7119): Relating to Homeowners Associations

This law primarily affects the governance and administration of homeowners associations, but also amends Chapter 468 FS, Part VIII, providing that disciplinary action can be taken against community association managers (CAMs) who violate any provision of Chapters 718, 719 or 720 when performing community association management services pursuant to a contract, as defined in Section 468.431(1). Violations are subject to disciplinary proceedings by the Department of Business and Professional Regulation.

Administration of homeowners associations
The law:
- Requires homeowners associations to report specified information to the Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation (Department). The department is required to establish an Internet-based registration system and to submit an annual report to the governor, the president of the Senate, and the speaker of the House of Representatives. This reporting requirement will expire on July 1, 2016, unless reenacted by the Legislature.
- Provides that associations do not have to allow nominations at the meeting where the election is to be held, if it permits nominations in advance of the meeting. It also provides that an election is not required unless more candidates are nominated than board vacancies exist.
- Limits the liability of associations for assessments that came due before the association acquired title through a foreclosure.

Regarding the homeowner's access to official records of the association, the law:
- Requires that the official records must be maintained for seven years and within 45 miles of the community or within the same county.

- Permits associations to maintain the records electronically.
- Permits members to photograph records using a camera or other electronic device at no charge.
- Permits associations to charge copying costs and personnel costs required to retrieve and copy records that exceed one-half hour, but the cost may not exceed $20 per hour, except that personnel costs may not be charged for requests that result in 25 or fewer pages.
- Decreases the cost of copies provided on the association's photocopier from 50 cents per page to 25 cents per page.

Regarding the officers and directors of homeowners associations, the law requires:

- Newly elected directors to certify that they have read, and will uphold, the governing documents.
- Contracts with interested directors to be disclosed and approved by a two-thirds vote of the board, and permits the contract to be canceled by a vote of the members.
- The removal of officers and directors who solicit or accept things of value from anyone providing or offering to provide services to the association, with exceptions.
- The removal of officers or directors charged with theft or embezzlement of association funds.
- Associations to maintain insurance or fidelity bonding, but permits the associations to annually waive the insurance requirement upon a majority vote of the members.

Regarding developer control of homeowners associations, the law provides:

- Additional events that trigger control of the association by the non-developer members, including when the developer has failed to complete the amenities and infrastructure, has filed chapter 7 bankruptcy, has lost title through foreclosure, or when a receiver has been appointed.
- That homeowners can elect at least one member to the board when 50 percent of the parcels are conveyed to non-developer members.
- That the right of a developer to amend the association's governing documents must be reasonable and prohibits the developer from making unilateral changes to those governing documents under certain circumstances.

Chapter 2013-227 (SB 0050) Relating to Public Meetings

Before this law was established, there was no legal guarantee that members of the public had the right to speak at public meetings. This law requires that members of the public be given a reasonable opportunity to voice their concerns or thoughts on propositions considered by the board or commission of a state agency or local government. If certain requirements are met, this opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action on the subject. This law may also exclude specific meetings and acts from the legal requirements to be heard established by the law.

The following conditions apply:

- If a board or commission authorized to adopt certain reasonable rules or policies governing the opportunity to be heard does so and complies with them, the organization is considered to be acting in compliance with the section.
- The law authorizes a circuit court to issue injunctions for the purpose of enforcing the section upon the filing of an application for such injunction by any citizen of Florida.
- If such an action is filed and the court determines that the board or commission violated the section, the law requires the court to assess reasonable attorney fees against the board or commission.
- The law also authorizes the court to assess reasonable attorney fees against the individual filing the action if the court finds that the action was filed in bad faith or was frivolous.
- The law excludes specified public officers from such attorney fee provisions.
- If a board or commission appeals a court order finding that it violated the section and the order is affirmed, the law requires the court to assess reasonable appellate attorney fees against the board or commission.
- The law provides that any action taken by a board or commission that is found to be in violation of the section is not void as a result of such violation.

Chapter No. 2013-246 (HB 903): Relating to Adverse Possession

This law was designed to address the problem of individuals squatting illegally on property while at the same time preserving adverse possession actions for legitimate purposes. It provides the following:

- Individuals are required to satisfy new conditions to take title to property through adverse possession. One requirement is that the person pays all outstanding taxes against the property within one year after entering into possession. The law also revised the form of the return filed in connection with the adverse possession claim. The new form requires a person to acknowledge that the return "does not create any interest enforceable by law" in the property.
- In cases where a person attempts to occupy, or occupies, a residential structure on the basis of adverse possession before filing a return with the property appraiser, the law provides that the occupying individual is subject to criminal penalties for trespassing.
- In cases where a person attempts to occupy a residential structure by claim of adverse possession before filing a return and then offers the property for lease, the law provides the occupying individual is subject to criminal penalties for theft.

The Florida Administrative Code contains rules for community association managers (CAMs) in Chapter 61E14, (formerly Chapter 61-20 FAC), Department of Business and Professional Regulations. The table below shows how the chapter is organized. The following section shows the current text. To ensure you have the most recent version of the FAC, refer to *https://www.flrules.org/gateway/Division.asp?DivID=835*.

FAC changes in 2013 were limited to Chapter 61E14-2, FAC, "Standards of Professional Conduct," which was amended to update language, remove unnecessary text, and clarify standards of professional conduct for community association managers. The rule also implements Sections 468.433 and 468.436 FS, relating to disciplinary action.

61E14: Community Association Managers Chapter/Section title	Rule number
Chapter 61E14-1: Licensure	
Prelicensure Education Requirements	61E14-1.001
Examination for Manager's License	61E14-1.002
Reexamination	61E14-1.003
Examination Review	61E14-1.004
Chapter 61E14-2: Professional Conduct	
Standards of Professional Conduct	61E14-2.001
Chapter 61E14-3: Fees and Assessments	
Fees	61E14-3.001
Special Assessment	61E14-3.002
Chapter 61E14-4: Continuing Education	
Continuing Education Renewal Requirements	61E14-4.001
Continuing Education Provider Approval	61E14-4.002
Continuing Education Course Approval	61E14-4.003
Reactivation Continuing Education	61E14-4.004
Prelicensure Education Provider Approval	61E14-4.005

Chapter 61E14-1: Licensure

61E14-1.001 Prelicensure Education Requirements.

(1) All community association manager applicants must satisfactorily complete a minimum of 18 in-person classroom hours of instruction of 50 minutes each within 12 months prior to the date of examination. No applicant shall be allowed to take the licensure examination unless the applicant provides documentation of completion of the requisite prelicensure education. Each contact hour shall consist of at least 50 minutes of classroom instruction.

(2) The 18 hours of prelicensure education shall be comprised of courses in the following areas:
   (a) State and federal laws relating to the operation of all types of community associations, governing documents, and state laws relating to corporations and nonprofit corporations – 20 percent;
   (b) Procedure for noticing and conducting community association meetings – 25 percent;
   (c) Preparation of community association budgets and community association finances – 25 percent;
   (d) (Insurance matters relating to community associations – 12 percent; and
   (e) (Management and maintenance – 18 percent.

(3) Applicants who can document to the Council that they suffer from a disability or hardship shall be permitted to complete prelicensure education by either correspondence or online courses. Such documentation must be received and approved by the Council prior to enrolling and completing any correspondence or online prelicensure courses.
   (a) The following shall constitute acceptable "hardships" as used in this rule:
      1. The applicant's residence is more than 70 miles from the nearest physical location where prelicensure education is taught.
      2. Providers are not offering any in-person prelicensure education courses within the 12 months preceding the next available examination.
   (b) "Disability" as used in this rule shall mean a physical or mental impairment that substantially limits one or more of the major life activities of the applicant which would preclude the applicant from attending in-person prelicensure courses.

61E14-1.002 Examination for Manager's License – REVISED 1/5/2010

(1) An examination candidate must achieve a scaled score of 75 or higher in order to achieve a passing grade on the examination.

(2) The examination for a community association manager's license as approved by the Council must test the applicant's knowledge of the subjects in subsection 61E14-1.001(2), F.A.C., with the corresponding approximate percentages of questions to the examination as a whole.

61E14-1.003 Reexamination

If an examination candidate fails to achieve a passing grade on the examination, the candidate may re-apply in writing for reexamination with the (appropriate fees) fees provided in Rule 61E14-3.001, F.A.C. An examination candidate may only apply for reexamination within one year from the date of certification of the original application for a community association manager's license by the department.

61E14-1.004 Examination Review

(1) The Council hereby adopts by reference Rule 61-11.017, F.A.C., as its rule governing examination review.

(2) Notwithstanding the provisions of Rule 61-11.017, F.A.C., examination reviews may also be conducted at other times and places as established by the department. For purposes of this rule, a representative of the department conducting the examination review shall also include a representative of the contract vendor for the examination.

61E14-2: Standards of Professional Conduct

This rule clarifies standards for professional conduct in the service of community association management, and implements Sections 468.433 and 468.436 FS, providing enforcement authority and disciplinary action for violating the law. Legislative changes for 2013 are indicated by ~~strikethrough~~ (deletions) and underscore (additions) markings.

61E14-2.001 Standards of Professional Conduct

Licensees shall adhere to the following provisions, standards of professional conduct, and such provisions and standards shall be deemed automatically incorporated, as duties of all licensees, into any written or oral agreement for the rendition of community association management services~~, the violation of which shall constitute gross misconduct or gross negligence~~.~~:~~

(1) Definitions. As used in this rule, the following definitions apply:

~~(a) The word "control" means the authority to direct or prevent the actions of another person or entity pursuant to law, contract, subcontract or employment relationship, but shall specifically exclude a licensee's relationship with a community association, its board of directors, any committee thereof or any member of any board or committee.~~

(a) ~~(b)~~ "Licensee" means a person licensed pursuant to Sections 468.432(3)(1) and (4)(2), F.S.

(b) ~~(c)~~ "Community Association Management services" means performing any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill:

1. Controlling or disbursing funds of a community association;
2. Preparing budgets or other financial documents for a community association;
3. Assisting in the noticing or conduct of community association meetings;
4. Coordinating maintenance for the residential development; and
5. Other day-to-day services involved with the operation of a community association.

(c) ~~The word~~ "Ffunds" as used in this rule includes money and negotiable instruments including checks, notes and securities.

(d) "Due professional care" means the ethical duty of a community association manager or community association management firm to exercise the level of care, diligence, and skill as prescribed in Sections 468.432 (3) and (4), F.S., in the manner as other licensees would exercise in the same or similar circumstances.

(e) "Professional competence" means the capability to perform community association management services with skill of an acceptable quality as other licensees.

(2) Honesty. During the performance of management services, a licensee shall not do the following: ~~knowingly make an untrue statement of a material fact or knowingly fail to state a material fact~~:

(a) Make misleading, deceptive, or fraudulent representations in or related to the practice of community association management; or

(b) Make deceptive, untrue, or fraudulent representations in or related to the practice of community association management, or employ a trick or scheme in or related to the practice of community association management.

(3) Professional Competence. A licensee shall undertake to perform only those community association management services which ~~he or it~~ can reasonably be ~~expect to~~ complete~~d~~ with professional competence.

(4) Due Professional Care.

(a) A licensee shall show ~~exercise~~ due professional care in the performance of community association management services by doing the following:

1. ~~(b) A licensee shall not knowingly fail to C~~complying with the requirements of the association's governing documents or by-laws ~~by which the association is created or operated~~ so long as such documents comply with the requirements of law.

~~(5) Control of Others. A licensee shall not permit others under his or the management firm's control to commit on his or the firm's behalf, acts or omissions which, if made by either licensee, would place that licensee in violation of Chapter 455, 468, Part VIII, F.S., or Chapter 61-20, F.A.C. or other applicable statutes or rules. A licensee shall be deemed responsible by the department for the actions of all persons who perform community association management related functions under his or its supervision or control.~~

(5) ~~(6) Records~~ Gross Misconduct.

(a) It shall be considered gross misconduct, as provided by Section 468.436(2), F.S., for a licensee to violate the following provisions of this subsection:

1. ~~(a) A licensee shall not w~~Withholding possession of any original books, records, accounts, funds, or other property of a community association when requested by the community association to deliver the same to the association upon reasonable notice. Reasonable notice shall extend no later than 10 business days after termination of any management or employment agreement and receipt of a written request from the association. The manager may retain those records necessary for up to 20 days to complete an ending financial statement or report. Failure of the association to provide access or retention of accounting records to prepare the statement or report shall relieve the manager of any further responsibility or liability for preparation of the statement or report. The provisions of this

rule apply regardless of any contractual or other dispute between the licensee and the community association. ~~It shall be considered gross misconduct, as provided by Section 468.436(2), F.S., for a licensee to violate the provisions of this subsection.~~

2. ~~(b) A licensee shall not d~~Denying access to association records, for the purpose of inspecting or photocopying the same, to a person entitled to such by law, to the extent and under the procedures set forth in the applicable law.
3. ~~(c) A licensee shall not create~~ Creating false records or alter records of a community association or of the licensee except in such cases where an alteration is permitted by law (e.g., the correction of minutes per direction given at a meeting at which the minutes are submitted for approval).
4. ~~(d) A licensee shall not, to the extent charged with the responsibility of maintaining records, fail~~ Failing to maintain ~~his or its records,~~ the records of a community association manager or management firm or ~~and~~ the records of any applicable community association, in accordance with the laws and documents requiring or governing the records.
5. Using funds received by the community association manager or management firm for any purpose other than for the specific purpose or purposes for which the funds were remitted.

~~(7) Financial Matters. A licensee shall use funds received by him or it on the account of any community association or its members only for the specific purpose or purposes for which the funds were remitted.~~

(6) ~~(8)~~ Other Licenses.

(a) A licensee shall not commit acts of gross negligence or gross misconduct in the pursuit of community association management or any other profession for which a state or federal license is required or permitted. It shall be presumed that gross negligence or gross misconduct has been committed where a licensee's other professional license has been suspended or revoked for reasons other than non-payment of fees or noncompliance with applicable continuing education requirements.

(b) A licensee shall not perform, agree to perform or hold himself or itself out as being qualified to perform any services which, under the laws of the State of Florida or of the United States, are to be performed only by a person or entity holding the requisite license for same, unless the licensee also holds such license or registration; provided, however, that no violation hereof shall be deemed to have occurred unless and until the authority administering the license or registration in question makes a final determination that the licensee or registrant has failed to obtain a license or registration in violation of the law requiring same.

(c) A licensee shall reveal all other licenses or registrations held by him or it under the laws of the State of Florida or the United States, if, as a result of such license or registration, a licensee receives any payment for services or goods from the community association or its board.

(d) Violation of any provision of Section 455.227(1), F.S., or of any part of this rule shall subject the licensee to disciplinary measures as set out in Section 468.436, F.S.

Chapter 61E14-3: Fees and Assessments

61E14-3.001 Fees.

The following fees are adopted by the Council:

(1) Application fee for a Community Association Manager's License: $50.00
(2) Fingerprint processing fee: $47.00
(3) Examination fee: When the examination is not conducted by a professional testing service pursuant to Section 455.2171, F.S., $100.00 payable to the department. When the examination is conducted by a professional testing service pursuant to Section 455.2171, F.S., $73.00 payable to the department plus $27.00 payable to the testing service.
(4) Re-examination fee: When the examination is not conducted by a professional testing service pursuant to Section 455.2171, F.S., $100.00 payable to the department. When the examination is conducted by a professional testing service pursuant to Section 455.2171, F.S., $73.00 payable to the department, $27.00 payable to the testing service.
(5) Examination review fee: $50.00
(6) Initial license fee: $100.00
(7) Renewal fees.
  (a) The biennial renewal fee for a licensee renewing as active: $100.00
  (b) The biennial renewal fee for a licensee renewing as inactive: $100.00
(8) Delinquent license fee. A delinquent status licensee shall pay a delinquent license fee when the licensee applies for active or inactive status: $50.00
(9) Unlicensed activity fee for initial licensure and license renewal: $5.00
(10) Reactivation fee for reactivating an inactive license: $25.00
(11) Change of status processing fee. A licensee shall pay a change of status processing fee to change the licensee's status at any time other than the beginning of a licensure period: $15.00
(12) Duplicate license fee in event of loss or destruction: $25.00
(13) Application fee for continuing education providers: $250.00
(14) The renewal fee for continuing education providers: $250.00
(15) Application fee for prelicensure education providers: $250.00
(16) The renewal fee for prelicensure education providers: $250.00

61E14-3.002 Special Assessment.

(1) Each Community Association Manager licensee licensed on or before January 1, 2002, whether active or inactive, shall pay a special assessment fee of $200.00 to the department. Payment of the fee must be received by the department no later than 5:00 p.m. on September 30, 2002.
(2) The special assessment fee applies to all licensees including those whose licenses have been suspended and/or placed on probation by the department.

(3) Failure to pay the special assessment fee as required above shall constitute grounds for disciplinary action. Licensees who fail to pay the special assessment fee as required above shall be charged with violating Section 468.436(1)(b)2., F.S.

Chapter 61E14-4: Continuing Education

61E14-4.001 Continuing Education Renewal Requirements.

(1) All community association manager licensees must satisfactorily complete a minimum of 20 hours of continuing education. Each hour shall consist of 50 minutes of student involvement in approved classroom, correspondence, interactive, distance education or Internet courses which courses shall include the required hours at an approved update seminar. No license shall be renewed unless the licensee has completed the required continuing education during the preceding licensing period.

(2) Only continuing education courses approved by the Council shall be valid for purposes of licensee renewal.

(3) The 20 hours of continuing education shall be comprised of courses approved pursuant to Rule 61E14-4.003, F.A.C., in the following areas:

(a) Four hours of legal update seminars. Licensees shall satisfactorily complete a two-hour legal update seminar during each year of the biennial renewal period. The legal update seminars shall consist of instruction regarding changes to Chapters 455, 468, Part VIII, 617, 718, 719, and 721, F.S., and other legislation, case law, and regulations impacting community association management. Licensees shall not be awarded continuing education credit for completing the same legal update seminar more than once even if the seminars were taken during different years.

(b) Four hours of instruction on insurance and financial management topics relating to community association management.

(c) Four hours of instruction on the operation of the community association's physical property.

(d) Four hours of instruction on human resources topics relating to community association management. Human resources topics include, but are not limited to, disaster preparedness, employee relations, and communications skills for effectively dealing with residents and vendors.

(e) Four hours of additional instruction in any area described in paragraph (3)(b), (c) or (d) of this rule or in any course or courses directly related to the management or administration of community associations.

(4) No licensee will receive credit, for purposes of meeting the continuing education requirement, for completing the same continuing education course more than once during a biennial renewal period.

(5) Course instructors may receive continuing education credit hours in the amount of hours approved by the Council for licensees only once every renewal period for each approved course taught by the instructor.

(6) Anyone licensed for more than 24 months at renewal time will be required to have complied with the CE requirements set forth in subsection (1), above, prior to renewal. More than 24 months, means 24 months plus 1 day. Licensees licensed for 24 months or less at renewal time are exempt from compliance with the CE requirements set forth in subsection (1), above, until the end of the next renewal cycle.

(7) A licensee shall retain, and make available to the department and its representatives upon request, continuing education course certificates of completion that comply with paragraph 61-6.015(4)(a), F.A.C., for three years following course completion.

(8) All licensees shall comply with all applicable provisions of subsections 61-6.015(2) and (3), F.A.C.

61E14-4.002 Continuing Education Provider Approval

(1) A continuing education provider is a person or entity approved pursuant to this rule to conduct continuing education courses for community association managers.

(2) Entities or individuals who wish to become approved providers of continuing professional education shall make application to the Council, on Forms DBPR 0020-1 – Master Organization Application (Eff. 05/10), DBPR 0060-1 – General Explanatory Description (Eff. 05/10), and DBPR CAM-4302 – Continuing Education Provider and Course Approval Application (Rev. 05/10), all of which are hereby incorporated by reference into this rule. These forms are available as a single application packet with instructions, a copy of which may be obtained from the department's website at https://www.myfloridalicense.com/intentions2.asp?SID=&page=intentions2.asp.

(3) Each provider application shall contain the following information, and shall be accompanied by the following documentation and other information as required by the Council:

(a) The name, address, telephone number, fax number, and email address of a contact person who will fulfill the reporting and documentation requirements for provider approval. The provider shall notify the Council of any change of contact person within ten (10) days of the actual change.

(b) The identity and qualifications of all instructors who will be presenting courses during the period of providership. These qualifications at a minimum shall include instructional experience and:

1. A bachelor's degree and two years experience in the subject matter being taught; or
2. An associate's degree and four years experience in the subject matter being taught; or
3. Six years experience in the subject matter being taught.

Should additional instructors be added during the period of providership, the provider shall notify the Council in writing of the new instructor's qualifications at least 30 days prior to actually conducting the course.

(c) The appropriate continuing education provider application fee pursuant to subsection 61E14-3.001(13), F.A.C.

(4) Continuing education provider status shall be valid from the date of approval until May 31 of every odd-numbered year. Providers may renew their provider status within 90 days of May 31 of the odd-numbered year. Those seeking renewal of provider status must reapply in a format acceptable to the Council and submit the appropriate renewal fee pursuant to subsection 61E14-3.001(14), F.A.C. Providers who fail to renew their provider status on a timely basis in accordance with this rule shall not offer or advertise a course as an approved course for continuing education. Renewal of provider status shall be for a two-year period until May 31 of the next odd numbered year.

(5) Once approved, providers shall comply with the following requirements:

(a) When advertising approved courses, providers shall disclose the course approval number and the number of contact hours assigned by the Council and the course subject area. Providers shall not advertise courses as approved courses until they are actually approved by the Council.

(b) Providers shall maintain a system of recordkeeping which provides for storage of approved course offerings information.

(c) Records of individual courses shall be maintained by the provider for six years and shall be available for inspection by the Council and the department or the department's designee.

(d) An attendance record shall be maintained by the provider for six years and shall be available for inspection by the Council and the department or the department's designee. Providers must electronically provide to the department a list of attendees taking a course within five (5) business days of the completion of the course. For home study courses, the provider must electronically supply the list of those individuals successfully completing the course by the 5th of the month following the calendar month in which the provider received documentation and was able to determine the successful completion of the course by the individual. The list and a certificate of attendance provided to the participant shall include the provider's name, the name and license number of the attendee, the date the course was completed and course approval number and the total number of hours successfully completed in each type of continuing education credit granted as described in subsection 61E14-4.001(3), F.A.C. If the instructor is receiving credit as set forth in subsection 61E14-4.001(5), F.A.C., the instructor shall be listed as an attendee with the same information required above. Providers shall maintain security of attendance records and certificates.

(e) All information or documentation, including electronic course rosters, submitted to the Council or the department shall be submitted in a format acceptable to the Council and the department. Failure to comply with the time and form requirements will result in disciplinary action taken against the provider. No provider may reapply for continuing education provider status until at least two (2) years have elapsed since the entry of the final order against the provider.

(f) Providers shall assure that sales presentations shall not be conducted during, immediately before or after the administration of any courses approved pursuant to this rule.

(6) A continuing education provider initially approved during the last 90 days prior to May 31 of an odd-numbered year shall not be required to reapply as a condition for renewing provider status.

(7) The Council shall deny continuing education provider status to any applicant who submits false, misleading or deceptive information or documentation to the Council.

(8) The Council retains the right and authority to audit courses offered by any provider approved pursuant to this rule.

(9) The Council shall rescind the provider status or reject individual courses offered by a provider if the provider disseminates any false or misleading information in connection with the continuing education course, or if the provider or its instructor(s) failed to conform to and abide by the rules of the Council or the department or are in violation of any of the provisions of Chapter 468, Part VIII or 455, F.S.

(10) The Council shall utilize expert groups or individuals as appropriate in implementing these rules.

61E14-4.003 Continuing Education Course Approval

(1) Continuing education courses shall be valid for purposes of the continuing education requirement only if such courses have been approved by the Council. The Council shall approve a course as a continuing education course for the purpose of this rule when the following requirements are met:

(a) Application for course approval shall be received by the Council prior to the date the course is offered, on Forms DBPR 0020-1 – Master Organization Application (Eff. 05/10), DBPR 0060-1 – General Explanatory Description (Eff. 05/10), and DBPR CAM-4302 – Continuing Education Provider and Course Approval Application (Rev. 05/10). These forms are available as a single application packet with instructions, a copy of which may be obtained from the department's website at https://www.myfloridalicense.com/intentions2.asp?SID=&page=intentions2.asp.

(b) A course outline is submitted to the Council, along with the application, which describes the course's content and subject matter. A course outline shall address the following:

1. **Learner Objectives.** Objectives shall describe expected learner outcomes, how learner outcomes will be evaluated, and describe how the objectives will be obtained. The objectives shall describe the content, teaching methodology and plan for evaluation.
2. **Subject Matter.** The content shall be specifically designed to meet the objectives and the stated level and learning needs of community association managers. Specifically, it shall address one or more of the subject areas outlined in subsection 61E14-4.001(3), F.A.C.
3. **Materials and Methods.** It shall be demonstrated to the Council that:
   a. Learning experiences and teaching methods are appropriate to achieve the objectives;

b. Time allotted for each activity shall be sufficient for the learner to meet the objectives;
c. Principles of adult education are utilized in determining teaching strategies and learning activities; and
d. Currency and accuracy of subject matter will be documented by references or bibliography.

4. **Evaluation.** Participants are given an opportunity to evaluate learning experiences, instructional methods, facilities and resources used for the course.

(c) A list of all instructors for the course, which shall include names, addresses, email addresses and telephone numbers, shall accompany the course approval application.

(d) The course approval application must be accompanied by an approved provider number or the applicant must simultaneously apply for continuing education provider status pursuant to Rule 61E14-4.002, F.A.C.

(2) The course provider shall submit to the Council a sample continuing education course certificate of completion that complies with paragraph 61E14-4.002(5)(d), F.A.C., that is given to each course participant if the participant completes the course. In addition to the information required by paragraph 61E14-4.002(5)(d), F.A.C., the certificate shall be provided to the course participant at the completion of the course. The certificate of completion shall contain, on its face, the following statement in capital letters in at least 12 point type:

IF YOU HAVE ANY CONCERNS THAT THE COURSE YOU HAVE JUST COMPLETED DID NOT MEET THE LEARNING OBJECTIVES SET OUT IN THE COURSE MATERIALS, DID NOT COVER THE SUBJECT MATTER OF THE COURSE, OR WAS A SALES PRESENTATION; PLEASE CONTACT THE COUNCIL'S OFFICE IN WRITING AT:

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
REGULATORY COUNCIL OF COMMUNITY ASSOCIATION MANAGERS
1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399-1040

(3) Course approvals are valid for 24 months from the date of issuance. Providers must reapply for course approval within 90 days from the expiration of the 24-month period. Written application and course approval shall be in the same form as set forth in paragraph (1)(a) above. The Council shall be notified of any substantive changes made to approved courses during this period. Course approval shall be rescinded by the Council if such notification is not made or the changes fail to otherwise conform to this rule. Course approvals shall be automatically rescinded if the provider approval expires or is rescinded by disciplinary action or otherwise.

(4) Continuing education courses approved prior to the effective date of this rule remain valid for the purposes of fulfilling the continuing education requirement until the course approval expires.

61E14-4.004 Reactivation Continuing Education

(1) As a condition for reactivating an inactive or delinquent license, an inactive status licensee shall be required to satisfactorily complete ten (10) classroom hours of continuing education instruction of 50 minutes each for each year or any portion of a year the license was inactive. Two (2) hours shall consist of the legal update seminar for the year in which the licensee is reactivating. The remaining hours of reactivation continuing education may be in any of the areas described in Rule 61E14-4.001, F.A.C., as appropriate.

(2) Notwithstanding subsection (1) of this rule, no inactive status licensee shall be required to satisfactorily complete more than twenty (20) classroom hours of continuing education, at least 50 percent of which must have been completed within the year prior to application for reactivation, in order to reactivate a license. An inactive licensee must take the two most recent legal update courses prior to reactivation.

61E14-4.005 Prelicensure Education Provider Approval

(1) A prelicensure education provider is a person or entity approved pursuant to this rule to conduct prelicensure education courses for community association managers.

(2) Entities or individuals who wish to become approved providers of prelicensure education shall make application on Forms DBPR 0020-1 – Master Organization Application (Eff. 05/10) and DBPR CAM-4306 – Prelicensure Provider Application (Rev. 05/10). Forms DBPR 0020-1 and DBPR CAM-4306 are hereby incorporated by reference into this rule. These forms are available as a single application packet with instructions, a copy of which may be obtained from the department's website at https://www.myfloridalicense.com/intentions2.asp?SID=&page=intentions2.asp.

(3) Each provider application shall contain the following information, and shall be accompanied by the following documentation and other information as required.

(a) The name, address, telephone number, fax number, and email address of a contact person who will fulfill the reporting and documentation requirements for provider approval. The provider shall notify the Council of any change of contact person within ten (10) days of the actual change.

(b) The identity and qualifications of all instructors who will be presenting courses during the period of providership. These qualifications at a minimum shall include instructional experience; and

1. A bachelor's degree and two years experience in the subject matter being taught; or
2. An associate's degree and four years experience in the subject matter being taught; or
3. Six years experience in the subject matter being taught.

Should additional instructors be added during the period of providership, the provider shall notify the Council in writing of the new instructor's qualifications at least thirty (30) days prior to actually conducting the course.

(c) The appropriate prelicensure education provider application fee pursuant to subsection 61E14-3.001(15), F.A.C.

(d) A course outline which describes the course's content and subject matter. A course outline shall address the following:

1. **Learner Objectives.** Objectives shall describe expected learner outcomes, how learner outcomes will be evaluated, and describe how the objectives will be obtained. The objectives shall describe the content, teaching methodology and plan for evaluation.
2. **Subject Matter.** The content shall be specifically designed to meet the objectives and the stated level and learning needs of community association managers. Specifically, it shall address one or more of the subject areas outlined in subsection 61E14-1.001(2), F.A.C.
3. **Materials and Methods.** It shall be demonstrated to the Council that:
   a. Learning experiences and teaching methods are appropriate to achieve the objectives;
   b. Time allotted for each activity shall be sufficient for the learner to meet the objectives;
   c. Principles of adult education are utilized in determining teaching strategies and learning activities; and
   d. Currency and accuracy of subject matter will be documented by references or bibliography.
4. **Evaluation.** Participants are given an opportunity to evaluate learning experiences, instructional methods, facilities and resources used for the course.

(4) Prelicensure education provider status shall be valid from the date of approval until May 31 of every even-numbered year. Those seeking renewal of provider status must reapply on Forms DBPR 0020-1 and DBPR CAM 4306, referenced in subsection (2) above, to the Council and submit the appropriate renewal fee pursuant to subsection 61E14-3.001(16), F.A.C. Providers who fail to renew their provider status on a timely basis in accordance with this rule shall not offer or advertise a course as an approved course for prelicensure education.

(5) Once approved, providers shall comply with the following requirements:
   (a) When advertising courses, providers shall disclose the number of hours assigned by the Council and the course subject area. Providers shall not advertise courses until they are actually approved by the Council.
   (b) Providers shall maintain a system of record keeping which provides for storage of course offerings information.
   (c) Records of individual courses shall be maintained by the provider for four years and shall be available for inspection by the Council.
   (d) Providers shall furnish each participant with an individual certificate of attendance and completion of the course. A roster of participants shall be maintained by the provider for four years and shall be available for inspection by the Council. Providers shall maintain security of attendance records and certificates.
   (e) The course provider shall submit to the Council a sample certificate of course completion that the course instructor shall provide each course participant if the participant completes the course. Such certificate shall include the course participant's name, the title of the course, prelicensure education category, date completed and number of hours. The certificate shall be provided to the course participant at the completion of the course. The certificate of course completion shall contain, on its face, the following statement in capital letters in at least 12 point type:

      IF YOU HAVE ANY CONCERNS THAT THE COURSE YOU HAVE JUST COMPLETED DID NOT MEET THE LEARNING OBJECTIVES SET OUT IN THE COURSE MATERIALS, DID NOT COVER THE SUBJECT MATTER OF THE COURSE, OR WAS A SALES PRESENTATION; PLEASE CONTACT THE COUNCIL'S OFFICE IN WRITING AT: DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, REGULATORY COUNCIL OF COMMUNITY ASSOCIATION MANAGERS, 1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399-1040.

   (f) All information or documentation submitted to the Council or the department shall be submitted in a format acceptable to the Council and the department.
   (g) Providers shall assure that sales presentations shall not be conducted, immediately before or after the administration of any courses pursuant to this rule.

(6) A prelicensure education provider initially approved during the last 90 days prior to May 31 of an even-numbered year, shall not be required to reapply as a condition for renewing provider status.

(7) The Council shall deny prelicensure education provider status to any applicant who submits false, misleading or deceptive information or documentation to the Council.

(8) The Council shall rescind the provider status if the provider disseminates any false or misleading information in connection with the prelicensure education course, or if the provider or its instructor(s) failed to conform to and abide by the rules of the Council or are in violation of any of the provisions of Chapter 468, Part VIII or 455, F.S.

Other FAC rules related to CAMs

You may want to refer to Chapter 61B for further information on accounting, contracts, arbitration, and mediation, among many other topics specific to condominiums, cooperatives, homeowners associations, mobile homes, and timeshares. The following table shows how the chapter is organized:

Chapter No.	Chapter Title
61B-1	GENERAL INFORMATION
61B-3	FEES AND COSTS
61B-5	PROCEDURE FOR REGISTRATION
61B-6	ENCUMBRANCES AND IMPROVEMENTS
61B-7	CONTRACTS, AGREEMENTS FOR DEED AND PUBLIC OFFERING STATEMENT
61B-8	OFFERING STATEMENT
61B-9	ADVERTISING
61B-13	EXEMPTIONS
61B-15	FORMS AND DEFINITIONS
61B-16	FEES
61B-17	FILINGS
61B-18	DOCUMENTS
61B-19	COMPLAINTS
61B-20	DEVELOPER OBLIGATIONS AND RESOLUTION GUIDELINES FOR CONDOMINIUM DEVELOPERS
61B-21	CONDOMINIUM RESOLUTION GUIDELINES FOR UNIT OWNER-CONTROLLED ASSOCIATIONS
61B-22	FINANCIAL AND ACCOUNTING REQUIREMENTS; BUDGETS, RESERVES, AND GUARANTEES
61B-23	THE ASSOCIATION
61B-24	CREATION OF CONDOMINIUM BY CONVERSION
61B-25	VOLUNTEER AND PAID MEDIATION RULES
61B-29	MOBILE HOME RULES DEFINITIONS
61B-30	MOBILE HOME ADVERTISING PROSPECTUS RULE
61B-31	MOBILE HOME PROSPECTUS AND RENTAL AGREEMENT RULE
61B-32	MOBILE HOME MEDIATION RULES
61B-34	MOBILE HOME MEDIATION RULES OF PROCEDURE
61B-35	MOBILE HOME MINOR VIOLATIONS
61B-37	TIME-SHARE PLANS
61B-38	TIME-SHARE SOLICITORS
61B-39	FILING REQUIREMENTS FOR PUBLIC OFFERING STATEMENTS
61B-40	TIMESHARE ACCOUNTING AND FINANCIAL REPORTING REQUIREMENTS SCOPE; BOOKS AND FINANCIAL RECORDS; BUDGETS; GUARANTEES; RESERVES; FINANCIAL REPORTING
61B-41	TIMESHARE PENALTIES
61B-45	THE MANDATORY NON-BINDING ARBITRATION RULES OF PROCEDURE
61B-50	THE RULES OF PROCEDURE GOVERNING RECALL ARBITRATION
61B-55	COMMUNITY ASSOCIATION MANAGEMENT
61B-60	YACHT AND SHIP BROKERS
61B-75	COOPERATIVES
61B-76	ACCOUNTING AND FINANCIAL REPORTING REQUIREMENTS; BUDGETS, GUARANTEES, AND RESERVES; FINANCIAL STATEMENTS AND REPORTS
61B-77	RESOLUTION GUIDELINES FOR COOPERATIVE DEVELOPERS
61B-78	ASSOCIATION FEE AND MAILING ADDRESS; COOPERATIVE RESOLUTION GUIDELINES FOR UNIT OWNER-CONTROLLED ASSOCIATIONS
61B-79	FILINGS
61B-80	THE ARBITRATION RULES OF PROCEDURE GOVERNING RECALL AND ELECTION DISPUTES IN HOMEOWNERS ASSOCIATIONS
61B-81	SUBSTANTIVE RULES FOR RECALLS IN HOMEOWNERS ASSOCIATIONS.
61B-82	THE RULES OF MEDIATION PROCEDURE IN HOMEOWNERS ASSOCIATIONS.
61B-83	CERTIFICATION OF COMMUNITY ASSOCIATION MEDIATORS AND ARBITRATORS
61B-85	HOMEOWNER ASSOCIATIONS

Endnotes

1. http://www.myflorida.com/dbpr/pro/cam/documents/cam_faq.pdf

Final examination questions

Select the best answer for each question and mark your answers on the Final Examination Answer Sheet found on page 128 or complete your test online at **CAMS.EliteCME.com**.

6. In 2013, four companion bills relating to residential property became law, making substantial revisions to condominium, cooperative, homeowners association, and timeshare law.

   ○ True ○ False

7. An estoppel letter indicates whether all assessments and other money owed to the managing entity by the timeshare interest owner have been paid.

   ○ True ○ False

8. A lis pendens is a notice recorded in the chain of title to real property showing that the property is the subject matter of litigation.

   ○ True ○ False

9. Condominium and homeowners associations with total annual revenues between $150,000 and $300,000 must prepare reviewed financial statements.

   ○ True ○ False

10. According to 61E14-2.001, Standards of Professional Conduct, it is considered gross misconduct to use funds received by the community association manager or management firm for any purpose other than for the specific purpose or purposes for which the funds were remitted.

    ○ True ○ False

Chapter 3: Best Hiring Practices

4 CE Hours

By: Valerie Wohl

Learning objectives

- Explain the significance of effective selection criteria in the hiring process.
- List some possible negative repercussions and risks of a poor hiring choice.
- Discuss the pros and cons of outsourcing hiring responsibilities.
- Explain what information is necessary in documenting the hiring process.
- Describe the relationship between the job analysis and knowledge, skills and abilities (KSAs).
- Explain the function of a qualifying question.
- Identify what is and is not an appropriate interview question.
- Convert different units of training, study, and work experience to assess and compare applicants' qualifications fairly.
- Evaluate credentials and degrees from a variety of different institutions to assess and compare applicant's qualification fairly.
- Ask application and interview questions designed to provide the most information possible.
- Ask applicants with disabilities legally acceptable interview questions using appropriate language and etiquette.
- Conduct an effective job interview, with appropriate closure and accommodation, if necessary.
- Design and administer additional screening tools, such as work samples or testing, willingness questionnaires, and supplemental applications.
- Conduct thorough, legal reference and background checks.

Introduction

Many community association managers perform the function of selecting new employees for association positions. It is largely through an organization's hiring decisions that it charts its course toward success or failure. A highly qualified staff creates a more favorable environment for all employees, increases productivity, and lowers costs associated with employee turnover.

At the conclusion of the selection process, the community association manager (and other decision-makers, such as board members, human resources personnel, or an interview panel, if used), determine the best-suited applicants based upon the information derived from the association's screening techniques.

Determining an applicant's qualification for a position sounds straightforward enough – compare the applicant's education and experience as described in the employment application with the required qualifications listed on the position description. Unfortunately, the hiring process can be complicated by many factors; there may be disagreement among those making the hiring decision, or such a large number of qualified individuals apply that it is becomes very difficult to choose between the top contenders.

Should the association, for example, pay a higher initial salary for an applicant with experience in Excel, or pay less and provide on-the-job training? Should it draw applicants from within or outside the organization? How much can employers trust applicants to be truthful and accurate, and what is the best way to verify schooling, degrees, and work experience?

Selecting new employees can be time-consuming and frustrating. Poor decisions result in inadequate workers who impede other employees' ability to be efficient, slow operations, and often end up causing more work in the end, including the unpleasant task of having to dismiss the employee and hire another. Employers also may be concerned that some aspect of the hiring decision will be the basis of legal action against the association in the future.

This guide has been developed to provide community association managers with detailed guidelines for recruiting and selecting employees for the diverse range of jobs required by a community association. The ultimate goal of the recruitment and selection process is to hire in an efficient and legally defensible manner the applicant who is best suited for the position. This chapter will help you design job-appropriate, legally defensible, and expeditious selection techniques that result in sound hiring decisions.

This course provides instruction for:

- Developing appropriate screening criteria.
- Evaluating and comparing applicants' experience and credentials.
- Preparing and conducting an effective verbal interview.
- Administering work samples, supplemental applications, and willingness questionnaires.
- Conducting a legal background check.

Definitions

In this course:

- The term "**qualifications**" encompasses any licensure, certification, education or training, and entry level of knowledge, skills, and abilities required for the position as determined by the association.
- The term "**employer**" refers to any individual, including supervisors, managers, human resources personnel, and administrators, responsible for community association hiring decisions.
- The term "**community association**" refers to homeowners' associations, condominium associations, or any other community associations as defined by the Florida Community Association Act.

Should you outsource hiring responsibilities?

Associations take many forms, so it is not surprising that they address hiring needs in a many different ways. Some associations have a professional individual or department specializing in human resources (HR) within the organization; others outsource, using a professional company or individual to manage HR responsibilities.

Depending on the association, hiring responsibilities may fall to a panel of association personnel, members or residents, or other individuals with experience or training in hiring practices; a board member and community association manager who share hiring decisions; or a human resources consultant, among other possibilities.

Successful organizations use effective hiring practices, select outstanding candidates, and are able to retain a loyal and highly competent workforce. Hiring personnel are responsible for ensuring the hiring process is conducted fairly, according to applicable regulatory requirements, and also may be accountable to the association for training and certification tasks, e.g., ensuring certifications are current, establishing training for food handling and alcohol service, providing company policies for filing complaints or reporting sexual harassment, or distributing OSHA safety regulations, among many other possible responsibilities. Add to this the fact that each type of job is regulated by a different set of laws and rules, and it is easy to see how hiring a few new employees may be less a short-term project and more a full-time job.

It may make sense to outsource your association's human resource responsibilities, depending on the experience and abilities of those in-house, the nature and extent of needed tasks, and the comparative expense of using in-house or external personnel. Outsourcing human resource needs to a single individual or a whole consulting department may seem expensive, but many associations find that HR professionals are able to recognize areas where the association can realize savings in a more efficient and expeditious manner than those who are employed or well acquainted with the company, but are without specialized training, experience, and professional networks, all of which can be instrumental in saving money.

If an association chooses to outsource hiring responsibilities, it is critical that the CAM and employees who will be working with the new hire actively participate in the process, providing input and feedback, and working closely with the external individual or team to develop screening criteria.

Preliminary legal requirements

Associations must comply with applicable federal, state, and local laws and regulations on anti-discrimination, compensation, occupational safety and health, recruiting, and screening in hiring practices. Employers are legally bound to ensure each applicant receives equal opportunity in recruitment, selection, appointment, promotion, and other employment practices, without regard to these factors:

- Race/ethnicity.
- Gender.
- Religion.
- Country of origin.
- Personal/political opinions and affiliations.
- Marital status.
- Age (except when such requirements constitute a clear occupational qualification necessary to perform tasks associated with the position).

It is legally required to provide equal opportunity in all employment practices to any disabled applicant or employee unless the disability prevents performance of the essential functions of the position, in accordance with the Americans with Disabilities Act (ADA).

Navigating the legal do's and don'ts of the hiring process is not an easy task. Long before any application is posted or test is administered, all selection criteria and assessment tools developed for use in the hiring process MUST be reviewed by qualified legal and human resources personnel to ensure legal compliance.

All information associated with selection techniques is confidential and must be kept confidential while in the employer's possession.

Documentation

Documentation of the hiring process must be timely, accurate, unbiased, comprehensive, and complete.

In cases where an applicant challenges a hiring decision, employers must produce documentation of each stage of the selection process. The more detailed the information, the better the employer's legal position and defense if charges are ever filed.

The association human resources office (or equivalent) should maintain proper documentation according to these guidelines:

- Retain all records documenting the selection process and justifying the selection decision.
- All work samples, testing, and examination materials used in the selection process must be kept confidential and maintained in a secure location to preserve their validity as an applicant testing tool.
- For each hiring process, documentation should include all of the following:
  - The current position description.
  - Details of the job analysis and identification of knowledge, skills and abilities (KSAs) necessary to perform the job.
  - Description of the selection process, including selection technique, screening criteria, and ideal responses for application, interview, and supplemental application questions.
  - The job posting and any other recruitment efforts.
  - The names and titles of all persons who administered the selection process or participated in the selection decision.
  - Demographic data of applicants, if necessary, including race/ethnicity, gender, and age.
  - List of the applicant's ratings or rankings (if applicable) for each selection technique.
  - Other information on the preceding points that influenced the selection decision.
- Application and other screening method certification: Most employment applications provide an area for the hiring organization to document whether it has evaluated the qualifications of an applicant for a position (often indicated as an "Official Use Only" section of the application), according to association specifications. Application certification requires the following steps:
  - Evaluation of applicant qualifications is noted in the appropriate section of the application, using the association's preferred coding or format. For example, the interviewer might use a "Q" for qualified or "U" for unqualified to indicate an applicant's status.
  - Sign and date the "Official Use Only" section of the application.
  - Repeat for any other screening tools used.
- Each association is required to retain records in accordance with the retention schedule requirement standards of that association, which must adhere to applicable federal, state, and local requirements. Pending litigation or unresolved personnel issues may require longer retention.

Job analysis

A job analysis is a review of the job tasks assigned to a position to identify the essential knowledge, skills, and abilities required for successful performance of the job. It is typically the first step in designing a job application.

Begin the job analysis by reviewing all materials that provide information about the job (job description, occupational profile, etc.). This information will be used to determine job responsibilities and the KSAs required to perform those tasks.

The position description should accurately reflect the current scope of responsibilities assigned to the position. If some of the duties performed by the position have changed or are no longer performed, the description should be updated accordingly.

If the employee currently in the position is leaving voluntarily, he or she may be the best resource for updating the position description and pointing out any inaccuracies. Employees who work closely with this position may also provide valuable input.

Selection technique

A selection technique refers to the multi-step process in which a variety of screening methods are used to collect applicant information for assessment purposes. The methods selected should be those most likely to recruit and select the best candidate for the position and association. The most common methods are:

- Written application.
- Verbal interview.
- Work sample or test.
- Willingness/preference questionnaire.
- Supplemental application.

It is the employer's responsibility to select the applicant who best fits the position as defined by the job description through the use of an effective employee selection technique. The best selection techniques are those that are able to reach the greatest pool of qualified candidates, allow a fair and complete assessment of candidates on all job requirements and responsibilities, and be completed within the required time frame and budget.

Application screening criteria

Once the selection technique for a specific position is established, it must be applied consistently for every applicant seeking that position. These practices protect an association from litigation should a hiring decision be challenged.

Each component of a properly developed selection technique is associated with different types of screening criteria.

These criteria identify applicants that possess the necessary knowledge, skills, and abilities to successfully perform the duties of the position. Developing screening criteria requires analyzing the position, identifying the tasks or duties associated with it, and equating those responsibilities with the specific KSAs necessary to perform each task or project competently.

Identifying tasks and KSAs

A **task** is an assigned duty or responsibility. Refer to the job description to identify tasks required by the position. Some examples of tasks are:

- Opening mail and reviewing email.
- Preparing a monthly statistical analysis.
- Data entry.

Associate each task identified on the job description with the KSAs required to successfully perform them. **KSA** refers to the knowledge, skills, and abilities the individual must possess for successful job performance. In developing selection criteria, it is important to distinguish between entry-level and full performance KSAs:

- Entry-level KSAs are those an employee must bring to the job.
- Full performance KSAs are those an employee is expected to learn and develop while on the job.

Knowledge refers to the information, facts and principles that an individual must possess for successful job performance, acquired through formal education, training, or personal experience. Some examples are:

- Knowledge of management principles.
- Knowledge of data collection methods.
- Knowledge of problem-solving techniques.

Skill refers to an observable, quantifiable (measurable) proficiency in the manual, verbal, or mental manipulation of data or other information that is necessary to successful job performance. Some examples are:

- Operating heavy equipment.
- Typing.
- Using power tools.

Ability refers to the capability or capacity to perform an observable behavior or produce an observable product. Some examples are:

- Moving 50 pounds.
- Collecting and organizing information by topic.
- Speaking and writing in grammatically correct English and Spanish.

The following section presents examples of common tasks and the KSAs frequently associated with them.

KSAs related to **analytical responsibilities:**

- Ability to analyze and interpret data.
- Ability to prepare various reports and statistical data.
- Ability to organize data in logical format for presentation in reports, documents and other written materials.

KSAs related to **contract management:**

- Ability to prepare contracts.
- Ability to develop programs for monitoring compliance.
- Ability to organize and update independent contractor agreements.

KSAs related to **verbal and written communication:**

- Knowledge of the principles and techniques of effective verbal and written communication.
- Ability to compose written correspondence, policies, procedures, and reports.
- Ability to make effective presentations.
- Ability to communicate effectively with coworkers.

KSAs related to **organization and time-management:**

- Ability to organize and format and present information.
- Ability to plan, organize and direct program activities.
- Ability to schedule and coordinate assigned work responsibilities.
- Ability to work independently.

KSAs related to **secretarial/clerical responsibilities:**

- Experience with Macs and PCs.
- Knowledge of specific software.
- Minimum required typing speed and accuracy.
- Word processing or data entry experience.
- Ability to use correct spelling, punctuation, and grammar.
- Ability to organize and maintain filing systems.
- Ability to transfer clients to the correct department using multi-line telephone system.
- Ability to transcribe dictation.

KSAs related to **management:**

- Ability in training or instruction.
- Supervisory ability.
- Ability to prioritize and delegate work.
- Ability to assess employee work performance.
- Ability to communicate effectively in writing and verbally.
- Ability to establish and maintain effective working relationships with others.
- Ability to utilize problem-solving techniques.

Using qualifying questions to filter applicants

With a highly competitive job market and the highly accessible nature of Internet job posting and searching, some positions receive a high number of applications from unqualified applicants. An effective way to efficiently identify qualified applicants and reduce the number of applications you need to personally screen is by use of carefully chosen "qualifying questions." These questions ask the applicant to demonstrate familiarity with essential knowledge, skills, or abilities, or possession of required educational degrees, certifications, or licensure requirements of the position.

Qualifying questions function as a filter. Their initial goal is to divide the pool of applicants into two groups, those who have the minimum qualifications for the position and those who do not. A second tier of qualifying questions should similarly subdivide the remaining applicants into groups of more qualified vs. less qualified applicants, filtering the applicant pool into a more manageable group for the next step of the hiring process.

Qualifying questions do not ask for driver's license numbers, Social Security numbers, or any other sensitive personal information that may be vulnerable to identity theft. They focus solely on information that is directly relevant to job performance and the KSAs required to perform the position.

Examples of qualifying questions

The format and phrasing of questions used in online applications depend somewhat on the application's design and programming, the number of applications anticipated, and the number of people designated to review applications. Some selection can occur automatically by programming the online application to pull applications out of the running if they do not provide a qualified response to an application question. (Programming parameters showing the rationale for disqualification must be documented should there be any question in the future of why the application was not further considered.)

Qualifying questions should focus on the essential skills and experience required to perform the duties of the position. The more uncommon or esoteric the criteria, the more the qualifying question will reduce the number of applicants. For example, the probability of finding an individual fluent in four or more specific languages in a pool of 100 applicants is much lower that the probability of finding an individual fluent in two of those four languages.

Here are examples of qualifying criteria:

- Position requires five-plus years of experience using Microsoft Word, Excel, and PowerPoint.
- Position requires three-plus years of experience analyzing, designing, testing, and evaluating network systems, such as local area networks (LAN) and wide area networks (WAN).
- Position requires two-plus years of design and maintenance services for landscaping using native vegetation and xeriscaping.
- Position requires two-plus years of experience in salt-water swimming pool maintenance.
- Position requires a master's degree and two years supervisory or managerial experience.

Questions may be presented in any number of formats (true/false; yes/no; multiple choice; number range, or open text). Select wording and a style of question-and-answer arrangement that collects the most useful information for evaluating the applicant's qualifications, while at the same time is relatively easy to review and assess without requiring a great deal of time.

Examples of these formats follow:

- **True/false:** The applicant must answer either true or false:
  1. FLSA stands for Florida Labor Statistics Act.
  2. FMLA stands for Family and Medical Leave Act.
  3. A part-time employee who works more than 40 hours per week is not eligible for overtime pay.
- **Yes/no:** The applicant must answer either yes or no:
  1. Do you possess a bachelor's degree or five years of experience in physical property management?
  2. Have you developed presentations using PowerPoint?
  3. This position requires licensure/certification as a CPA. Are you currently licensed as a CPA?
  4. Do you possess a valid Florida driver's license? NOTE: Do NOT request the applicant provide a driver's license number at this time.
- **Multiple choice:** A question or statement is presented with three to five possible answers, of which only one is correct.
  1. Rate your knowledge on sprinkler system retrofitting according to current standards:
     a. Not at all knowledgeable.
     b. Somewhat knowledgeable.
     c. Very knowledgeable.
  2. Which of the following is not a file extension?
     a. Tif.
     b. Pdf.
     c. Doc.
     d. Glm.
     e. None of the above.
  3. Rate your level of experience using Excel:
     a. Beginner.
     b. Intermediate.
     c. Advanced.
- **Number range:** These questions are answered one of two ways. The first type of question format requires a response using a number with one of the following: greater than, less than, equal to, not equal to, greater than or equal to, and less than or equal to. Possible questions include:
  1. How many years of professional accounting experience do you have?
  2. How many years of supervisory experience do you have?

  The second type of number-range questions are structured so the applicant provides two numbers that show a range. Possible questions include:
  1. What is the largest number of people you have supervised at one time?
  2. What is the average number of cases you handle at one time?
- **Free text or open field:** These questions require a written response from the applicant. This text can be analyzed in two ways: the online application can be programmed to identify key words that signify a desired answer, and the statements or answers can be read and evaluated by hiring personnel according to established selection criteria. Reviewing this type of response can be quite time-consuming compared to other formats, so this type of response is usually reviewed after as many applications as possible have been removed from the pool of applicants. Possible questions include:
  1. What tools and techniques do you use for training sessions? Key words – PowerPoint, flip charts, role play, and so on.
  2. What software can you use at an intermediate level or higher? Key words – PowerPoint, Excel, Access, Microsoft Word, and so on.
  3. What were your main responsibilities in your last job? Key words – Website design, maintenance, content development, and so on.

Application screening criteria should be directly associated with KSAs required for the position. Valid qualification criteria may include:

- Licensure or certification requirements.
- Computer database experience.
- Training or experience on Microsoft Word, Excel or PowerPoint.
- Training or experience using electronic mail systems.
- Suspense or tracking system experience.
- Office management experience.
- Experience in public relations.
- Experience in marketing.

Inappropriate application screening criteria are inquiries or observations that are not specifically KSA- or job-related. The following criteria are not valid:

- Stable work history or uninterrupted progression in career.
- Misspellings on the application (may be relevant if spelling is a necessary job skill, but would be better assessed using a work sample or test during the personal interview).
- Using information in an application or resume to determine knowledge, skills, or abilities (While applicants can state their qualifications, his or her KSAs cannot be appropriately assessed through a written application, but is better evaluated with a work sample or testing).

Online job posting

Your association operating procedures will determine the way in which the open position is advertised. The most common method is some form of online posting, in which an application is placed on a dedicated website or websites (including, for example, the association website, online job sites catering to job candidates and employment opportunities in a relevant field, or any combination). Online applications are typically programmed to expedite the screening process, so that a portion of unqualified applicants are automatically ruled out as possible candidates.

Check company policy on any special recruiting policies and preferences. For example, should the available position be hired from within or outside the organization? Internal hiring advertises the position to an applicant pool that is limited to current employees of the association and employees who have filed for promotions, meaning no applications are accepted from outside sources. In open competition, jobs are posted publicly, with applications drawn from internal and external sources.

Organizations may prefer to hire from within whenever possible, publicly advertising the position only after all internal possibilities are exhausted. It may also be appropriate to consider options with lateral moves or promotions for current employees, reassignment requests, or re-employment of laid-off workers, before opening the search to a more general audience.

If the association is unable to fill the position internally or prefers to hire an individual from outside, it will need to publicly advertise the position. Posting an application on an online site should be used whenever possible, because it is one of the most efficient and least costly means of recruiting qualified employees, partly because of its ability to put the posting in front of a large number of qualified job seekers and facilitate the filtering process using programming to pull unqualified applicants. The more the pool of applicants can be narrowed down in the early selection process through the use of qualifying questions and an automated system, the fewer man-hours needed for application review and assessment.

The association's hiring policies and procedures usually determine the number of days the position is posted and when it is closed to new applications. Good business practice suggests that a job should be posted for a minimum of three days.

An insufficient number or quality of applicants may require the posting be pulled from a site, reviewed, revised, and posted to a different site. If, for example, the pool of qualified candidates for the position is small and no applicant meets the minimum required job qualifications, it may be useful to review the qualifying questions, selection criteria, and the locations of the posting to determine whether any of these factors need to be reconsidered.

If no applicants meet the established criteria, it may be that the listed salary is not high enough to draw qualified candidates, or that the application is not associated with pertinent key words so that a qualified applicant is unable to bring up the application using search terms, or even that the job listing is not posted in locations or a manner that attracts the desired pool of applicants.

Reviewing applications

The primary considerations for comparing applicants and assessing a candidate for a specific position are the responsibilities and primary tasks and duties required by the position and those performed by the applicant in previous jobs. Primary duties are those that applicants perform at least 50 percent of their work time, or the task that is the primary focus of the job. For example, while fighting fires may not take up 50 percent of a firefighter's working time, the firefighter's main purpose and objective is fighting fires.

Refer to responsibilities and tasks previously performed by the applicant instead of a job title for the best indication of the applicant's type of work, level of expertise, and seniority in the former position. These factors should carry the most weight in assessing qualifications.

Review each application based on the established application analysis screening criteria, removing those applicants without the requisite entry-level KSAs and other requirements from the pool of applicants for the particular position. Be flexible without compromising the qualifications and standards required by the position. All individuals possessing the appropriate knowledge, skills, and abilities should be given every reasonable opportunity to qualify.

Decisions must be defensible. A final verification of the selected applicant's education, experience or other specified requirements should support the qualification determination decision and eliminate any doubt of eligibility. In reviewing the application, be certain to record information that establishes the rationale for selecting or pulling the application from the running. A clear indication of the applicant's qualification or lack of qualification for each question should be noted on the application worksheet or other documentation kept with the application materials.

Applicants who meet all or a specified number of the screening criteria will remain in the pool of applicants. Those not meeting specified criteria will be sent notification that they did not meet the qualifications needed for this position, and are separated from the applicants who will move on to the next step of the screening process.

A simple worksheet like the one below, adapted to a specific association's needs, provides an easy way to record performance on each component of the selection technique, and compare the qualifications of many candidates at once. Use this worksheet to identify the tasks of the position, and then determine what component of a selection technique best determines whether the applicant has the required knowledge, skills, or abilities to perform the identified tasks.

Provide sufficient space to record ratings, rankings, or notes summarizing applicant qualifications or characteristics. The same selection technique and standards should be applied to all applicants consistently.

Selection technique worksheet

Task	KSA	Written application	Verbal interview	Supplemental application	Work sample	Willingness questions

Evaluating educational qualifications

Educational requirements are used when specific job knowledge is required or when education is considered a primary way to acquire the specific knowledge, skills, and abilities needed for the job.

- **High school diploma:** When the qualifications for a position require a high school diploma or its equivalent, a high school diploma awarded by any board of public education, foreign or domestic, is acceptable. It is not necessary to verify accreditation of high schools for most positions. In the event accreditation is required, the following websites, while not exhaustive, will assist with verification of secondary schools, including those offering diplomas through online or correspondence course work:
  - **Public secondary schools:** http://www.ed.gov/about/offices/list/ous/international/usnei/us/edlite- accreditation.html
  - **Private secondary schools:** http://www.floridaschoolchoice.org/Information/Private_Schools/accreditation.asp
- **High school equivalency:** If an applicant does not have a high school diploma, an equivalency will meet the high school requirement. Some students may attend 12 years of school and receive a certificate of attendance or certificate of completion when they do not meet all the graduation requirements. These certificates are not sufficient to meet an education requirement for a high school diploma or its equivalent.

  Several following types of high school equivalencies are acceptable:
  - **General education diploma (GED):** A GED issued by any state. State-issued GEDs may be obtained from vocational/technical schools or at education programs. Please note that general education diploma (GED) requirements may differ by state.
  - **Military GED.**
- **Vocational/technical school training:** When the position qualifications require vocational/technical school training, you do not need to verify the accreditation of the school. Vocational/technical school credit hours earned are either classroom or clock hours; these terms are used interchangeably. When evaluating classroom or clock hours, 720 hours are equivalent to one year of study.
- **College education:** It is good business practice to accept only accredited college or university degrees. This also applies to courses from pre-accredited or provisionally accredited institutions or those that are only licensed by a state but not accredited. Non-accredited college education may be accepted for certain types of work if the candidate is otherwise qualified. To verify accreditation of the post-secondary education, check the following resources:
  - The Accredited Institutions of Post-Secondary Education, the Council for Higher Education Accreditation (CHEA) website at http://www.chea.org/default.asp
  - Council for Higher Education Accreditation (CHEA) website at http://www.chea.org/default.asp.
  - U.S. Department of Education's website at http://www.ope.ed.gov/accreditation/.

  Foreign degrees are acceptable if the foreign university is equivalent to an accredited U. S. school. To determine accreditation of foreign institutions, see the following:

- Educational Credential Evaluators, Inc. at http://www.ece.org.
- Joseph Silny & Associates, Inc. at http://www.jsilny.com.
- World Education Services, Inc. at http://www.wes.org.
- USC Worldwide Colleges and Universities at http://www.globaled.us/wwcu/.
- American Association of Collegiate Registrars at http://www.aacrao.org/.

- **Junior or community colleges:** The Associate of Arts degree and the Associate of Science degree may be used interchangeably in the qualification determination process.
  - **Associate degree (AA or AS):** An award that normally requires at least two but less than four years of full-time equivalent college work. U S. Department of Education's *Classification of Instructional Programs* is available online at http://nces.ed.gov/pubs2002/cip2000/.
  - **Associate of Applied Science (AAS):** Applied Associate of Science programs could be less than the two-year AS degree and are not awarded by Florida's junior or community colleges. An AAS is not the same as an AS degree, and is not interchangeable with the AS or AA degree.

  Before awarding credit for completion of two years of college, verify that the applicant has earned one of the following:
  - AA degree conferred.
  - AS degree conferred.
  - Completion of 60 semester or 90 quarter hours.
- **Four-year colleges or universities:**
  - **Bachelor of Applied Science degree (BAS):** The BAS degree is a program that is designed to complement the community college Associate of Science (AS) or Associate of Applied Science (AAS) degree programs. The BAS combines applied technology course work (AS/AAS) with a general education core and elective course work. The BAS degree is designed primarily to enhance job progression rather than career entry. The degree promotes career advancement by allowing students to complement their technical specialization and work experience and gain leadership and higher learning skills. The BAS degree programs are not limited to universities in the U. S., and are common in Canada, the United Kingdom, Australia and New Zealand. Several Florida universities offer the BAS degree. Contact the Florida Board of Education at (850) 245-9661 to verify whether a college or university has been approved to issue the BAS degree.
  - **Bachelor's degree (BS or BA):** An award that normally requires at least four but not more than five years of full-time equivalent college-level work. This includes all bachelors' degrees conferred in a cooperative or work-study plan or program. A cooperative plan provides for alternate class attendance and employment in business, industry or government; thus it allows the student to combine actual work experience with college studies. It also includes bachelor's degrees in which the normal four years of work is completed in three years.

  The primary difference between the BA and BS degree is that the BA often contains course work in the area of foreign languages. A BA degree also may contain more liberal arts-oriented course work than a BS degree. The BS degree is typically more technical- or science-oriented than a BA degree.
  - **Master's degree (arts or sciences; MA or MS, respectively):** An award that requires the successful completion of a program of study of at least the full-time equivalent of one but not more than two academic years of work beyond the bachelor's degree.
  - **Doctor's degree (doctorate, Ph.D.):** An award that requires work at the graduate level and terminates in a doctor's degree. The doctor's degree classification includes such degrees as Doctor of Education, Doctor of Juridical Science, Doctor of Public Health and the Doctor of Philosophy degree in any field such as agronomy, food technology, education, engineering, public administration, ophthalmology or radiology. For the Doctor of Health degree, the prior professional degree is generally earned in the closely related professional field of medicine or sanitary engineering.
  - **Major college course work:** When the position requires a bachelor's degree with no specific major, then a bachelor's degree with any major is acceptable. However, if the position requires a bachelor's degree with a specific major, the degree must be in the required major. Check with a local university to clarify specific majors within a discipline. Coursework in an academic area shall be considered a major when the following qualifications are fulfilled:
    - When the major can be verified through the college registrar's office.
    - When the applicant can provide clear documentation that the coursework taken meets the school's requirements for the major.
    - When a track, concentration, or emphasis within a specific field constitutes the primary course of study.
    - When an applicant receives an education major in the academic area specified in the required qualifications, such as a major in math education when a major in math is required.
    - When a degree is earned in an interdisciplinary program; the degree is generally considered to be a major in the academic discipline from which it was awarded.
    - When a bachelor's degree in a specific field is required, then a master's or doctorate degree in the required field is acceptable.
    - When the required qualifications list a broad academic discipline, all majors within the academic discipline are acceptable.
    - When a juris doctorate or Ph.D. is substituted for a master's degree, both a juris doctorate or a Ph.D. may be used as an acceptable equivalent for the master's degree if the position requirements allow the use of a generic master's degree to substitute for required experience. A juris doctorate and a Ph.D. are not equivalent, and any substitution of one for the other would have to be considered on an individual basis.
    - When a conversion of semester and quarter hours and academic hours to years of college is calculated (see the chart below).
    - When a conversion of academic hours to months of experience is calculated (see the chart below).

Calculating academic hours

Converting forms of credit into academic hours, using the chart below, makes it easier to compare applicants across different educational institutions that use various systems for awarding credit.

1. To begin, select the number of college academic hours to be converted by locating, in the center column, the number of semester/trimester or quarter hours that you want to convert. (Semester and trimester hours are generally considered equivalent for the purposes of these calculations).
2. To convert to quarter hours, look at the number in the right-hand column that is next to the number you are converting. For example, 35 semester hours (center column) equals 53 quarter hours (right-hand column).
3. To convert to semester or trimester hours, look at the number of hours in the left-hand column that is next to the number you are converting. For example, 35 quarter hours (center column) equals 23 semester/trimester hours (left-hand column).

Chart A: CONVERSION CHART: Semester, quarter and academic hours to years of college

Sem	Hrs to be converted	Qtr	Sem	Hrs to be converted	Qtr	Sem	Hrs to be converted	Qtr	Sem	Hrs to be converted	Qtr
0.667	1	1.5	23	34	51	44	66	99	65	98	147
1	2	3	23	35	53	45	67	101	66	99	149
2	3	5	24	36	54	45	68	102	67	100	150
3	4	6	25	37	56	46	69	104	67	101	152
3	5	8	25	38	57	47	70	105	68	102	153
4	6	9	26	39	59	47	71	107	69	103	155
5	7	11	27	40	60	48	72	108	69	104	156
5	8	12	27	41	62	49	73	110	70	105	158
6	9	14	28	42	63	49	74	111	71	106	159
7	10	15	29	43	65	50	75	113	71	107	161
7	11	17	29	44	66	51	76	114	72	108	162
8	12	18	30	45	68	51	77	116	73	109	164
9	13	20	31	46	69	52	78	117	73	110	165
9	14	21	31	47	71	53	79	119	74	111	167
10	15	23	32	48	72	53	80	120	75	112	168
11	16	24	33	49	74	54	81	122	75	113	170
11	17	26	33	50	75	55	82	123	76	114	171
12	18	27	34	51	77	55	83	125	77	115	173
13	19	29	35	52	78	56	84	126	77	116	174
13	20	30	35	53	80	57	85	128	78	117	176
14	21	32	36	54	81	57	86	129	79	118	177
15	22	33	37	55	83	58	87	131	79	119	179
15	23	35	37	56	84	59	88	132	80	120	180
16	24	36	38	57	86	59	89	134	81	121	182
17	25	38	39	58	87	60	90	135	81	122	183
17	26	39	39	59	89	61	91	137	82	123	185
18	27	41	40	60	90	61	92	138	83	124	186
19	28	42	41	61	92	62	93	140	83	125	188
19	29	44	41	62	93	63	94	141	84	126	189
20	30	45	42	63	95	63	95	143	85	127	191
21	31	47	43	64	96	64	96	144	85	128	192
21	32	48	43	65	96	65	97	146	86	129	194
22	33	50							87	130	195

CHART B: CONVERSION CHARTS: Academic hours to months of experience

Chart B1: Vocational/technical classroom/clock hours to months

Classroom/ clock hours	Months
60	1
120	2
180	3
240	4
300	5
360	6
420	7
480	8
540	9
600	10
660	11
720	12

Chart B2: Semester/trimester hours to months

Semester/ trimester hours	Months
2.5	1
5.0	2
7.5	3
10.0	4
12.5	5
15.0	6
17.5	7
20.0	8
22.5	9
25.0	10
27.5	11
30.0	12

Chart B3: Quarter hours to months

Quarter hours	Months
3.75	1
7.5	2
11.25	3
15.00	4
18.75	5
22.50	6
26.25	7
30.00	8
33.75	9
37.50	10
41.25	11

Evaluating work experience

The section categorizes broad areas of work experience to help an employer compare applicants' qualifications. Most work experience and job requirements may be classified into at least one of the areas listed below. Many jobs may be included in two or more categories. The applicant's qualifications are compared to the entry-level knowledge, skills, and abilities (KSAs) for the position and any other necessary qualification.

These categories help the employer to consistently interpret types and extent of work experience, especially for positions not familiar to hiring personnel.

When evaluating the type of experience an applicant has, the most important information to consider is the duties and responsibilities listed for each job. The job title may or may not be useful in this evaluation. The duties and responsibilities performed are the most valid and reliable basis for any decisions about experience; for example, an administrative assistant may be a clerical support position in one company and a senior professional in another.

These resources can help identify the duties and responsibilities of many occupations to make it easier to compare work experience of candidates with diverse backgrounds:

- **The O*net system** serves as the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations. O*Net is available at http://online.onetcenter.org/. (The Dictionary of Occupational Titles, published by the U. S. Department of Labor, Employment and Training, has been replaced by replaced by O*Net.)
- **The Standard Occupational Classification System (SOC),** developed by the U.S. Department of Labor, classifies workers into 820 occupations. Occupations are grouped with other occupations requiring similar job duties, skills, education or experience. SOC resources are available at http://www.bls.gov/soc/home.htm and provide access to this information.
- **The Occupational Outlook Handbook,** U. S. Department of Labor, Bureau of Labor Statistics provides detailed descriptions of many jobs that share similar responsibilities. It is available at http://www.bls.gov/OCO/

Comparing types of work experience requires an understanding of the primary duties of the position. All employees do a variety of tasks in their jobs, but it must be a primary duty or the focus of the job to count towards work experience when determining the optimum qualifications. Primary duties are those that applicants performed at least 50 percent of their time. When it is not possible to calculate the percentage of time the applicant engaged in a specific activity, it may be necessary to relay an informed decision based on a review of resource materials and discussion with employees working closely with that position.

It may also be useful to review the applicant's salary, title and his or her supervisor's title to learn more about the position or more easily compare it to others. If the application shows job duties that appear inconsistent with the job title, or if primary duties are not sufficiently described, it may be necessary to request additional information for clarification purposes.

Categories of work experience

- **Professional work experience** occupations require specialized and theoretical knowledge, usually acquired through college, other types of training, and work experience that provides comparable knowledge.
  - When a degree is the primary requirement for a position, work performed at the same level of competency in the same field may be considered, particularly if there is a provision allowing work experience to substitute for the degree.
  - In evaluating military experience, the rank of E-7 and above is generally considered professional. (Refer to U.S. Armed Forces Grade Chart).
  - In evaluating law enforcement and correctional experience, the ranks of lieutenant and above are considered professional.
- **Paraprofessional work experience** includes occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training or experience than is normally required for professional or technical status. Examples: personnel aide, teacher's aide, unit treatment and rehabilitation specialist, licensed practical nurse, interviewing clerk, direct services aide, paralegal specialist and library technical assistant.
- **Clerical and secretarial work experience** includes occupations engaged in activities concerned with preparing, transcribing, systematizing, and preserving written communications and records; distributing information; and collecting accounts. These workers are also responsible for internal and external communication; recording and retrieval of data and information; and other required paperwork. Examples: fiscal clerk, switchboard operator, clerk typist, statistical aide, teller, mail clerk, cashier, dispatcher, receptionist, secretary, and computer operator.
- **Administrative work experience** can be either professional or nonprofessional.
  - **Professional administrative work experience** includes occupations in which employees use specialized or theoretical knowledge, usually gained through formal education, to set and execute broad policies that affect an association's operations or special phases of the operations. Not all professional work experience is administrative work experience. As a rule, professional experience involving direct patient, client, inmate, offender, or student contact or sales would not be considered administrative work. Professionals not considered administrative would include correctional probation officers, social workers, nurses, counselors, therapists, sales persons, insurance agents, and real estate agents.
  - **Nonprofessional administrative work experience** is work that assists or supports a higher-level employee in the administrative functions of a business or association. Work experience can be administrative without being professional. Nonprofessional administrative staff may supervise other nonprofessionals; supervision in itself does not elevate the experience to a professional level. Examples include executive secretaries, clerical supervisors, administrative secretaries, staff assistants, senior clerks, full charge bookkeepers, word processing systems operator supervisors, office managers, purchasing technicians, personnel aides, and military experience at the rank of E-6.
  - **Executive management** includes administration and management positions responsible for directing a business or association. Examples include executive directors, company presidents, association heads, and division directors.
  - **Line management** includes administrative and management positions responsible for directing a specific unit or program area within a business, association, department, or bureau. Examples include personnel officers, purchasing directors, human services program administrators, and nursing directors.

    Line management personnel also include administrative and management positions responsible for supervising a specific unit or program area within an association, department or bureau. Examples include personnel program managers, accounting managers, human services program managers, and planning managers.
  - **Independent administrative specialty positions** are non-management positions that perform special phases of a business or association operations. Examples include accountants, purchasing agents, budget specialist, classroom teachers, human resource technicians, human resource analysts, computer systems analysts, management analysts, engineers, and financial specialists.
  - **Teaching** experience is considered professional administrative work experience. Teaching experience in a specific area, however, should be counted toward qualifying experience when the teaching field directly relates to the experience required for the position.
  - **Military service and nonmilitary experience** are generally weighted evenly, with military experience at the rank of E-7 and above considered professional As more veterans are returning to the work force, it is important that employers familiarize themselves with military ranks and units so they appropriately assess the applicant's experience and level of seniority. Refer to Tables 1a and 1b below for information on pay scale grading and command hierarchy among commissioned and non-commissioned officers.

Table 1a: U.S. Military Ranks and Units – Commissioned Officers[1]

Pay Scale	Army	Air Force	Marines	Navy and Coast Guard
Commissioned officers				
**	General of the Army	General of the Air Force		Fleet Admiral
O-10	Army Chief of Staff General	Air Force Chief of Staff General	Commandant of the Marine Corps General	Chief of Naval Operations Commandant of the Coast Guard Admiral
O-9	Lieutenant General	Lieutenant General	Lieutenant General	Vice Admiral
O-8	Major General	Major General	Major General	Rear Admiral (Upper Half)
O-7	Brigadier General	Brigadier General	Brigadier General	Rear Admiral (Commodore)
O-6	Colonel	Colonel	Colonel	Captain
O-5	Lieutenant Colonel	Lieutenant Colonel	Lieutenant Colonel	Commander
O-4	Major	Major	Major	Lieutenant Commander
O-3	Captain	Captain	Captain	Lieutenant
O-2	1st Lieutenant	1st Lieutenant	1st Lieutenant	Lieutenant, Junior Grade
O-1	2nd Lieutenant	2nd Lieutenant	2nd Lieutenant	Ensign
Warrant officers				
W-5	Master Warrant Officer 5		Chief Warrant Officer 5	Master Warrant Officer
W-4	Warrant Officer 4		Chief Warrant Officer 4	Warrant Officer 4
W-3	Warrant Officer 3		Chief Warrant Officer 3	Warrant Officer 3
W-2	Warrant Officer 2		Chief Warrant Officer 2	Warrant Officer 2
W-1	Warrant Officer 1		Warrant Officer	Warrant Officer 1

Table 1b: U.S. Military Ranks and Units – Non-Commissioned Officers

Pay Scale	Army	Air Force	Marines	Navy and Coast Guard
Non-commissioned officers				
E-9 Special	Sergeant Major of the Army	Chief Master Sergeant of the Air Force	Sergeant Major of the Marine Corps	Master Chief Petty Officer of the Navy
E-9	Command Sergeant Major Sergeant Major	First Sergeant (Chief Master Sergeant) Chief Master Sergeant	Sergeant Major Master Gunnery Sergeant	Master Chief Petty Officer
E-8	First Sergeant Master Sergeant	First Sergeant (Senior Master Sergeant) Senior Master Sergeant	First Sergeant Master Sergeant	Senior Chief Petty Officer
E-7	Sergeant First Class	First Sergeant (Master Sergeant) Master Sergeant	Gunnery Sergeant	Chief Petty Officer
E-6	Staff Sergeant	Technical Sergeant	Staff Sergeant	Petty Officer First Class
E-5	Sergeant	Staff Sergeant	Sergeant	Petty Officer Second Class
E-4	Corporal		Corporal	Petty Officer Third Class
Enlisted personnel				
E-4	Specialist	Senior Airman		
E-3	Private First Class	Airman First Class	Lance Corporal	Seaman
E-2	Private	Airman	Private First Class	Seaman Apprentice
E-1	Private (Recruit)	Airman Basic	Private	Seaman Recruit

- **Protective services occupations** are those entrusted with public safety, security, and protection from destructive forces. Examples include security guards, lifeguards, emergency workers, police officers, and firefighters.
- **Technical work experience** requires a combination of basic scientific or technical knowledge and manual skills, usually obtained through specialized post-secondary school education or equivalent on-the-job training. These individuals accomplish tasks using systematic procedures requiring knowledge of technical details, rules, methods, theories, principles, and specific equipment. These positions require specialized scientific knowledge of the necessary techniques and manual skills to safely operate equipment. Examples include computer programmers and operators, inspectors, engineers, draftsmen, surveyors, photographers, plumbers, construction workers, and assessors, and architects.
- **Skilled craftwork experience** requires special manual skills and a comprehensive knowledge of the processes involved in the work, usually acquired through on-the-job training and experience, or through apprenticeships or other formal training. Examples include mechanics, electricians, heavy equipment operators, skilled machinist occupations, typesetters, and carpenters.
- **Service maintenance work** requires performing duties resulting in or contributing to the comfort, convenience, hygienic conditions, or safety of the general public; or contributing to the maintenance of buildings, facilities or grounds of public property. Examples include bus driver, truck driver, grounds keeper, custodial employees, laundry and dry cleaning services, and waste management or recycling.

Calculating work experience

To calculate and compare experience, use the following guide:

- All applicable and relevant work experience performed by an individual on a paid or unpaid basis, including work performed in conjunction with educational programs, internships, cooperative education, field placements, trainees and volunteer experience, should be used in determining qualifications, but only if the type of work experience is the same or relevant to that required to demonstrate possession of the required entry-level knowledge, skills and abilities for the position.
- When totaling the amount of experience for the applicant's current position, count only relevant experience (in months, if less than a year) and education up to and including the date the application was signed and submitted. (Note: Electronic signatures are commonly accepted for online applications.)
- An applicant must have 12 months of work experience to receive credit for an entire year.
- If an applicant indicates only the month and year of work experience, count the months of experience from the first day of the first month listed (beginning date) to the first day of the second month listed (ending date).
- If the applicant indicates only the years of work experience, count experience from December 1 of the beginning year to January 1 of the ending year. The exception to this rule is counting 9, 10 or 11 months (as applicable) for full-time teaching during an academic year.

To compute credit for hours worked, use the following guide:

- An applicant must have worked at least 37 hours per week to be considered a full-time employee.
- Additional credit is not given to an applicant working in excess of the standard 40-hour work in a single job.
- When a person is employed in two or more jobs simultaneously, experience in all relevant jobs worked during the same period can be counted toward qualification.
- Count all of the applicant's relevant work experience, including unpaid, if the duties and responsibilities satisfy the positions' qualifications. Examples of paid and unpaid work experience include internships, cooperative education, field placements, trainee programs, and volunteer work.
- If the position requires the applicant to have experience in a supervisory capacity, the supervisory position should be in a career relevant to the position being hired, rather than supervisory experience in an unrelated area.
- Positions requiring a degree typically do not consider professional work experience a qualification unless the application indicates that professional experience may be substituted for the required degree.
- An association may approve an applicant's education and experience as equivalent to the education and experience of the required qualifications if the equivalency is documented and justified based on the following:
    - The total quantity of the applicant's training and experience equals or exceeds the total quantity of training and experience established for the position.
    - The quality and type of the applicant's training and experience is equivalent to the quality and the type of training and experience established for the position.
    - The applicant's training and experience is directly related to the knowledge, skills and abilities necessary for the successful performance of the duties of the position.
    - If an applicant works less than 37 hours per week, compute months of experience using Chart C, below. When hours worked per week are indicated with a range, calculate credit using the midpoint of the range.

CHART C: CONVERSION CHART: Part-time hours per week to months of experience

Locate the number of months worked in the left-hand column and the hours per week at the top. Read across and down to find the months of credit to give. If the number of hours per week the applicant worked is not listed, use the next lower number.

HOURS WORKED PER WEEK								
MONTHS WORKED	**5**	**10**	**15**	**20**	**25**	**30**	**35**	**37-40**
1 month	0	0	0	0	0	0	0	1
2 mos	0	0	0	1	1	1	1	2
3 mos	0	0	1	1	1	2	2	3
4 mos	0	1	1	2	2	3	3	4
5 mos	0	1	1	2	3	3	4	5
6 mos	0	1	2	3	3	4	5	6
7 mos	0	1	2	3	4	5	6	7
8 mos	1	2	3	4	5	6	7	8
9 mos	1	2	3	4	5	6	7	9
10 mos	1	2	3	5	6	7	8	10
11 mos	1	2	4	6	6	8	9	11
1 year	1	3	4	6	7	9	10	1 yr
1 yr 1 mos	1	3	4	6	8	9	11	1 yr 1m
1 yr 2 mos	1	3	5	7	8	10	1 yr	1 yr 2m
1 yr 3 mos	1	3	5	7	9	11	1 yr 1m	1 yr 3m
1 yr 4 mos	2	4	6	8	10	1 yr	1 yr 2m	1 yr 4m
1 yr 5 mos	2	4	6	8	10	1 yr	1 yr 2m	1 yr 5m
1 yr 6 mos	2	4	6	9	11	1 yr 1m	1 yr 3m	1 yr 6m
1 yr 7 mos	2	4	7	9	11	1 yr 2m	1 yr 4m	1 yr 7m
1 yr 8 mos	2	5	7	10	1 yr	1 yr 3m	1 yr 5m	1 yr 8m
1 yr 9 mos	2	5	7	10	1 yr 1m	1 yr 3m	1 yr 6m	1 yr 9m
1 yr 10 mos	2	5	8	11	1 yr 1m	1 yr 4m	1 yr 7m	1 yr 10m
1 yr 11 mos	2	5	8	11	1 yr 2m	1 yr 5m	1 yr 8m	1 yr 11m
2 years	3	6	9	1 yr	1 yr 3m	1 yr 6m	1 yr 9m	2 yrs

Interview questions

Interview questions are meant to help the employer collect sufficient job-related information from the applicant to predict the applicant's performance on the job. Questions should always relate to the KSAs identified for the position and function to further narrow down the pool of candidates.

Given the short amount of time available for personal interviews, it is important to develop clear, targeted questions that allow the applicant to demonstrate competence or weakness in a required area. Review the following list of do's and don'ts before developing your interview questions to ensure they provide the necessary information in the most effective way.

DO:

- Keep questions brief and to the point.
- Use questions that ask the applicant to identify, describe, or explain.
- Ask questions based on the knowledge, skills, and abilities essential to bring to the job.
- Ask questions on the applicant's ability to perform the job with or without an accommodation.

DON'T:

- Ask yes or no questions.
- Ask about union affiliation or activities.
- Ask questions that cannot be aligned directly to the requirements of the job.
- Ask questions about age, race, sex, national origin, religion, marital status or disability.

- Ask questions about an applicant's spouse or a spouse's employment or salary; or about children, child-care arrangements or dependents.
- Inquire about the applicant's organizations, clubs, societies, and lodges to which he or she belongs.
- Ask questions about arrest records.
- Inquire about the applicant's religious denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
- Inquire about the names or relationship of persons with whom the applicant resides.
- Inquire whether the applicant owns or rents a home.
- Ask how the applicant will get to work.
- Ask questions about illnesses, disabilities, injuries, or sick leave usage (refer to the following sections for detail).

Examples of interview questions

This section provides sample interview questions used to evaluate various performance factors. It is not an exhaustive list, but covers many common KSAs, and can be customized to meet an organization's specific hiring needs. Employees whose performance depends on this individual's competency in the position (i.e., co-workers, supervisor, assistant) can also contribute ideas for appropriate interview questions.

Interviewers typically ask no more than two or three questions in each category, focusing on the most crucial KSAs for success in the position. In some cases, the question's answer may not be as important as its ability to reveal how quickly the applicant thinks on his or her feet, or how clearly he or she is able to discuss a topic from memory.

The following questions gather information about an individual's **communication skills:**

- We've all had occasions when we misinterpreted something that we'd been told (a due date, complicated instructions, etc.). Give us a specific example of when this happened to you. What was the situation? Why was there a misinterpretation? What was the outcome?
- What kind of reports or proposals have you written? Can you give us some examples?
- Give an example of when you told someone to do something, and they did it wrong. What was the outcome?
- What reports that you are currently preparing (or recently prepared) are the most challenging and why?
- What kinds of presentations have you made? Can you give us some examples? How many presentations do you make a year?
- Give us an example from your past work experience where you had to rely on information given to you verbally to get the job done.
- What different approaches do you use in talking with different people? How do you know you are getting your point across?
- What is the worst communication problem you have experienced? How did you handle it?

During the interview, note the following:

- Consider whether the applicant is able to express him- or herself effectively and in a well-organized manner.
- Observe the applicant's non-verbal communication.
- Consider whether the applicant's grammar, sentence structure, and so forth are appropriate to the requirements of the position.

The following questions are designed to gather information about **initiative,** including an individual's ability to independently identify tasks that need to be done without supervision or excessive explanation.

- Have you found any ways to make your job easier or more rewarding?
- We've all had occasions when we were working on something that just "slipped through the cracks." Can you give us some examples of when this happened to you? What was the cause? What were the results?
- In your past experience, have you noticed any process or task that was being done incorrectly or in an unsafe manner? What did you do?
- Give an example of how you handled completing a job assignment without enough information.

The following questions help identify an applicant's **motivation** for the type of work the position requires. The intent is not to see whether they had good motivation or satisfaction in their previous jobs, but to see whether the types of things they enjoy doing will be available in this position. For example, a person who reports that the favorite aspects of his last job were being able to work outside and do different things all the time will probably not find satisfaction in a customer service desk job.

- What do/did you like best (least) about your job as a _____?
- What were/are your reasons for leaving _____?
- What are some examples of experiences in your job at _____ that were satisfying? Dissatisfying? Why?
- What gave you the greatest feeling of achievement in your job at _____? Why?
- All jobs have their frustrations and problems. Describe specific job conditions, tasks, or assignments that you've found dissatisfying. Why?
- What are some examples of past work experiences that you have found personally satisfying?
- What are some recent responsibilities you have taken on? Why did you assume these responsibilities?
- Why do you want to be a (title of position)?
- Why did you choose this (career, type of work)?

The following questions gather information about an individual's **management ability and leadership** as well as the manner and use of appropriate interpersonal styles and methods to guide individuals or a group toward successful project completion.

- Tell us about a time when you had to take a firm stand with a co-worker. What was the situation? What was difficult about the co-worker? What was the firm stand you had to take?

- Describe a situation in which you instructed someone to do something new. What were you training them to do? Walk me through how you did it.
- Tell us about a time you had to win approval from or influence your co-workers on a new idea or plan of action.
- Tell us about a new idea or way of doing something that you developed that was approved by your supervisor. What did you do to get it to the right person? What did you do to get the supervisor to agree? Be specific.
- Describe any management or leadership training, education, or work experience you've had that was relevant to this position.
- What management or leadership skills and experience do you have that would qualify you as an effective leader? Be specific.

The following questions gather information about an individual's **planning and organizing ability,** including the ability to schedule work and handle multiple tasks.

- How do you organize your workday?
- How often is your planned schedule upset by unforeseen circumstances?
- What do you do when that happens? Tell us about a specific instance.
- Describe a typical day or a typical week. (Interviewers: Listen for planning abilities.)
- How do you establish priorities in scheduling your time? Give examples.
- What is your procedure for keeping track of items requiring your attention?
- We have all had times when we just could not get everything done on time. Tell us about a time that this happened to you. What did you do?
- Tell us how you establish a course of action to accomplish specific long- and short-term goals.
- Do you postpone things? What are good reasons to postpone things?
- How do you catch up on an accumulated backlog of work after a vacation or conference?

The following questions are designed to provide information about an individual's **tolerance to stress,** the ability to perform work under pressure. These questions are not designed or intended to rate a person's stress level; instead, they are designed to give the interviewer an idea of how the applicant has reacted to previous stressful conditions or situations, as that is usually a good indicator of how the applicant will react to work-related stress in the future.

- What pressures have you felt in previous jobs? How do you deal with them?
- Describe the highest-pressure situations you have experienced recently in your job and how you addressed them?
- How do you maintain consistent work performance through periods that impose greater pressure from increased workloads and time constraints?
- Describe the last time a person at work (customer, co-worker, or supervisor) became irritated or lost his/her temper with you. What did they do? How did you respond? What was the outcome?
- Describe a situation where you became frustrated or impatient with an individual ((customers, co-workers, or supervisor) over a work-related issue. What did you do?

The following questions gather information about **teamwork,** a person's ability to work effectively and get along with others:

- We've all had to work with someone who is difficult. Give an example of when this happened to you. Why was that person difficult? How did you handle interactions with this person? What was the result?
- When dealing with individuals or groups, how do you determine when you are pushing too hard or should back off? Give an example.
- How do you go about developing good relationships with the individuals with whom you work?
- Give an example of when one of your ideas faced opposition or you had a strong disagreement with a coworker or coworkers. How did you resolve the situation?
- Tell us, specifically, what you have done to show you are a team player in the workplace.
- We all have ways of showing consideration for others. What are some things you've done to express concern or show consideration for a co-worker?
- How do you keep your employees informed about what is going on in the organization? What methods do you use to keep informed as to what is going on in your department?

The following questions gather **technical and position-specific information** about the applicant's past work experience, duties, and working conditions that are similar to those of the position.

- What training and job experiences do you have that are relevant to this position?
- Describe your experience with the following tools and equipment: (list necessary job-related tools and equipment).
- Walk me through the procedures you would follow to achieve or complete the following tasks/projects (list tasks/project that are commonly the responsibility of that position).
- What equipment did you operate in your previous jobs that is relevant to this position?
- Describe your experience performing the following tasks: (list job-related tasks).
- How do you follow the prescribed standards of safety when performing the following tasks? (List common tasks with some degree of risk required by the position.)

The following questions gather information about an applicant's **performance standards and ability to get the job done:**

- What are your standards of success in your job? What have you done to meet these standards?
- What do you consider the most important contribution you or your team made to your former place of employment. What was your role?
- What factors, other than pay, do you consider most important in evaluating yourself or your success?
- When judging the performance of others, what factors or characteristics are most important to you?
- Describe the time you worked the hardest and felt the greatest sense of achievement.
- Tell us about a time when you weren't very pleased with your work performance. Why were you dissatisfied with your performance? What did you do to turn around your performance?

Applicants with disabilities

The ADA establishes rules about "disability-related inquiries," which consist of a question or a series of questions that are likely to solicit information about a disability. The ADA limits an employer's ability to make disability-related inquiries at three stages:

1. The ADA prohibits all disability-related inquiries before an offer of employment, even if they are related to the job. The employer may not require a job applicant to take a medical examination, to respond to medical inquiries or to provide information about workers' compensation claims before the employer makes a job offer.
2. The employer may require a medical examination after giving the applicant a conditional job offer (based on the satisfactory result of a post-offer medical examination) as long as the association does so for all entering employees in the same job category, with the same conditions. If an individual is not hired because a post-offer medical examination or inquiry reveals a disability, the reasons for not hiring must be job-related and necessary for the business.
3. After employment begins, an association may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity.

Employers must be conscious of what questions may and may not be asked when interviewing an applicant with a disability. It's also helpful to be aware of some "disability etiquette" to ensure both the interviewer and applicant are at ease when interacting with one another. The following guidelines facilitate the interviewing process and enhance communication skills when interacting with prospective employees with disabilities.

While the ADA prohibits all disability-related inquiries before an offer of employment, even if they are related to the job, it is necessary to ensure that any necessary accommodations are made for applicants with disabilities requiring accommodation to ensure their comfort and that the location of the interview is accessible.

The communication (typically an email or mailed letter) in which the applicant is informed that he or she has been selected for an interview should include a notification with the following information (with [x] replaced by the number of days or weeks required by your association to make any necessary accommodations for disabled applicants).

> If you require accommodation to participate in the interview process, please contact the human resources office [x days/ weeks] in advance of your interview.

No matter what an applicant's response to this request, the employer may not include any interview questions inquiring into:

- The nature of a disability.
- The severity of a disability.
- The condition causing the disability.
- Any prognosis or expectation regarding the condition or disability.
- Whether the individual will need treatment or special leave because of the disability.

The following questions **may not be asked during an interview:**

- How many days were you absent from work because of illness last year?
- Do you have any disabilities or impairments that may affect your performance in the position for which you are applying?
- Please list any conditions or diseases for which you have been treated in the past three years.
- Have you ever been hospitalized? If so, for what condition?
- Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?
- Have you had a major illness in the last five years?
- Have you ever been treated for any mental condition?
- Are you taking prescribed drugs?
- Have you ever been treated for drug addiction or alcoholism?
- Have you ever filed for workers' compensation insurance?
- What is the nature of your disability?
- How severe is your disability?
- Will you need treatment or special leave because of your disability?
- What is the prognosis or expectation of the condition of your disability?

The following questions **may be asked during an interview:**

- The employer may explain the organization's attendance policy, and ask if the applicant can meet that requirement.
- The employer may ask the applicant how he or she will perform a specific job function, but only if everyone in the job category is required to do so.
- If the employer believes an applicant will need a reasonable accommodation to do the job, the employer may ask the applicant to describe or demonstrate how he or she would perform the job with or without reasonable accommodation.

Follow these recommendations for interviewing an applicant with a disability.

When interviewing an applicant who **uses a wheelchair:**

- Do not lean on the wheelchair.
- Do not be embarrassed to use phrases such as "Let's walk over to the auditorium."
- Do not push the wheelchair unless asked to do so.
- Move into a position that allows you to look eye-to-eye with the applicant if the conversation lasts more than a couple of minutes. Consider that people using wheelchairs must keep their heads at an angle to look up or down if you are not eye level with them.
- Keep accessibility in mind (Is that chair in the middle of your office a barrier to a wheelchair user? If so, move it aside.).

When interviewing an applicant who **has a visual impairment:**

- Do not be embarrassed to use such phrases as "Do you see what I mean?"
- Do not shout.
- Do not touch an applicant's cane.
- Do not touch or attempt to pet a guide dog when it is in harness.
- Identify yourself and others present immediately; cue a handshake verbally or physically.
- Use verbal cues; be descriptive in giving directions. ("The table is about five steps to your left.")
- Verbalize chair location or place the person's hand on the back of the chair, but do not place the person in the chair.
- Keep doors either opened or closed; a half-opened door is a serious hazard.
- Offer assistance in travel; let the applicant grasp your left arm, usually just above the elbow.

When interviewing an applicant who **is deaf or hard of hearing:**

- Do not shout.
- Use a physical signal to get the applicant's attention.
- Enunciate clearly. If the applicant is lip reading, keep your mouth clear of obstructions and place yourself where there is ample lighting. An accomplished lip reader will be able to understand 30 to 35 percent of what is said.
- If you do not understand what the applicant is telling you, do not pretend you did. Ask the candidate to repeat the sentence.
- If requested, use a sign language interpreter. Keep in mind that the interpreter's job is only to translate; always direct questions and speak directly to the applicant.
- Secure a skilled interpreter well in advance of the interview.

If you need further assistance in the area of disabilities, contact the Florida Commission on Human Relations at http://fchr.state.fl.us.

Ideal responses

Before scheduling interviews, develop for each question an example of the type of response that would identify the ideal candidate, specifying the desired knowledge, skills, and abilities that an applicant requires for successful job performance. Have space on the screening worksheet to note the specific question asked, the ideal answer, the applicant's response, and any other relevant information from the interview.

This serves two purposes:

1. It makes evaluating the candidates' responses or comparing one candidate to another a less complicated process. Not only is it easier to evaluate or rate the candidates' responses by comparing them to the ideal answers for each interview question, the information is already organized and easily compiled for rating or ranking.
2. If necessary, the ideal responses matched with the documented applicant responses can be used to defend a hiring decision.

Interview protocol

Interviews are often conducted by a panel. To ensure consistency in the interview process, the same interview panel should conduct all of the interviews for a particular position. Additionally, the panel should decide on the methodology by which the applicant will be scored, assessed, or evaluated before beginning the interviews. For example, determine whether panel members will discuss each interview and score the applicant collectively, or will each member of the panel score the applicant on a private, independent basis.

The number of candidates chosen to interview will need to strike a balance between scheduling as many applicants that meet the established screening criteria as possible, with the constraining factors of limited time and resources. Because interviews are time-consuming, the most efficient hiring strategy is to interview candidates only after narrowing the applicant pool as much as possible.

Here are some important recommendations:

- **Interview each applicant using approved interview questions in a consistent manner.** Do not alter the wording to the questions, and fully document applicants' responses.
- **Be familiar with the position.** The interviewers must have a thorough understanding of the job requirements and knowledge of the position description.
- **Create a realistic job picture for the applicant.** Do not try to hide difficult or undesirable aspects of the position if any exist.
- **Obtain applicant information and become familiar with it before the interview.** For most positions, it is helpful to compile and review materials in advance and have applicant information at hand during the interview
- **Arrange the interview setting and atmosphere.** The area should be quiet and private enough so the interview is not disturbed or interrupted. The space should be comfortable, free of clutter, clean and organized, and otherwise designed to ease the tension of interviewing.
- **Summarize up front what will happen during the interview and the approximate length of time the process will take.** Provide any other information that will make the applicant feel more comfortable during the interview. This can be provided in written form some time before the interview, or in person the day of the interview.

- **Allow sufficient time for interviews.** Each interview should be scheduled for approximately the same amount of time. Budget some time before each interview to review materials, and after each interview to make final notes about the applicant. If an applicant is scheduled for a series of interview on one day with different people or a panel is used to interview, ensure sufficient time for all interviewers to discuss the applicant. This may be scheduled for immediately after the interview or at some later point. The longer the period after the actual interview, the more essential good notes become, because they are relied on more heavily when memories fade.
- **Control the interview.** The interviewer is responsible for establishing and maintaining order and propriety in the meeting.
- **Ask meaningful questions designed to gather the needed information.** Questions are meant to demonstrate that the applicant has the necessary KSAs and experience to perform the duties and responsibilities of the position. All questions should be job-related and directed to identify the applicant's weaknesses and strengths.
- **Accommodate applicants.** Be prepared to accommodate applicants with disabilities, if requested. Ensure that an applicant's requested accommodation can be fulfilled before the applicant's scheduled interview.
- **Close the interview appropriately.** Treat all applicants with respect during the interview. In closing, inform the applicant of the anticipated schedule for filling the job. Do not provide obvious cues about the applicant's performance in the interview, good or bad, and do not give an applicant the impression that he or she "got the job," even if that individual appears to be the best candidate.

Additional screening tools

Additional screening tools include work samples or testing, willingness questionnaires, and supplemental applications of various kinds. All are data collection instruments, similar to the application and interview, meant to collect information about the potential performance of the job applicant in the specified position based on their KSAs and other pertinent job-related information. Have your association's legal and human resources personnel approve these additional screening tools, as they did they did the application and interview questions, before any are administered.

Work sample

A work sample is the reproduction of a designed task or behavior used to measure skills that are necessary to perform the job. It may be presented in the form of a test; a typing test, for example, provides a work sample of the individual's typing skills. Work samples provide the applicant the opportunity to demonstrate a job-related skill or a particular knowledge, e.g., speaking and presentation skills, writing skills, computer skills, trade skills, problem-solving or analytical skills, knowledge of rules or procedures, etc.

To develop a work sample screening tool:

1. Analyze the job to identify tasks best measured by an applicant's actual performance.
2. Develop a sample that consists of a task representative of work actually done on the job, focusing on performance that is critical to its success. The work sample should mimic the actual task required as closely as possible if it is not possible to simulate exactly.
3. Pre-test the exercise to ensure the testing will run smoothly and that applicants requiring equipment or materials have the appropriate supplies and workspace to perform the work sample as well as protective clothing or equipment, if necessary.

Work samples include:

- Skill assessments:
  - Typing.
  - Drafting.
  - Proofreading.
  - Auditing a financial invoice.
  - Machine operation (sewing machine, word processing, duplication machine).
  - Tool use.
  - Trade skill (welding, painting, engine repair, electronics repair, plumbing, carpentry).
- Employment and management ability measures:
  - Situational problem resolution.
  - Interview simulations (e.g., employee counseling).
  - Analysis (i.e., budget, organization, alternatives) priorities, fact-finding.
- Written exercises:
  - Written problem analysis.
  - Compose a letter or report.
  - Preparation of legal brief or quasi-judicial decision.
  - News release.
  - Letter composition.
  - Arithmetic calculation for computing a claim.
  - Arrangement of files (e.g., alphabetical, by category, date, etc.).
  - Review of document for typographical errors.
- Verbal communication exercises:
  - Report to board members or residents.
  - Presentations.
  - Safety training or new employee orientation.

Willingness questionnaire

Sometimes there are aspects of a position that may not be appealing to an applicant. This is where a willingness questionnaire may be needed. The questionnaire will ask the applicant's willingness to perform those aspects of the position, such as working rotating shifts, providing health care to clients or dealing with angry customers. A willingness questionnaire is also a method for applicants to self-assess their suitability for the job.

To develop a willingness questionnaire:

1. Determine whether there are unusual or unpleasant job-related work aspects of the position.
2. Develop a list of questions about the applicant's willingness to perform these tasks.
3. Decide on the appropriate time in the selection process to use the willingness questionnaire, for example, at the same day as the interview or at the same time as a supplemental application or work sample.
4. Evaluate the willingness questionnaire: If the applicant answers "no" to a willingness question, you may choose to ask for further information, or this response may eliminate the individual from further consideration. It is important to determine in advance how this step will be handled and administer the process consistently.

Willingness question include:

- Are you willing to work overtime necessary to complete assignments and projects?
- Your workstation will be located in the reception area of the office, where there are continuous interruptions throughout the day. Your responsibilities will include greeting visitors and answering several telephone lines. You will be expected to carry out these functions while performing your normal responsibilities. Are you willing to accept this responsibility?
- Are you willing to work rotating shifts?
- Are you willing to work "on-call"?
- Are you willing to attend a work retreat one weekend every three months?
- Are you willing to deal with irate people?
- Are you willing to present training sessions?
- Are you willing to travel out of town overnight in the performance of your job?
- Are you willing to work in stressful situations?
- Are you willing to obtain and maintain a Florida driver's license?

Supplemental application

A supplemental application is designed to obtain additional or more detailed information on the applicant's work history, education, and training, as they relate to the duties of the position and the necessary KSAs. A supplemental application's primary focus is the KSAs identified as necessary to perform the duties of the position, with questions asking the applicant to elaborate on past experience that demonstrates these qualifications. Additionally, the supplemental application collects information that may not be obtained from the state of Florida employment application, such as driver's license information, for example.

To develop a supplemental application:

1. Determine whether any relevant job-related information was not collected in the original application. Be certain that federal, state, and association regulations allow inquiries into this area.
2. Develop a supplemental application requesting this additional information.
3. Decide on the appropriate time in the selection process to use the supplemental application.

Supplemental application example

Directions to applicants: This supplemental application contains a summary of the duties and responsibilities assigned this position and their related knowledge, skills or abilities (KSAs). A space has been provided for you to relate any educational, work or life experience that you feel would indicate you possess the relevant experience and work or knowledge, skill, or ability needed for the job.

This is a key support position, responsible for independently performing a variety of administrative duties involving all aspects of the association. [Provide a brief description of the position's duties and responsibilities.]

- Required KSA: Knowledge of governmental accounting principles.
  - Describe the type of accounting experiences you have had in governmental accounting, or a comparable entity (city, county or state).
- Required KSA: Ability to work independently.
  - This position handles a varied and high-volume workload and coordinates functions. The incumbent must often make decisions on the priority of tasks to be performed. In describing your work or life-related experience, please give examples of work you've handled independently and how you prioritized their completion.
- Required KSA: Ability to design or develop computer-assisted training.
  - Describe your experience and role in designing or developing computer-assisted instruction, computer-based or distance learning programs for training purposes.
- Required KSA: Ability to type letters and other standard business forms in correct format.
  - Please describe any experience you have preparing and completing documents of a legal nature.
- Required KSA: Ability to effectively communicate verbally and in writing.

- What experience do you have in composing correspondence? Give examples.
- Special position requirement: This position requires the possession of a valid driver's license.
  - Do you possess a valid Florida driver's license (or current valid driver's license of another state)? If yes, please provide state of issue, license number and expiration date.

Administering work samples, willingness questionnaires and supplemental applications

Once you have determined that you will administer a work sample, willingness questionnaire or supplemental application, you will need to decide when, where and how to administer this part of the selection technique. Follow these suggested guidelines for administering these additional screening tools:

- **Choose an appropriate day and time for optimum results.** For example, the work sample may be administered at the time of the interview or to a larger pool of applicants before the interview to narrow the pool of applicants as much as possible before the interviewing phase.
- **Determine which supplemental assessments will be administered and to whom.** Inform applicants in advance of these additional selection techniques (e.g., work sample), and when each will be administered so the applicant is prepared and may request an accommodation, if necessary.
- **Develop a template.** Identify the objectives of the supplemental assessment. Prepare clear and concise instructions for applicants performing the assessment (e.g., including time limits and instructions for saving and submitting the completed work sample). Ensure each applicant is provided the same assessment information and documentation.
- **Create a setting appropriate to the supplemental screening needs,** including any space, equipment, or materials required.
- **Allow sufficient time for supplemental assessments.** Give the applicant plenty of time to complete the assessment task, but do not allow excessive amounts of time. Each applicant should be scheduled for approximately the same length of appointment. Allow sufficient time to answer any questions the applicant may have before he or she begins the task.
- **Accommodate applicants.** Be prepared to reasonably accommodate applicants with disabilities if requested.
- **Keep the supplemental assessment documentation in a secure location.** Unlike other components of a selection technique, supplemental screening tools are "tests" and should be kept in a secured, locked location to reduce the potential for applicants to see the testing instrument in advance.
- Evaluate the supplemental assessment documentation. Ensure the supplemental assessment documentation is evaluated consistently. Ideally, the same evaluator should be used to review all supplemental assessment documentation of the same nature (e g., the same individual would review all work samples; another would review all information related to the willingness questionnaire).
- Confirm that the application and other screening method certification is complete, with the "Official Use Only" section of the application signed and dated.

Background and reference checks

Verification of credentials can begin once the applicant pool has been narrowed to the best possible candidates. Selecting more than one individual from the most qualified applicants is usually a preferred strategy, because not all applicants may pass the reference check, or be available for the job when needed, at the salary offered, and so on. The best candidates for the job are those who have demonstrated the highest level of knowledge, skills, and abilities necessary to perform the duties and responsibilities of the position.

Verification of the final candidates' qualifications and experience through the use of background and reference checks are one of the most important tools for evaluating the qualifications of a prospective employee. Because past performance is the best predictor of future success, the reference check is one of the best indicators of how the applicant will perform on the job.

A thorough reference check yields job-relevant information about an individual's past behavior, experience, education, performance, and other critical factors important in the overall selection process. These inquiries are a critical aspect of a successful hiring strategy, and should never be omitted.

A thorough background check also is essential to provide reasonable assurance of the trustworthiness and dependability of the job candidate. Employers are legally required to take "reasonable" steps to ensure the person hired is not in any way a potential risk to association members or employees.

If, for example, a background check shows the prospective employee has a history of violence, crime, sexual harassment, or similar behavior and he or she is hired, any future criminal or anti-social behavior, aggression or hostility exhibited in the workplace by that employee may be judged "foreseeable," carrying with it the implication that the behavior could or should have been anticipated by the employer and hiring process. This can make the employer potentially legally responsible (liable) for any negative consequences suffered by individuals due to the actions of that hire. Similarly, a reference check that showed no red flags might be a mitigating factor in civil litigation, reducing or preventing company liability from any incidents associated with the employee.

Background checks verify credentials required for the position with validation of educational degrees and performance, professional certifications, and current licensing requirements. Applicants may falsely state that they have a certain degree or certification or graduated from a specific institution, so the

best rule-of-thumb when reviewing qualifications from the application or assertions in the interview is "trust but verify."

This verification is achieved through evaluation of testing or a work sample along with background and reference checks. While direct communication with the applicant provides useful information about credentials and experience, it is not possible to verify qualifications using the applicant as the information source.

Once the application materials have been evaluated and discussed by hiring personnel and a final candidate is selected, employers should begin verification of the applicant's history.

Associations may have specific procedures for conducting the reference check and background verification of a selected applicant. The employment application must contain the applicant's agreement to release any and all information (excluding records deemed confidential under ADA) about the person to be used in decisions about employment with the association.

These are general guidelines that should be followed and may be performed by the manager or the human resources office. Contact your human resources office for association-specific procedures.

- Conduct a reference check on the top applicants. The employment reference check must be sufficient to verify the applicant meets the requirements established for the position. Contact at least three (or as many as possible) former employers. Confirm information stated in the application, and ask questions related to the job requirements that clarify the applicant's qualifications.
- Verify education and licensure if required or specified for the position. A verification of education and experience of the applicant selected should support the qualification determination and eliminate any doubt that the applicant is qualified for the position. Supervisor reference checks, verification of education or job, and background investigations are additional types of required verification.
- Confirm work and training starting and ending dates from the application for gaps in employment.
- Review "the reason for leaving" section for each employment listed.
- If the applicant indicates "yes" to any of the conviction questions, contact your human resources office for guidance.

National standards for employment screening are set by the Fair Credit Reporting Act (FCRA), with modifications legislated by each state. During the reference check (and not before), it may be possible for the employer to collect private information, such as the applicant's educational records, criminal records, workers compensation history, motor vehicle record, credit history, and court records, or to conduct drug or psychological testing, but ONLY IF:

- The inquiry is directly relevant to the job.
- The applicant has provided written consent to a background check.
- The request is made according to regulations stipulated by the FCRA and the state. Many states limit the ability of the employer to access certain information for hiring purposes. Be certain the state in which the employer is hiring allows the requested information to be collected through a background check.

In some cases, it may be more efficient to hire a reputable company that specializes in background checks for potential employees. In the end, a competently performed background check is cost-effective because it minimizes risk for the association.

Some points to remember when conducting reference checks:

- Be consistent: Ensure that standards of information are applied uniformly for the position, e.g., if one item is grounds for denial of a job to one person, it should be the same for any other applicant similarly situated.
- Keep inquiries relevant: Information used for employment purposes should be job-related and based on essential functions.
- Check several sources: It is good business practice to contact at least three employers.
- Keep written documentation: Document the information gained from the reference check.

Final determination

After the reference check is complete and a hiring decision is made, a final review of the selected candidate's qualification should confirm:

- The applicant selected performed better in the selection technique than the majority of the other applicants who participated and had favorable employment reference checks.
- The applicant selected performed as well as the other applicants in the selection technique, has more of the training or education necessary for successful work performance in the position to be filled and had favorable employment reference checks.
- The applicant selected performed as well as the other applicants in the selection technique, has more related work experience or skills compared with the most important duties and responsibilities of the position to be filled, and had favorable employment reference checks.

References

1. Rank information as of 12/2008 from http://www.militaryfactory.com/ranks/index.asp [Blank indicates there is no rank at that pay grade. ** Ranks used infrequently during wartime]

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- Online Sunshine: Official site of the Florida Legislature; http://www.leg.state.fl.us
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- U. S. Equal Employment Opportunity Commission; http://eeoc.gov/

BEST HIRING PRACTICES

Final examination questions

Select the best answer for each question and mark your answers on the Final Examination Answer Sheet found on page 128 or complete your test online at **CAMS.EliteCME.com**.

11. Hiring personnel are responsible for ensuring the hiring process is conducted fairly according to applicable regulatory requirements, and may also be accountable to the association for training and certification tasks.

    ○ True ○ False

12. Each association is required to retain hiring records for a maximum of three years from the date the individual began employment.

    ○ True ○ False

13. A supplemental application refers to the multi-step process in which a variety of methods are used to collect applicant information for assessment purposes.

    ○ True ○ False

14. Qualifying questions focus solely on information that is directly relevant to job performance and the KSAs required to perform the position.

    ○ True ○ False

15. The primary considerations for comparing applicants and assessing a candidate for a specific position are the responsibilities and primary tasks and duties required by the position and those performed by the applicant in previous jobs.

    ○ True ○ False

16. Primary duties are those that applicants perform at least 70 percent of their work time.

    ○ True ○ False

17. The associate degree (AA or AS) normally requires less than two years of full-time equivalent college work.

    ○ True ○ False

18. When a degree is the primary requirement for a position, work performed at the same level of competency in the same field may be considered, particularly if there is a provision allowing work experience to substitute for the degree.

    ○ True ○ False

19. In evaluating military experience, the rank of E-5 and above is generally considered professional.

    ○ True ○ False

20. The ADA prohibits interview questions asking an applicant who is disabled whether he or she will need treatment or special leave because of a disability.

    ○ True ○ False

Chapter 4: Community Associations and Accessible Housing Law

4 CE Hours

By: Valerie Wohl

Learning objectives

- Explain why the number of individuals with disabilities in this country is likely to increase, both in number and as a percentage of the U.S. population.
- Name the primary federal and state laws and codes that regulate fair housing policy for the disabled.
- Explain how the amended FHA defines "multifamily dwellings," and its application to community associations.
- Describe how Title III of the ADA defines "public accommodations," and how it applies to community associations.
- Describe the main functions and applications of Chapter 760 FS, Chapter 553 FS, and Chapter 11 of the Florida Building Code.
- Describe how the FHA defines "accessible," and list the seven required areas that must meet accessibility standards.
- Explain the legal differences and similarities between "reasonable modifications" and "reasonable accommodations."
- Describe an appropriate procedure for receiving, reviewing, and granting or denying a request for accommodation.
- List the three criteria most relevant when requesting proof of disability, and what should not be asked (i.e., what constitutes an acceptable or unacceptable request).
- Explain how financial responsibility for accommodation or modification expenses is determined.
- Explain the legal issues related to accessible parking and how they apply to community associations.
- Explain the legal issues with accessible swimming pools and how they apply to community associations.

Introduction

The past two decades have seen a significant expansion of civil rights for individuals with disabilities, with legislation creating improved access to housing and employment through the legal prohibition of discrimination and the creation of legal enforcement mechanisms. In recent years, amendments to disability law have implemented even stronger enforcement of the law, and harsher penalties for noncompliance.

Community associations must comply with state and federal housing laws that promote equal access to housing for individuals with disabilities, but navigating which laws, rules, and codes apply to a specific association, or even a part of the association, can be difficult.

In the next few decades, the number of disabled individuals in the United States is expected to grow in numbers, and constitute a greater percentage of the U.S. population. As those numbers increase, so will the demand for housing that accommodates residents with disabilities, allowing them to live more comfortably and independently.

There are at least two important reasons a community association should familiarize itself with the current law and identify the association's obligations to disabled residents/owners and guests:

- Community associations are legally required to accommodate the housing needs of disabled individuals.
- It makes good financial sense to meet the housing needs of this growing sector of the population.

This chapter provides an overview of federal and state civil rights laws that ensure equal opportunity in housing and public spaces for people with disabilities. It clarifies which laws and rules apply to community associations, what constitutes accessibility and reasonable accommodation, and how the law distinguishes between public and private areas of an association.

It also discusses some common "hot topics" on disability obligations for community associations, such as distribution of accessible parking spaces, who is responsible for modification expenses, and how recent legislative changes might regulate access for the disabled at your community pool. Because the law on housing discrimination is so vast, this chapter will focus on federal and state regulations explaining the rights of disabled individuals as they specifically apply to community associations.

Notes on terminology:

- Some federal and state legislation use the term "**handicap**" instead of "**disability**." Both words have the same legal meaning, but the current preferred term is "disabled," so that word is used throughout this chapter unless it is quoting from an original text.
- The words **co-owner, owner, resident,** and **tenant** all are used to refer to individuals who reside within the community association.

- Although the original versions of the **Fair Housing Act (FHA)** and **Americans with Disabilities Act (ADA)** have been substantially amended over the years (the Fair Housing Amendments Act of 1990, or FHAA; the Americans with Disabilities Amendments Act of 2008, or ADAAA; etc.), unless it is useful to use the specific title of the revised law, "FHA" and "ADA" will be used to refer to all versions of the acts.

Population trends

Florida has long been a haven for senior citizens, an age group more likely to experience disability than any other. In all, about 37 percent of adults 65 years of age and older have a chronic or constant disability, while even more are temporarily disabled, during an illness, for example, or recuperating after surgery.[1]

Hearing and visual impairments are more prevalent among the elderly, who may become increasingly hard of hearing or visually impaired as they age. Of the 10.2 million individuals who have some hearing difficulty, 5.8 million are 65 and older. Of the 6.5 million individuals with a visual disability, 3.1 million (17 percent) are age 65-74 years, and 4.3 million (26 percent) are age 75 years and older. Many visual difficulties are associated with age-related macular degeneration, which typically occurs in patients over 60 and is the leading cause of legal blindness in senior citizens in North America.[2]

A number of demographic trends are expected to combine, resulting in increasing numbers of adults with a disability over the next two decades or more: The baby boomer population is aging, and advanced years are associated with an increased risk of disability. Add to this the fact that U.S. citizens are living longer than ever, and it reasonably evident that there will be a noticeable increase in the demand for accessible housing in the foreseeable future.

While the majority of disabled individuals are older, one in five U.S. adults (47.5 million, or 21.8 percent) in the general population reports a disability. The three most common causes of disability among adults in the United States are arthritis or rheumatism, back or spine problems, and heart disease.

Military veterans have a higher rate of disability than the general population. In 2008, the total number of veterans with any type of disability numbered 5.5 million, with 3.4 million reporting a service-connected disability.[3] While young men and women typically experience disability at a lower rate than senior citizens, recent conflicts have meant more disabilities among young adult military veterans. Typically, about 10 percent of people 18 to 64 are disabled.[4] In 2012, 17 percent of veterans who served during the Gulf War era I reported having a service-connected disability. Among veterans who served during Gulf War era II, nearly 30 percent reported having a service-connected disability.[5]

FEDERAL FAIR HOUSING LAW

Two main federal laws regulate how the law applies to community association accessibility for disabled individuals: The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, or FHA) and the Americans with Disabilities Act (ADA). Both laws are lengthy and cover many topics outside of fair housing, such as discrimination in employment and detailed information on enforcement authority.

Civil Rights Act of 1968 – Title VIII: Fair Housing Act

Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act (FHA), prohibits discrimination in the sale, rental and financing of residence based on race, color, religion, sex or national origin. Title VIII was amended in 1988 (effective March 12, 1989) by the Fair Housing Amendments Act (FHAA) to prohibit discrimination based on disability, among many other factors, and establish new enforcement mechanisms for discrimination in housing.

Americans with Disabilities Act of 1990

The Americans with Disabilities Act (ADA) of 1990 provides equal opportunity for individuals with disabilities, including the ability to access and enjoy public commercial facilities. The ADA prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications.

To be protected by the ADA, a person must have a disability or have a relationship or association with an individual with a disability. The Americans with Disabilities Amendments Act of 2008 (ADAAA), effective in 2009, amended numerous sections of the act.

The Rehabilitation Act of 1973 and the Architectural Barriers Act of 1968

The Rehabilitation Act of 1973 and the Architectural Barriers Act of 1968 are important federal acts that apply only to federal buildings and governmentally funded or sponsored entities. They are mentioned here because they set unprecedented accessibility standards that were later incorporated into many federal and state regulations, including amendments to the FHA

and ADA. Community association housing, or some portion of it, may be subject to additional accessibility requirements under Section 504 of the Rehabilitation Act or Architectural Barriers Act if they are recipients of any federal, state, or local government funds.

Uniform Federal Accessibility Standards (UFAS)

These standards were developed by four federal agencies responsible for issuing standards under the Architectural Barriers Act of 1968. When the new ADA Accessibility Guidelines were written, the Americans with Disabilities Act and the Architectural Barriers Act were merged into one document. It is common to see UFAS technical specifications referenced in accessibility standards.

Florida State Fair Housing Law

Florida State laws on the housing rights of individuals with disabilities are primarily found in Chapter 760 Florida Statutes (FS), Part II: Fair Housing Act; Chapter 553 FS, Part II: Accessibility by Handicapped Persons.

Chapter 553 was revised in 2011 to ensure consistency with amended specifications established by the 2010 ADA. This technical information became the basis for the 2012 Florida State Accessibility Code and accessibility requirements for the disabled contained in Chapter 11 of the Florida Building Code (FBC), which relate to new building construction and the remodeling of existing buildings and facilities.[6]

Chapter 760 Florida Statutes – Part II: Fair Housing Act

Part II of Chapter 760 FS is the Florida Fair Housing Act (Ss. 760.20-760.37). Enacted in 1983, it was designed to mirror on a state level the federal Fair Housing Act's legal structure for prohibiting discrimination in the sale, rental, financing, appraisal, or insuring of housing, the provision of real estate brokerage services, or the advertising of a residence on the basis of race, color, religion, sex, national origin, disability, or familial status. The statute also mandates that new multifamily housing must be constructed and designed in an accessible manner, and requires certain modifications or accommodations for persons with mental or physical disabilities.

Chapter 553 Florida Statutes: Building Construction Standards Part II: Accessibility by Handicapped Persons and the State Accessibility Code

Accessibility requirements on the housing rights of individuals with disabilities are found in Chapter 553 FS, Building Construction Standards Part II: Accessibility by Handicapped Persons. This chapter contains detailed specification for implementing fair housing law, including exceptions to federal law, parking space allocation, vertical accessibility of buildings, provisions for making modification, and qualifications for waivers.

In 1993, the Florida Americans with Disability Accessibility Implementation Act was enacted within this chapter (Sections 553.501-553.513, Florida Statutes), incorporating the structural accessibility requirements of the Americans with Disabilities Act of 1990 into Florida state law and maintaining existing provisions of Florida law that were judged more rigorous than federal accessibility requirements. Chapter 553 was revised in 2011 to establish consistency in standards with the 2010 ADA. These specifications were incorporated into the 2012 Florida State Accessibility Code.

All legislation is subject to revision. Both federal and state laws have been substantially amended over the years. In determining what laws apply to a specific community association, confirm that you are referring to the current text of the law, especially because revisions occur each year, and many websites do not update information in a timely manner.

Accessibility guidelines under the Florida Statutes are separate and apart from federal accessibility law, such as Title III of ADA and the ADA Accessibility Guidelines (ADAAG), which are enforced by the U.S. Department of Justice or by private action in federal court. State regulations on accessibility are under the jurisdiction of county and municipal authorities, who provide detailed information through departments regulating building and code compliance.

A closer look at the Fair Housing Act[7]

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, FHA, or Title VIII), prohibits discrimination based on disability in the sale, rental, and financing of dwellings, and in other housing-related transactions. This version of the Fair Housing Act prohibited persons from discriminating against others in real estate matters (e.g., sales, leases, mortgages), but did not apply to most private housing, so its impact on community associations was slight.

In 1988, The Fair Housing Act was amended (referred to as the Fair Housing Amendments Act, or FHAA), expanding the law to prohibit discrimination to a person with a disability, defined by the act to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term **"physical or mental impairment"** is broad, including diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus (HIV) infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The term "major life activity" means activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking, among other activities.

The amended law, effective in 1989, prohibits discrimination in any aspect of selling or renting housing or denying a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence.

It also regulates housing-related activities, such as financing, zoning practices, new construction design, advertising, and establishing new administrative enforcement mechanisms to bring suit on behalf of housing discrimination victims. Its coverage includes private housing, housing that receives federal financial assistance, and state and local government housing.

Other important revisions included:

- Design and construction standards to ensure accessibility for qualifying new multifamily dwellings ready for occupancy after March 1991.
- Amendments to criminal penalties in section 901 of the Civil Rights Act of 1968 for violations of the Fair Housing Act.
- Changes providing incentives for discrimination testing under the Fair Housing Act and the Equal Credit Opportunity Act.
- Requiring owners of housing facilities to make reasonable exceptions to their policies and operations to accommodate people with disabilities for the purpose of equal housing opportunity.
- Requiring landlords to make reasonable modifications to the private living space as well as common-use spaces to accommodate the disabled individual, without charge to the landlord.

The FHAA requires that new multifamily housing with four or more units be designed and built to allow access for persons with disabilities. Dwellings must be designed and constructed with the following accessible features:

- The public and common use areas must be readily accessible to and usable by persons with disabilities.
- All doors designed to allow passage into and within all premises of covered dwellings must be sufficiently wide to allow passage by persons with disabilities, including persons who use wheelchairs.
- All premises within covered dwellings must contain the following features:
    - An accessible route into and through the dwelling unit.
    - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.
    - Reinforcements in bathroom walls to allow the later installation of grab bars.
    - Usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about and use the space.

A closer look at the Americans with Disabilities Act (ADA)[8]

The ADA prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. The ADA does not specifically name impairments covered by the act, and defines an individual with a disability in the same way as the FHAA.

The Americans with Disabilities Act Amendments Act of 2008 (ADAAA), effective in 2009, reinforced and strengthened the original law. It was amended to "restore the intent and protections of the Americans with Disabilities Act of 1990," assuring that the act had the authority to implement the law and more effectively protect disabled individuals from housing discrimination. The ADAAA also revised sections of the Fair Housing Act and Section 501 of the Rehabilitation Act of 1973, which established construction standards for accessible structures.

The ADA consists of a number of sections, each of which addresses a different aspect of disability law. Much of the ADA applies to governmental entities or those receiving federal funds. Community associations may be subject to portions of Title II if they receive government funding, or Title III, Public Accommodations, depending on the association's use of space.

Title I of the Americans with Disabilities Act of 1990 addresses employment, prohibiting private employers, state and local governments, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

Title II of the ADA, Public Services, requires that these entities provide the disabled equal access and opportunity to benefit from all of their programs, services, and activities (e.g., public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings). It also requires state and local governments to be located in buildings accessible to the disabled, and to follow specific architectural standards for new construction and alteration of government buildings.

While public entities are required to make reasonable modifications to policies, practices, and procedures to avoid discrimination, they are not required to take actions that would result in undue financial and administrative burdens, and they may be exempt if they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity offered.

ADA Title III: Public Accommodations and Services Operated by Private Entities

Title III of the ADA, effective in 1992, was enacted to ensure equal access to public goods and services by persons with disabilities. The law applies to businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities.

Public accommodations are private entities that own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities, including sports stadiums and fitness clubs. It also includes transportation services provided by private entities.

Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They also must comply with specific requirements and architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. Additionally, public accommodations must remove barriers in existing buildings where it is easy to do so without much difficulty or expense, given the public accommodation's resources.

While Title III of the ADA applies to places of public accommodation and commercial facilities, if an establishment invites the public onto its property or into its buildings, it is likely subject to Title III of the ADA. Examples of public accommodations include almost any business that deals with the public, such as hotels, motels, restaurants, bars, professional offices, gyms, and recreational sites.

Title III of the ADA and the ADA Accessibility Guidelines (ADAAG) prescribe accessibility requirements for buildings and facilities enforced by the U.S. Department of Justice (DOJ), which is authorized to bring a lawsuit where there appears to be a pattern or practice of discrimination in violation of Title III, or where an act of discrimination raises an issue of general public significance. Title III also provides for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII, the ADA, and section 501 of the Rehabilitation Act of 1973 (Rehab Act). It is also enforced through private lawsuits.

The original ADA Title II regulations were effective from 1991 through March 15, 2011; ADA regulations for Title III were effective from 1994 through March 15, 2011. In 2010, The ADA and the ADA Standards for Accessible Design were amended, effective March 15, 2011. The revised regulations made changes to Title II (28 CFR Part 35) and Title III (28 CFR Part 360) published in the 2011 edition of the Code of Federal Regulations (CFR).

Title II was revised to make enforcement of accessibility standards under the ADA more effective, and Title III was amended to assure consistency with the minimum guidelines and requirements developed and issued by the Architectural and Transportation Barriers Compliance Board.

The Department of Justice amended its regulation implementing Title III of the Americans with Disabilities Act (ADA), which applies to public accommodations (which may include private businesses that fall within one of a number of categories established by the statute) and commercial facilities. The amendments were made in response to an ADA requirement that the Department of Justice (DOJ) publish ADA design standards consistent with the minimum guidelines published by the U.S. Architectural and Transportation Barriers Compliance Board. Title III fulfills this obligation.

To minimize compliance burdens on entities subject to more than one legal standard, these design standards now correspond with the federal standards implementing the Architectural Barriers Act and with the private sector model codes that are adopted by most states.

In 2010, final regulations implementing the ADA's amended Title II (State and Local Government Services) and Title III (Public Accommodations and Commercial Facilities) were finalized, with a Department of Justice clarification of the following points:

- **Effective date:** The rule became effective March 15, 2011. On March 15, 2012, compliance with the 2010 standards was required for new construction and alterations and barrier removal. In the period between September 15, 2010, and March 15, 2012, covered entities were allowed to choose between the 1991 standards and the 2010 standards. Covered entities that should have complied with the 1991 standards during any new construction or alteration of facilities or elements, but had not done so by March 15, 2012, must comply with the 2010 standards.
- **Element-by-element safe harbor:** The rule includes a general "safe harbor" under which elements in covered facilities that were built or altered in compliance with the 1991 standards would not be required to be brought into compliance with the 2010 standards until the elements were subject to a planned alteration. A similar safe harbor applies to elements associated with the "path of travel" to an altered area.
- **Service animals:** The rule defines "service animal" as a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. The rule states that other animals, whether wild or domestic, do not qualify as service animals. Dogs that are not trained to perform tasks that mitigate the effects of a disability, including dogs that are used purely for emotional support, are not service animals. The final rule also clarifies that

individuals with mental disabilities who use service animals that are trained to perform a specific task are protected by the ADA. The rule permits the use of trained miniature horses as alternatives to dogs, subject to certain limitations. To allow flexibility in situations where using a horse would not be appropriate, the final rule does not include miniature horses in the definition of "service animal."

- **Wheelchairs and other power-driven mobility devices:** The rule adopts a two-tiered approach to mobility devices, drawing distinctions between wheelchairs and "other power-driven mobility devices." These include a range of devices not designed for individuals with mobility impairments, such as the Segway® PT, but which are often used by individuals with disabilities as their mobility device of choice. Wheelchairs (and other devices designed for use by people with mobility impairments) must be permitted in all areas open to pedestrian use. Other power-driven mobility devices must be permitted to be used unless the covered entity can demonstrate that the class of devices cannot be operated in accordance with legitimate safety requirements. The rule also lists factors to consider in making this determination. This approach accommodates both the legitimate business interest in the safe operation of a facility and the growing use of nontraditional mobility devices, such as the Segway® PT, by returning veterans with disabilities and other individuals with disabilities who are using these devices as their mobility aid of choice.
- **Effective communication:** The rule includes video remote interpreting (VRI) services as a kind of auxiliary aid that may be used to provide effective communication. VRI is an interpreting service that uses videoconference technology over dedicated lines or wireless technology offering a high-speed, wide-bandwidth video connection that delivers high-quality video images. To ensure that VRI is effective, the department has established performance standards for VRI and requires training for users of the technology and other individuals involved with its use so that they may quickly and efficiently set up and operate the VRI system.
- **Reservations made by places of lodging:** The rule establishes requirements for reservations made by places of lodging, including procedures that will allow individuals with disabilities to make reservations for accessible guest rooms during the same hours and in the same manner as other guests, and requirements that will require places of lodging to identify and describe accessible features of a guest room, to hold back the accessible guest rooms for people with disabilities until all other guest rooms of that type have been rented, and to ensure that a reserved accessible guest room is removed from all reservations systems so that it is not inadvertently released to someone other than the person who reserved the accessible room.
- **Timeshares, condominium hotels, and other places of lodging:** The rule provides that timeshare and condominium properties that operate like hotels are subject to Title III. The rule also provides guidance about the factors that must be present for a facility that is not an inn, motel, or hotel to qualify as a place of lodging. The final rule limits obligations for units that are not owned or substantially controlled by a public accommodation that operates a place of lodging. Such units are not subject to reservation requirements to "hold back" of accessible units nor are they subject to the rule's barrier removal and alterations requirements if the physical features of the guest room interiors are controlled by their individual owners rather than by a third-party operator.

A CLOSER LOOK AT FLORIDA FAIR HOUSING LAW

While much of Florida housing and public space accessibility regulation is a reflection of federal standards (and was one of the first four states to have its accessibility codes certified compliant with the Americans with Disabilities Act by the Department of Justice), Florida has also established its own requirements, considered more amenable to the disabled than federal specifications.

Chapter 760 Florida Statutes Part II: Fair Housing Act

In 1983, the Florida legislature passed the Florida Fair Housing Act, a law that largely mirrors the federal Fair Housing Act in establishing prohibitions against housing discrimination, including the act of discriminating in the sale, rental, advertising, financing, or providing of brokerage services for housing.

In 1997, the law was revised to maintain consistency with the amended FHA and ADA, including prohibitions on retaliating against an individual alleging discrimination, and harassing, coercing, intimidating, or interfering with anyone exercising or assisting someone else who is exercising rights provided under the Fair Housing Act. Revisions also provided for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII and the ADA, and section 501 of the Rehabilitation Act of 1973 (Rehab Act).

Chapter 553 Florida Statutes Part II: Accessibility by Handicapped Persons[9]

Chapter 553 FS, Building Construction Standards; Part II: Accessibility by Handicapped Persons, contains detailed specification for implementing the fair housing law, including exceptions to federal law, parking space allocation, vertical accessibility of buildings, provisions for making modification, and qualifications for waivers.

In 1993, the Florida Americans with Disability Accessibility Implementation Act was enacted within Chapter 553 FS

(Sections 553.501-553.513, FS), incorporating the structural accessibility requirements of the Americans with Disabilities Act of 1990 into Florida state law, and maintaining existing provisions of Florida law that were judged more rigorous than federal accessibility requirements. Chapter 553 was revised in 2011 to establish consistency in standards with the 2010 ADA. These specifications were incorporated into the 2012 Florida State Accessibility Code.

Florida 2012 State Accessibility Code

The DOJ confirms that accessibility codes are in compliance with ADA federal regulations, creating consistency within the law and ensuring that Florida building owners, contractors and architects are compliant with both federal and state guidelines requiring access for individuals with disabilities. Florida was one of the first four states in the country (along with Texas, Washington and Maine) to have building codes certified as ADA equivalent.

In the summer of 2012, the Florida Building Commission updated the Florida Accessibility Code for Building Construction to conform to 2010 ADA Standards and Florida law, Part II, Chapter 553, Florida Statutes. The 2012 Florida Accessibility Code updated the previous 1997 version to ensure compliance with 2010 ADA Standards for Accessible Design. These revisions were certified by the Department of Justice as consistent with current federal and state law.[10] The 2012 Accessibility guidelines can be found at: *http://www.floridabuilding.org/fbc/committees/accessibility/aac/Changes_to_Law/Florida_Accessibility_Code_2012_ICC_FINAL.pdf.*

Chapter 11 of the Florida Building Code

Construction, alterations, and barrier removal performed in the state of Florida must comply with the ADA and the Florida Building Code, Chapter 11. Although county building departments do not enforce the ADA, they do enforce accessibility requirements for the disabled contained in Chapter 11 of the Florida Building Code on new building construction and the remodeling of existing buildings and facilities.

It is strongly recommended that any time an association plans construction or remodeling, it check with a qualified consultant or architect to ensure the project facilitates compliance with all federal and state access requirements, which are regularly updated. The Florida Building Code provides technical guidance essential to building owners, architects, engineers, and contractors in designing and constructing new buildings, or making alterations to existing buildings to meet accessibility requirements.

How does the ADA apply to community associations?

Title III of the ADA prohibits discrimination against persons with disabilities in commercial facilities and public accommodations. While the ADA does not generally define community associations as "commercial facilities" or places of "public accommodation," certain areas within an otherwise private entity may qualify as a place of public accommodation, depending on the nature of its use.[11] Determining if the area in question is public or private requires a case-by-case examination and an understanding of the language used in the act.

The ADA can apply to any community amenities open to the public and held at an association's location, or any space used by nonresidents for social or educational events, such as lectures, games, or meetings. In cases where the ADA applies, Title III requires that all new construction and modifications to existing structures are accessible to individuals with disabilities. Community associations may be required to alter these areas at the association's expense to comply with ADA regulations.

The act defines a common use area to include "rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or guests. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings."[12] The ADA may also apply to management and regional offices, community rooms, auditorium or lecture areas, and meeting rooms.

It is important that a community association carefully consider the location of its meetings or events. Not only must the property, complex, and building be accessible to the disabled, the association must also ensure there is clear access to and within the specific area, as well as pathways to bathrooms, hallways, or storage areas.

A condominium clubhouse defined as a common use area, for example, would be required to provide a ramp for an individual who uses a wheelchair if this modification is necessary for him or her to gain access to this space. It is important to note that an association making improvements to a clubhouse or common areas also may need to implement accessibility requirements of local ordinances and building codes as well the ADAA and FHAA.

For existing facilities, barriers to services must be removed if readily achievable. If a clubhouse or pool is open to the public, it is likely the ADA applies. An association should examine the types and areas of use on the premises to determine whether there are accessibility barriers and whether the removal of such barriers is readily achievable.

Examples of **"public use"** or **"public accommodation"** areas within a private association are those used for public gathering or rental to the general public for events such as weddings or performances. This may include use of an association's:

- Restaurants.
- Rental/management offices.
- Auditorium.

- Convention center.
- Lecture hall.
- Golf courses.
- Clubhouses.
- Meeting rooms.
- Exercise facilities.
- Parking lots providing guest parking.
- Swimming pools or other recreational areas.

In some cases, defining the association's use of space to determine accessibility obligations is no easy task. For example, if an owner rents the pool for an event and opens it up to the public, is it defined as a public pool or area of public accommodation? Community associations are encouraged to consult qualified legal counsel to confirm the status of your potential place of "public accommodation."

How does the FHAA Apply to community associations?[13,14]

Many members of community associations are unsure how the FHAA applies to their facility, if at all. The answer is, "It depends." Each community association – even areas of the association – must be analyzed on a case-by-case basis to determine what standards and criteria apply.

FHAA accessibility requirements for covered multifamily dwellings[15]

The FHAA requires that all "covered multifamily dwellings" designed and constructed for first occupancy after March 13, 1991, are readily accessible to and usable by persons with disabilities. In buildings with four or more dwelling units and at least one elevator, all dwelling units and all public and common use areas are subject to the act's design and construction requirements. In buildings with four or more dwelling units and no elevator, all ground floor units and public and common use areas are subject to the act's design and construction requirements.

To help determine what sections of the FHAA apply to your association and ensure compliance with the law, it is necessary to examine how the act defines certain terms and concepts, including "public space," "accessibility, "common areas," "reasonable modifications," or a "covered multifamily dwelling."

What does the FHAA mean by "accessible"?

The act defines areas of a building "accessible" if they can be "approached, entered, and used by individuals with physical handicaps."[16] A Guide to the Fair Housing Act, published by the Department of Housing and Urban Development (HUD) and a Design Manual based on it, present seven basic areas that must meet accessibility requirements to comply with the law. These standards are consistent with Chapter 553 of the Florida Statutes and Chapter 11 of the Florida Building Code.[17]

Requirement 1: An accessible building entrance on an accessible route.

Requirement 2: Accessible and usable public and common use areas (e.g., cut-outs on curbs, a stair alternative, such as a ramp or elevator, accessible path to the clubhouse stairs, an accessible pool, etc.).

Requirement 3: Usable doors. (e.g., must accommodate wheelchair use. Entryways, doors, and ramps must be sufficiently wide, and spaces must allow for wheelchair maneuvering).

Requirement 4: An accessible route into and through the covered dwelling unit (e.g., an unobstructed pathway that accommodates the individual's disability).

Requirement 5: Light switches, electrical outlets, thermostats and other environmental controls in accessible locations (e.g., no lower than 15 inches from the floor, or higher than 48 inches from the floor).

Requirement 6: Reinforced walls strong enough to support grab bars (e.g., bathroom walls must be sufficiently strong to support the installation of grab bars around the bathtub, toilet and shower.)

Requirement 7: Usable kitchens and bathrooms (e.g., must accommodate a parallel approach to the sink and stove, and a forward approach to other appliances, helpful for people using wheelchairs).

Are community associations considered "covered multifamily dwellings"?

The FHA mentions a number of different types of community associations potentially subject to the law:

- The preamble states the definition of a "dwelling" is "broad enough to cover each of the types of dwellings enumerated in the proposed rule: mobile home parks, trailer courts, condominiums, cooperatives, and time-sharing properties."[18]
- The amended FHA definition for "covered multifamily dwelling" covers a range of different types of residential buildings and facilities, including condominiums, cooperatives, apartment buildings, vacation and timeshare units, assisted living facilities, continuing care facilities,

nursing homes, public housing developments, extended stay or residential hotels, and more.[19]

The determination of whether a housing facility that includes short-term residencies is a dwelling under the act depends on whether the facility is intended to be used as a residence for more than a brief period of time. As a result, the operation of each housing facility must be examined to determine whether it is intended to contain dwellings.

Factors to be considered in determining whether a facility contains dwellings include:

- The length of time persons will stay.
- Whether the rental rate for the unit will be calculated on a daily, weekly, monthly, or yearly basis.
- Whether the terms and length of occupancy will be established through a lease or other written agreement.
- How the property will be described to the public in marketing materials.
- What amenities will be included inside the unit, including kitchen facilities.
- Whether the resident will possess the right to return to the property.
- Whether the resident will have anywhere else to return.[20]

The FHAA's design and construction requirements apply specifically only to covered multifamily dwellings (defined as buildings with four or more dwelling units built for first occupancy after March 13, 1991), that are not detached, including rental and sale units.[21] [22] Single-family and duplex or two-family dwellings are generally not required to be accessible except when they are part of a condominium or planned-use development.

However, while many detached single-family houses, as well as duplexes and triplexes, are not covered by the act's design and construction requirements, they may be subject to state and local accessibility requirements.

New dwelling units having all the living space on one floor and forming part of multifamily buildings comprised of four or more units, whether apartments, condominium or townhouses, must be accessible and must meet minimum requirements in accordance of the Fair Housing Act and Chapter 11, FBC. Existing privately funded multifamily buildings can generally undergo remodeling or alterations with little or no access work required except for public or employee areas.

Equal access to housing for disabled individuals is regulated by federal, state, and local laws and codes. Each residence or space subject to regulation must comply with all applicable laws at each level of government authority. In cases where federal, state, or local laws differ, the more stringent requirements apply. State or local laws have the authority to increase accessibility beyond what is required by federal law, but may not decrease the accessibility required by federal law.[23]

FHA prohibitions

The act makes it unlawful for any person to refuse "to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted."[24]

The act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... equal opportunity to use and enjoy a dwelling." The act also prohibits housing providers from refusing residency to persons with disabilities, with some narrow exceptions.

Under the Fair Housing Act, a reasonable modification is a structural change made to the premises, whereas a reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service. There are times when context dictates whether a request is categorized as a reasonable accommodation or a reasonable modification. For example, if an individual with a disability wants her carpet removed because it impedes the movement of her wheelchair, it may be classified as one or the other, as these examples demonstrate.

- **Example 1:** If the housing provider has a practice of not permitting a tenant to change flooring in a unit and there is a smooth, finished floor underneath the carpeting, generally, allowing the tenant to remove the carpet would be a reasonable accommodation.
- **Example 2:** If there is no finished flooring underneath the carpeting, generally, removing the carpeting and installing a finished floor would be a reasonable modification that would have to be done at the tenant's expense. If the finished floor installed by the tenant does not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant would not have to restore the carpeting at the conclusion of the tenancy.
- **Example 3:** If the housing provider has a practice of replacing the carpeting before a new tenant moves in and there is an existing smooth, finished floor underneath, then it would be a reasonable accommodation of his normal practice of installing new carpeting for the housing provider to just take up the old carpeting and wait until the tenant with a mobility disability moves out to put new carpeting down.

A person with a disability may need either a reasonable accommodation or a reasonable modification, or both, to have an equal opportunity to use and enjoy a dwelling, a public space, or a common use space. Disabilities come in a range of different forms. Reasonable accommodations and modifications must address the specific needs of the individual, so will vary according to each person's specific situation and abilities.

Reasonable accommodations

The law prohibits the refusal to make "reasonable accommodations" (i.e., non-structural modifications) in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. A reasonable accommodation can also be conditioned on meeting reasonable safety requirements to ensure there is no risk posed to the individual or other residents, or potential damage to property.

Because rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling.

- **Example 1:** A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.
- **Example 2:** A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing provider must make an exception to its "no pets" policy to accommodate this tenant.

The following items are other examples of non-structural reasonable accommodations:

- Offering documents in accessible formats (e.g., large type, computer disk or Braille) and in plain language.
- Permitting rent payments and required communications to be mailed rather than delivered in person.
- Providing auxiliary aids, such as pencil and paper for those with speech difficulties, telecommunication device for the deaf (TDD), assisted listening device (ALD), a qualified sign language interpreter, or a reader, when necessary for effective communication with an applicant or resident.
- Sending mail or making phone calls to a person designated as a contact person by the person with disabilities
- Allowing a live-in aide to reside in an appropriately sized dwelling unit.
- Permitting an outside agency or family member to assist an applicant or resident.

Who is financially responsible for reasonable accommodation expenses?

Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it would impose an undue financial and administrative burden on the housing provider, or it would fundamentally alter the nature of the provider's operations. A "fundamental alteration" is a modification that alters the essential nature of an establishment.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. This request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations.

For example, the tenant might agree to an alternative where the housing provider is able to reduce the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit to drive the tenant to the grocery store and help him with his shopping.

The determination of undue financial and administrative burden must be made on a case-by-case basis, and involves a number of factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation. In certain limited and narrow circumstances, a housing provider may require that the tenant deposit money into an interest-bearing account to ensure that funds are available to restore the interior of a dwelling to its previous state, with the exception of ordinary wear and tear. Imposing conditions not contemplated by the Fair Housing Act and its implementing regulations may be the same as an illegal refusal to permit the modification.

- **Example 1:** A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Because allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter.

However, because the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

- **Example 2:** Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability, or if there is no disability-related need for the accommodation.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it.

An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

- **Example 1:** Because of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff is on site only twice a week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable.

  If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs, for example, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash, and the provider's maintenance staff can then transfer the trash to the dumpster when they are on-site. Such an accommodation would not involve a fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's needs.

There may be instances where a provider believes that while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual whether he or she is willing to accept the alternative accommodation.

However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and individuals are not obligated to accept an alternative accommodation suggested by the provider if they believe it will not meet their needs and their preferred accommodation is reasonable.

A failure to reach an agreement on an accommodation is, in effect, a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, the agency or court receiving the complaint will review the evidence in light of applicable law and decide whether the housing provider violated that law.

Enforcement of the law

The Department of Justice (DOJ) and the Department of Housing and Urban Development (HUD) are jointly responsible for enforcing the federal Fair Housing Act. If an individual believes he or she has been subjected to a discriminatory housing practice based on disability, including a provider's wrongful denial of a request for reasonable accommodation, the individual may file a complaint with HUD within one year after the denial or may file a lawsuit in federal district court within two years of the denial. If a complaint is filed with HUD, the department will investigate the complaint at no cost to the person with a disability.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. Because litigation is usually an expensive, time-consuming, and uncertain process for everyone involved, HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution

procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints, and it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance.

Reasonable modifications

A "reasonable modification" is a structural change made to existing premises, occupied or to be occupied by a person with a disability, to allow that person full access to and enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy. The act makes it unlawful for a housing provider or homeowners' association to refuse to allow a reasonable modification when necessary.

The following conditions apply to reasonable modifications:

- A person with a disability must have the housing provider's approval before making the modification. However, if the person with a disability meets the requirements under the act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request.
- A provider has an obligation to provide prompt responses to a reasonable modification request. An undue delay in responding to a reasonable modification request may be deemed a failure to permit a reasonable modification.

A housing provider cannot insist that a tenant move to a different unit instead of allowing the tenant to make a modification that complies with the requirements for reasonable modifications.

Example: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes that in lieu of installing the ramp, the tenant move to a different unit in the building. The tenant is not obligated to accept the alternative proposed by the housing provider, because his request to modify his unit is reasonable and must be approved.

The following items are examples of reasonable modifications:

General

- Add edge protection to ramps and ramp landings with drop-offs.
- Widen doors.
- Provide accessible, lever-type door hardware.
- Re-hang door to lay flat against a wall when opened.
- Re-hang door to swing outward instead of into the accessible space.
- Provide accessible or adjustable closet rods and shelves.
- Provide lever faucets in public restrooms.
- Provide grab bars in public restrooms.
- Provide accessible toilets in public restrooms.
- Lower mirrors in public restrooms.
- Provide extra electrical outlets for TDD/TTY equipment.
- Provide heavier electrical circuits to accommodate higher wattage bulbs for individuals with visual impairments.
- Provide visual alarms for individuals who are deaf or hard of hearing.
- Provide accessible cabinets and countertops in public kitchens.
- Provide accessible appliances (i.e., refrigerator, oven, stove) in public kitchens.

Elevators[25]

- Elevators shall be located on an accessible route.
- Residential or fully enclosed wheelchair lifts may be used, when appropriate, and when approved by local administrative authorities.

Building entrances and accessible routes[26]

- Accessible signage.
- Add edge protection to ramps and ramp landings with drop-offs.
- Widen doors.
- Provide accessible, lever-type door hardware.
- Re-hang door to lay flat against a wall when opened.
- Re-hang door to swing outward instead of into the accessible space.
- Add or adjust door closures.
- Provide lever faucets in public restrooms.
- Provide grab bars in public restrooms.
- Provide accessible toilets in public restrooms.
- Lower mirrors in public restrooms.
- Provide extra electrical outlets for TDD/TTY equipment.
- Provide heavier electrical circuits to accommodate higher wattage bulbs for individuals with visual impairments.
- Provide visual alarms for individuals who are deaf or hard of hearing.
- Providing contrasting paint on doors, around doorways, at windows, baseboards and stairs or risers for individuals with visual impairments.
- Provide a continuous disability-appropriate accessible route into a building.

Trash disposal facilities

- Provide an accessible route into and through trash disposal facilities, or provide an equally effective accommodation, such as personal trash disposal by housing staff.

Laundry facilities

- Provide an accessible route into and through common-use laundry facilities. Provide at least one front-loading washer and one front-loading dryer in public-use laundry

facilities,[27] or provide an equally effective accommodation, such as the provision of a front-loading washer and dryer in a resident's unit or provision of laundry services.

Mail delivery/mailboxes
- Provide an accessible route into and through mail boxes/ mail facilities.
- Provide a mailbox installed at lower height, upon request, or provide another equally effective accommodation, such as home delivery.[28]

Apartment entrance and interior doors
- Widen doors.
- Provide accessible, lever-type door hardware.
- Re-hang door to lay flat against a wall when opened.
- Re-hang door to swing outward instead of into the accessible space.
- Add or adjust door closure speed.
- Adjust door opening force required for pushing and pulling the door.
- Provide lower peepholes or "telescoped" peepholes.
- Provide a visual doorknocker for individuals with hearing impairments.
- Providing contrasting paint on doors, around doorways, at windows, baseboards and stairs or risers for individuals with visual impairments.
- Provide ramp from an accessible route to an accessible entrance into unit.

Apartment light switches and electrical outlets
- Lower electrical switches and raise electrical outlets.[29]
- Provide extra electrical outlets for TDD/TTY equipment or other equipment utilized by individuals with disabilities.
- Provide heavier electrical circuits to accommodate higher wattage bulbs for individuals with visual impairments.
- Lower thermostat controls.
- Lower circuit breakers when located in unit.

Apartment interior
- Provide extra electrical outlets for TDD/TTY equipment or other equipment used by individuals with disabilities.
- Provide heavier electrical circuits to accommodate higher wattage bulbs for individuals with visual impairments.
- Provide visual and audible alarms for individuals who are deaf or hard of hearing, and provide visual alarms in each room of unit.[30]
- Provide windows that requires five pounds or less of opening force; provide crank-type opening mechanisms with large levers, when feasible.
- Provide accessible storage spaces, including lowering clothes rods and adjustable closet shelves.

Apartment kitchens[31]
- Lower kitchen sink.
- Provide lever-type hardware on kitchen faucet.
- Provide accessible kitchen cabinets and accessible hardware on them.
- Provide accessible kitchen counters and work space.

Apartment bathrooms[32]
- Provide wider doors.
- Provide lever-type hardware on lavatory faucet.
- Lower washbasin.
- Lower mirror.
- Provide accessible toilet.
- Relocate toilet paper dispenser.
- Provide grab bars at toilet.
- Provide grab bars at bathtub or shower.
- Provide a seat in the bathtub or shower.
- Provide a hand-held shower device.
- Relocate bathtub and/ shower controls.
- Provide a roll-in shower or shower/bathtub seat.

Who must comply with the FHAA's reasonable modifications requirements?

Courts have applied the act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions.[33]

Any person or entity engaging in prohibited conduct (i.e., refusing to allow an individual to make reasonable modifications when such modifications may be necessary to afford a person with a disability full enjoyment of the premises) may be held liable unless they fall within an exception to the act's coverage.

Reasonable modification requests

A person may make a request for a reasonable modification at any time, including at the point that the potential tenancy or purchase is discussed. Under the act, a housing provider denying or restricting access to housing because the individual requests a reasonable modification is guilty of housing discrimination.

An applicant or resident is not entitled to receive a reasonable modification unless the person requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time.

For example, an individual making a reasonable modification request does not need to mention the act or use the words "reasonable modification." However, the requester must make the request in a manner that a reasonable person would understand to be a request for permission to make a structural change because of a disability. Additionally, a person with a disability need not personally make the reasonable modification request; a family member or someone else who is acting on her behalf can make the request.

Under the act, residents or applicants for housing are considered to have made a reasonable modification request whenever they make clear to the housing provider that they are requesting permission to make a structural change to the premises because of a disability. They should explain that they have a disability if not readily apparent or not known to the housing provider, the type of modification they are requesting, and the relationship between the requested modification and their disability.

Although a reasonable modification request can be made verbally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings about what is being requested or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine whether the provider has a preference on the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable modification requests even if the requester makes the request verbally or does not use the provider‘s preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider‘s designated form.

Proof of disability

To show that a requested modification may be necessary, there must be an identifiable link between the requested modification and the individual’s disability. In most cases, a housing provider may not inquire into the nature and degree of an individual‘s disability. In response to a request for a reasonable accommodation, however, a housing provider may request reliable disability-related information as long as it:

1. Is necessary to verify that the person meets the act’s definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities).
2. Describes the needed accommodation.
3. Shows the relationship between the person’s disability and the need for the requested accommodation.

If a person’s disability is obvious or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester‘s disability or the disability-related need for the accommodation. If the requester‘s disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

An individual may qualify as disabled under the ADA even if he or she has a short-term or temporary physical or mental impairment (rather than a permanent or chronic condition) as long as it substantially limits one or more major life activities, and there is a record of the impairment or the individual is regarded as having the impairment.[34]

Depending on the individual’s circumstances, information verifying that the person meets the act’s definition of disability may be as simple as a copy of a Supplemental Security Income or Social Security Disability Insurance benefits statement. Persons who meet the definition of disability for purposes of receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true.[35]

A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual‘s disability may also provide verification of a disability. In most cases, an individual‘s medical records or detailed information about the nature of a person‘s disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the act‘s definition of disability, the provider’s request for documentation should seek only the information that is necessary to evaluate whether the reasonable accommodation is needed because of a disability.

Inquiries into the following areas are acceptable if relevant to the request:

- Does the applicant qualify for a dwelling legally available only to persons with a disability or to persons with a particular type of disability?
- Does the applicant qualify for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability?
- Does the applicant meet the requirements of tenancy?
- Is the applicant a current illegal abuser or addict of a controlled substance?

Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (e.g., a court-issued subpoena). If an association suspects that a resident is fraudulently claiming to be disabled, its members should consult legal counsel to avoid a potential violation of the FHAA.

The following situations are examples of acceptable requests for documentation or proof of an individual’s disability relating to a request for reasonable accommodation or modification:

- **Example 1:** A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. The provider may not

ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information or documentation of the disability-related need for an accessible unit.

- **Example 2:** An applicant with an obvious mobility impairment who regularly uses a walker to assist in ambulation asks the housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Because the physical disability (i.e., difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about the disability or the need for the requested accommodation.
- **Example 3:** A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent, but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.
- **Example 4:** An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

Who is financially responsible?

The Fair Housing Act provides that while the housing provider must permit the modification, the tenant or someone acting on the tenant's behalf is responsible for paying the costs associated with a reasonable modification.

- **Example 1:** Because of a mobility disability, a tenant wants to install grab bars in the bathroom. This is a reasonable modification and must be permitted at the tenant's expense.
- **Example 2:** Because of a hearing disability, a tenant wishes to install a peephole in her door so she can see who is at the door before she opens it. This is a reasonable modification and must be permitted at the tenant's expense.
- **Example 3:** Because of a mobility disability, a tenant wants to install a ramp outside the building in a common area. This is a reasonable modification and must be permitted at the tenant's expense.

The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by him or her. If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by the housing provider, then the housing provider has no responsibility under the Fair Housing Act to maintain the modification.

- **Example 1:** Because of a mobility disability, a tenant, at her own expense, installs a lift inside her unit to allow her access to a second story. She is required to maintain the lift at her expense because it is not in a common area.
- **Example 2:** Because of a mobility disability, a tenant installs a ramp in the lobby of a multifamily building at her own expense. The ramp is used by other tenants and the public as well as the tenant with the disability. The housing provider is responsible for maintaining the ramp.
- **Example 3:** A tenant leases a detached, single-family home. Because of a mobility disability, the tenant installs a ramp at the outside entrance to the home. The housing provider provides no snow removal services, and the lease agreement specifically states that snow removal is the responsibility of the individual tenant. Under these circumstances, the housing provider has no responsibility under the Fair Housing Act to remove snow on the tenant's ramp.

  However, if the housing provider normally provides snow removal for the outside of the building and the common areas, the housing provider is responsible for removing the snow from the ramp as well.

The regulations implementing the Fair Housing Act state that housing providers generally cannot impose conditions on a proposed reasonable modification. Housing providers may not:

- Require that the tenant obtain additional insurance or increase the security deposit as a condition that must be met before the modification will be allowed. The preamble to the Final Regulations, however, indicates that some conditions may be placed on a tenant requesting a reasonable modification.
- Require an increased security deposit as the result of a request for a reasonable modification, nor may a housing provider require a tenant to pay a security deposit when one is not customarily required. However, a housing provider may be able to take steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy.
- Make approval of the requested modification dependent on the requester obtaining special liability insurance.

  Example: Because of a mobility disability, a tenant wants to install a ramp outside his unit. The housing provider informs the tenant that the ramp may be installed, but only after the tenant obtains separate liability insurance for the ramp out of concern for the housing provider's potential liability. The housing provider may not impose a requirement of liability insurance as a condition of approval of the ramp.

Multifamily dwellings

The Fair Housing Act provides that covered multifamily dwellings built for first occupancy after March 13, 1991, must be designed and constructed to meet certain minimum accessibility and adaptability standards. If any of the structural changes needed by the tenant should have been included in the unit or public and common use area when the property was constructed, the housing provider may be responsible for providing and paying for those requested structural changes. If, however, the requested structural changes are not a feature of accessible design that should have already existed in the building pursuant to the design and construction requirements under the act, then the tenant is responsible for paying for the cost of the structural changes as a reasonable modification.

Although the design and construction provisions only apply to certain multifamily dwellings built for first occupancy since 1991, a tenant may request reasonable modifications to housing built prior to that date. In such cases, the housing provider must allow the modifications, and the tenant is responsible for paying for the costs under the Fair Housing Act.[36]

- **Example 1:** A tenant with a disability who uses a wheelchair resides in a ground floor apartment in a non-elevator building built in 1995. Buildings built for first occupancy after March 13, 1991 are covered by the design and construction requirements of the Fair Housing Act. Because the building is a non-elevator building, all ground floor units must meet the minimum accessibility requirements of the act. The doors in the apartment are not wide enough for passage using a wheelchair in violation of the design and construction requirements but can be made so through retrofitting. In this case, a federal court decided that the tenant had a potential claim against the housing provider for not implementing modifications.
- **Example 2:** A tenant with a disability resides in an apartment in a building that was built in 1987. The doors in the unit are not wide enough for passage using a wheelchair but can be made so through retrofitting. If the tenant meets the other requirements for obtaining a modification, the tenant may widen the doorways, at her own expense.
- **Example 3:** A tenant with a disability resides in an apartment in a building that was built in 1993, in compliance with the design and construction requirements of the Fair Housing Act. The tenant wants to install grab bars in the bathroom because of her disability. Provided that the tenant meets the other requirements for obtaining a modification, the tenant may install the grab bars at her own expense.

Design preferences

In some cases, the housing provider may want to dictate design or construction features, for aesthetic or other purposes, that cost the same amount as the requested features. In general, the housing provider cannot insist on an alternative modification or an alternative design if the tenant complies with the requirements for reasonable modifications. If the modification is to the interior of the unit and must be restored to its original condition when the tenant moves out, then the housing provider cannot require that its design be used instead of the tenant's design.

However, if the modification is to a common area or an aspect of the interior of the unit that would not have to be restored because it would not be reasonable to do so, and if the housing provider's proposed design imposes no additional costs and still meets the tenant's needs, then the modification should be done in accordance with the housing provider's design.

- **Example 1:** As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes an alternative design for a ramp, but the alternative design costs more and does not meet the tenant's needs. The tenant is not obligated to accept the alternative modification, because his request to modify his unit is reasonable and must be approved.
- **Example 2:** As a result of a mobility disability, a tenant requests permission to widen a doorway to allow passage with her wheelchair. All of the doorways in the unit are trimmed with a decorative trim molding that does not cost any more than the standard trim molding. Because in usual circumstances it would not be reasonable to require that the doorway be restored at the end of the tenancy, the tenant should use the decorative trim when he widens the doorway.

If the housing provider wishes a more costly modification as a result of the desired design, labor, or materials to satisfy the provider's aesthetic standards, the tenant must agree only if the housing provider pays the additional costs. If the housing provider requires more costly materials be used to satisfy workmanship preferences beyond the requirements of the applicable local codes, the tenant must agree only if the housing provider pays for those additional costs as well.

In such a case, however, the housing provider may require that the tenant (or those doing the work) obtain all necessary building permits, and that the work be performed in a professional manner. The housing provider cannot insist that a particular contractor do the work, but is within its rights to require that whoever does the work is reasonably able to complete the work in a workmanlike manner and obtain all necessary documentation and permitting.

Restoring modifications

The Fair Housing Act expressly provides that housing providers may only require restoration of modifications made to interiors of the dwelling at the end of the tenancy. The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition only where "it is reasonable to do so" and where the housing provider has requested the restoration. The tenant is not responsible for expenses associated with reasonable wear and tear.

In general, if the modifications do not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state. A housing provider may choose to keep the modifications in place at the end of the tenancy.

The tenant must pay for reasonable restorations of the dwelling required as a result of modifications made to the interior of the dwelling unless the next occupant of the dwelling wants to retain the reasonable modifications. The subsequent tenant would have to restore the modifications to the prior condition at the end of his tenancy if it is reasonable to do so and if requested by the housing provider.

If a person with a disability has made a reasonable modification to the exterior of the dwelling or a common area (such as ramps to the front door of the dwelling or modifications made to laundry rooms or building entrances), it does not need to be restored to its original condition when the person moves out.

- **Example 1:** Because the tenant uses a wheelchair, she obtained permission from her housing provider to remove the base cabinets and lower the kitchen sink to provide for greater accessibility. It is reasonable for the housing provider to ask the tenant to replace the cabinets and raise the sink back to its original height.
- **Example 2:** Because of a mobility disability, a tenant obtained approval from the housing provider to install grab bars in the bathroom. As part of the installation, the contractor had to construct reinforcements on the underside of the wall. These reinforcements are not visible and do not detract from the use of the apartment. It is reasonable for the housing provider to require the tenant to remove the grab bars, but it is not reasonable for the housing provider to require the tenant to remove the reinforcements.
- **Example 3:** Because of a mobility disability, a tenant obtained approval from the housing provider to widen doorways to allow him to maneuver in his wheelchair. In usual circumstances, it is not reasonable for the housing provider to require him to restore the doorways to their prior width.

In cases where it is necessary to ensure with reasonable certainty that funds will be available to pay for restorations at the end of the tenancy, the housing provider may negotiate with the tenant as part of a restoration agreement a provision that requires the tenant to make payments into an interest-bearing escrow account. A housing provider may not routinely require that tenants place money in escrow accounts when a modification is sought. Both the amount and terms of the escrow payment are subject to negotiation between the housing provider and the tenant.

The decision to require that money be placed in an escrow account should be based on the following factors: 1) the extent and nature of the proposed modifications; 2) the expected duration of the lease; 3) the credit and tenancy history of the individual tenant; and 4) other information that may bear on the risk to the housing provider that the premises will not be restored.

If the housing provider decides to require payment into an escrow account, the amount of money to be placed in the account cannot exceed the cost of restoring the modifications, and the period of time during which the tenant makes payment into the escrow account must be reasonable. Although a housing provider may require that funds be placed in escrow, it does not automatically mean that the full amount of money needed to make the future restorations can be required to be paid at the time that the modifications are sought.

In addition, it is important to note that interest from the account accrues to the benefit of the tenant. If an escrow account is established and the housing provider later decides not to have the unit restored, then all funds in the account, including the interest, must be promptly returned to the tenant. If the next occupant of the dwelling wants to retain the reasonable modifications and it is appropriate, the next occupant would establish a new interest-bearing escrow account.

- **Example 1:** Because of a mobility disability, a tenant requests a reasonable modification. The modification includes installation of grab bars in the bathroom. The tenant has an excellent credit history and has lived in the apartment for five years before becoming disabled. Under these circumstances, it may not be reasonable to require payment into an escrow account.
- **Example 2:** Because of a mobility disability, a new tenant with a poor credit history wants to lower the kitchen cabinets to a more accessible height. It may be reasonable for the housing provider to require payment into an interest-bearing escrow account to ensure that funds are available for restoration.
- **Example 3:** A housing provider requires all tenants with disabilities to pay a set sum into an interest-bearing escrow account before approving any request for a reasonable modification. The amount required by the housing provider has no relationship to the actual cost of the restoration. This type of requirement violates the Fair Housing Act.

Which law applies?

The Americans with Disabilities Act and the Amended Fair Housing Act have several similarities: Both outlaw discrimination against individuals with disabilities, require reasonable accommodations and modifications, and mandate features of accessibility, design, and construction. They also have significant differences:

- The FHA requires that all covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, be accessible to and usable by people with disabilities.
- In general, unless an association includes a facility that is open to the general public, such as a clubhouse, pool, or parking lot, ADA provisions do not apply.
- Like the FHAA, the ADA contains requirements that property be modified. However, in cases where the ADA applies:
  - It prohibits discrimination against persons with disabilities in a place of public accommodation or public use.
  - Modifications must be implemented without exception.
  - The association typically pays for modifications.

If faced with the question of which law applies between state and federal law, the FHAA and the ADA provide that if a state law requires dwellings to be designed and constructed in a manner that allows individuals with disabilities greater access than is required by the federal act, then the state law is not limited by the federal law and the greater access requirements would apply.

Even if ADA or FHAA provisions do not apply to an association, it is critically important to consult other federal, state, or local laws and codes that may be relevant, as well as review compliance requirements with an expert.

2012 clarification in the application of the 2012 Accessibility Code with 2010 ADA Standards

The creation of the 2012 Accessibility Code included the adoption of the Americans with Disabilities Act's (ADA) 2010 Standards for Accessible Design and added certain Florida-specific requirements. Because of some ambiguous language in the resulting law, it was unclear to many whether the legislature and Florida Building Commission intended to impose the 2010 ADA standards (through the 2012 Accessibility Code), on residential developments not previously subject to regulation. If the code applied, additional potentially expensive requirements would be imposed on multifamily residential projects including unit configurations and common area features, such as swimming pool lifts.

Interpreting Chapter 553

The Florida Building Commission issued a clarifying statement on how the Accessibility Code applies to multifamily housing developments, including rental apartments and residential condominiums permitted and constructed in Florida.

It stated that areas of apartment buildings and multifamily residential dwellings, such as rental apartments and residential condominiums intended solely for the use of residents and their guests (including dwelling units and common use areas), that are not receiving federal, state, or local financial assistance or sponsorship, (i.e., not subject to Section 504 of the Rehabilitation Act), and are not state or local government services (i.e., not subject to Title II of the Americans with Disabilities Act) are not subject to the Accessibility Code (unless they qualify as places of public accommodation or commercial facilities), except for the requirement set forth in Section 553.504(2), Florida Statutes,[37] which states:

553.504 – Exceptions to applicability of the federal standards. – Notwithstanding the adoption of the Americans with Disabilities Act Standards for Accessible Design pursuant to s. 553.503, all buildings, structures, and facilities in this state must meet the following additional requirements if such requirements provide increased accessibility:

> (2) All new single-family houses, duplexes, triplexes, condominiums, and townhouses shall provide at least one bathroom, located with maximum possible privacy, where bathrooms are provided on habitable grade levels, with a door that has a 29-inch clear opening. However, if only a toilet room is provided at grade level, such toilet room must have a clear opening of at least 29 inches.

Section 553.507 (1-2), Florida Statutes, states that multifamily residential dwellings, such as rental apartments and residential condominiums (and their associated common use areas) that are not subject to Section 504 or Title II, are only subject to Section 553.504(2), unless:

1. They are places of public accommodation or commercial facilities, or
2. They are a specific area within multifamily residential dwellings defined as a "place of public accommodation" or "commercial facility," such as a leasing or sales office, restrooms, parking, and accessible paths from one to another.

If remodeling or altering an existing building is too expensive or difficult, an association may request an exception based on unreasonable hardship. The request should include the following points:

- The cost of providing access.
- The cost of all construction under consideration.
- The impact of implementing features providing accessibility on the financial feasibility of the project.
- The nature or extent of accessibility gained or lost.
- The nature of the facility under construction and its use by and availability to persons with disabilities.
- If it is technically unfeasible because of existing structural conditions or other complications.

Even when exemptions for financial hardships are granted, the housing provider may still be responsible for a portion of the construction costs for implementing accessible features. In choosing which accessible elements to provide, priority should be given to the following items in the following order:

1. An accessible entrance.
2. An accessible route to the altered area.
3. At least one accessible toilet room for each sex.
4. Accessible drinking fountains.
5. Additional features, such as parking, storage, and alarms.

The code requires that vertical accessibility be provided to all normally occupied levels. This may not necessarily entail the

use of an elevator, because vertical accessibility can also be provided by other means, such as ramps or lifts. Elevators are not required in facilities that are less than three stories in height or that have less than 3,000 square feet per story, except for shopping centers and health care providers.

Exemptions to the vertical accessibility requirement are:

- Mechanical rooms, equipment catwalks, lubrication pits and other similar areas.
- Storage and other spaces not designed for human occupancy.
- Spaces not open to the public and that hold no more than five persons.

Historical buildings in process of alteration or remodeling are required to construct the same accessible features (entrance, path-of-travel, toilets, phones, drinking fountains, and parking) as other buildings. The Florida Building Code allows very limited exceptions in cases where compliance with the accessibility requirements would threaten or destroy the historic significance of the building. To qualify as a historical building, it would need to be designated as such under an appropriate state or local law and documented in a reputable source, such as the Federal List of Historical Places.

Resources for FHA design and construction requirements and guidelines for covered multifamily dwellings[38]

Further information about Fair Housing Act nondiscrimination requirements is available on HUD's Fair Housing website at *http://www.hud.gov/offices/fheo/index.cfm*, and DOJ's Fair Housing website, at *http://www.justice.gov/crt/about/hce/housing_coverage.php.* Additional technical guidance can also be found on the Fair Housing Accessibility FIRST website at: *http://www.fairhousingfirst.org*.

Some reasonable modifications are features of accessible design required for covered multifamily dwellings pursuant to the act's design and construction requirements. As a result, people involved in the design and construction of multifamily dwellings are advised to consult the act at 42 U.S.C. § 3604(f)(3)(c), the implementing regulations at 24 C.F.R. § 100.205, and the Fair Housing Accessibility Guidelines and the Fair Housing Act Design Manual, both available on HUD's website at *www.hud.gov/offices/fheo/disabilities/index.cfm.*

Housing providers involved in designing and constructing covered multifamily dwellings are also subject to the other nondiscrimination provisions of the Fair Housing Act, including the obligations to provide reasonable accommodations and allow reasonable modifications.

Accessible parking spaces

Few topics are as contentious as the allocation of community association parking spaces for the disabled. Accessible parking issues are complicated by issues including a lack of supply, few possibilities for places to locate new spaces, and debates over what is considered "reasonable."

Florida state law dictates a minimum number of accessible spaces for certain types of housing based on the total number of spaces in the parking lot. Section 553.5041 FS (Parking spaces for persons who have disabilities) presents specifications for implementing parking modifications, as well what housing is subject to these requirements.

Both newly constructed community association buildings and facilities as well as existing buildings that are being remodeled must have the minimum numbers of spaces shown in this table.[39]

Total parking lot spaces	Required minimum number of accessible spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 plus 1 for each 100 over 1000

It is within community association rights to ask for supporting documentation proving an individual's need for a parking spot. This proof, as detailed earlier, must show how the owner's request relates to the disability. While it is within the association's rights to reject an owner's request if it appears invalid or is not appropriately specific, it is best to consult an attorney to confirm that the documentation is inadequate proof before responding to the owner. Ensure the association is requesting only the information necessary to evaluate the request for accommodation or the request may feel intrusive to the resident.

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider. Providing a parking accommodation could include building wheelchair ramps, creating signage, repainting markings, redistributing spaces, or creating curb cuts. Housing providers may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

Courts have required housing providers to fulfill requests for assigned accessible parking spaces even in cases where the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking. Community associations should be aware that if there is a waiting list to obtain a parking space and a disabled resident requests one, the association is required to provide the parking space to accommodate the owner, bypassing others on the waiting list. A federal court held that it was unreasonable for an association to handle a request for disabled parking by placing the owner's name on a list of residents waiting for the next available parking space; they determined the association should have moved her request to the front of the line.[40]

Example: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first-come, first-served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

In most cases, association parking is private and reserved for residents, so the ADA would not apply. A condominium with a guest parking lot or clubhouse open to the general public, however, may be considered a place of "public accommodation,"[41] requiring a certain minimum of accessible parking spaces.

Community associations may be prosecuted if their policies and procedures for dealing with a request for accessible accommodations are unreasonable. Associations should review their procedures for addressing disabled parking space requests and modification of common areas to ensure they would be determined "reasonable" if held up to scrutiny.[42]

- **Example 1:** A disabled co-owner asked the association to designate an accessible parking space in the general common element parking lots. As open parking spaces were in short supply, the association requested the state designate an accessible parking space on a nearby street for use by this co-owner. The space on the street was approved. Although the location of the space in the street was the same distance and terrain away from the co-owner's unit as a parking spot in the association's lot, the co-owner was not satisfied with it (he did not want to park on the street because he was afraid his car might be damaged), and filed a HUD complaint under the FHAA. The State Real Estate Board decided in favor of the association, determining that the parking space on the street did not afford the disabled co-owner less opportunity to use and enjoy his dwelling than a space in the common element parking lot, meaning the community association fulfilled the reasonable accommodation obligation.
- **Example 2:** group of disabled co-owners sued the association and management company under the FHAA, claiming, among other things, that the association refused to assign an accessible parking space without the co-owner signing a general medical record release. A settlement provided that the association would accept simple medical certification rather than requiring the release of medical records.
- **Example 3:** In a 1997 court case, an association was required to grant an owner an accessible parking space, although the master deed technically absolved the association from doing so. The court asserted that the association was "duty-bound to (1) avoid enforcing provisions of the master deed that have discriminatory effects; and (2) regulate use of the common elements so as to comply with the requirements of the FHAA."[43]

Because community associations are used to hearing parking-related complaints and concerns, it is particularly important that they establish formal policies and procedures to address requests for accessible parking. Among their responsibilities, the association should take all requests seriously, and be cautious about denying a request without a thorough examination of the situation. If a request is not feasible, present alternatives that might meet the individual's needs. Failure to provide a disabled resident with an accessible parking space, if requested, is a clear violation of the FHA.

2010 ADA accessible pool requirements

The revised 2010 ADA standards set minimum requirements for swimming pool, wading pool, and spa (pool) accessibility. All newly constructed and altered pools must meet these requirements. Public accommodations must bring existing pools into compliance with the 2010 standards to the extent that it is readily achievable to do so.

The 2010 standards establish two categories of pools: large pools with more than 300 linear feet of pool wall, and smaller pools with less than 300 linear feet of wall. Large pools must have two accessible means of entry, with at least one being a pool lift or sloped entry; smaller pools are only required to have one accessible means of entry, provided it is either a pool lift or a sloped entry. There are a limited number of exceptions to the requirements. One applies to multiple spas provided in a cluster. A second applies to wave pools, lazy rivers, sand bottom pools, and other pools that have only one point of entry.

Title III readily achievable barrier removal

Title III of the ADA requires that places of public accommodation (e.g., hotels, resorts, swim clubs, and sites of events open to the public) remove physical barriers in existing pools to the extent that it is readily achievable to do so (i.e., easily accomplishable and able to be carried out without much difficulty or expense). Determining what is readily achievable will depend on circumstances and timing, and will vary from business to business.

To determine which pools must be made accessible, public accommodations should consider the following factors:

- The nature and cost of the action.
- Overall resources of the site or sites involved.
- The geographic separateness and relationship of the site(s) to any parent corporation or entity.
- The overall resources of any parent corporation or entity, if applicable.
- The type of operation or operations of any parent corporation or entity, if applicable.

Application to community association pools

According to Accessibility Requirements for Existing Swimming Pools at Hotels and Other Public Accommodation, as published by the U.S. Department of Justice and Section 553.503, Florida Statutes, community association swimming pools are not subject to the ADA accessibility requirements or the accessibility code if any of the following apply:

- They are part of common-use areas of apartment buildings and developments intended solely for the use of residents and their guests (and not otherwise available to the general public).
- They are not the recipients of governmental assistance or sponsorship.
- They are not "public swimming pools" according to Section 424.1, which defines a public pool as "a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses. The term does not include a swimming pool located on the grounds of a private residence."

If, however, a swimming pool/club located in a residential community is made available to the public for rental or use, Title III of the ADA would apply.

In April 2013, the Department of Justice issued a statement clarifying the application of 2010 ADA standards to residential dwellings, including community associations. It confirmed that the 2010 ADA revised regulations do not affect any type of residential dwelling, such as a private residence, an apartment complex, a condominium, or a homeowner's association if that residential entity strictly limits use of the facilities to residents and their guests. If, however, any of these residential facilities operate an element of public accommodation within their premises, these elements would be regulated by the ADA.

The following examples demonstrate cases in which a residential entity would fall under ADA regulations for swimming pools:

- A private residential apartment complex sells memberships to its swimming facilities. This situation would be considered providing a public accommodation.
- A homeowners association pool is used for swimming competitions that are open to competitors from outside the association. This situation would also be considered offering a public accommodation.
- A condominium actively rents out their units when owners are absent, including advertising, taking reservations over the phone, and providing either meals or housekeeping services. In this instance, the condominium would be considered a hotel.
- A vacation timeshare that operates as a hotel. This facility would be considered a hotel.

Private clubs: These may or may not be subject to ADA regulation. If a private club limits use of its facilities strictly to members and their guests, then the club would not be subject to ADA regulations. However, if that club hosts swimming competitions or any other type of activity that opens the pool to nonmembers, the club would be required to follow ADA regulations for the pool. The determination of what constitutes a private club is based on its control of operations, membership requirements, and associated. Operations that have limited or no membership requirements and minimal charges or dues are less likely to fall under the private club exclusion.

Existing pools: For an existing pool, removing barriers may involve installation of a fixed pool lift with independent operation by the user or other accessible means of entry that complies with the 2010 standards to the extent that it is readily achievable to do so. In April 2013, the Department of Justice issued a statement clarifying a misunderstanding about the compliance of portable pool lifts to meet barrier removal obligations.

Generally, lifts purchased after March 15, 2012, must be fixed if it is readily achievable to do so. However, if the facility purchased a non-fixed lift before March 15, 2012, that otherwise complies with the requirements in the 2010 standards for pool lifts (such as seat size, etc.), it may be used and will not be prosecuted by the DOJ as long as it is kept in position for use at the pool and operational during all times that the pool is open to guests.

It is important to note that the barrier removal obligation is a continuing one, and it is expected that a facility will take steps to improve accessibility over time. When selecting equipment, the public accommodation should factor in the staff and financial resources needed to keep the pool equipment available and in working condition at poolside.[44]

New construction: The 2010 standards, which set requirements for fixed elements and spaces, require that all new pool facilities built by state and local governments, public accommodations, and commercial facilities must be accessible to and usable by persons with disabilities.

Alterations: A physical change to a swimming pool that affects or could affect the usability of the pool is considered to be an alteration. When pools are altered, the alterations must comply with the 2010 standards to the maximum extent feasible. Changes to the mechanical and electrical systems, such as filtration and chlorination systems, are not alterations. Entities must ensure that an alteration does not decrease accessibility below the requirements for new construction. For example, if a hotel installs a fixed pool lift powered by water pressure, it must ensure that the hose connecting to the lift does not create a barrier across the accessible route to the pool.

Maintenance of accessible features: Accessible pool features must be maintained in operable, working condition so that persons with disabilities have access to the pool whenever the pool is open to others. For example, a portable pool lift may be stored when the pool is closed but it must be at poolside and fully operational during all open pool hours. An entity should recognize that certain types of equipment may require more staff support and maintenance than others (e.g., ensuring there are enough batteries for a pool lift to maintain a continued charge during pool hours). Entities should plan for these issues and modify operational policies as needed to provide accessible means of entry while the pool is open.

Staff training: Ongoing staff training is essential to ensure that accessible equipment (particularly pool lifts) and pool facilities are available whenever a pool is open. Staff training should include instruction on what accessible features are available, how to operate and maintain them, and any necessary safety considerations.

Tax credits and deductions: Title III entities may be able to take advantage of federal tax credits for small businesses (Internal Revenue Code section 44) or deductions (Internal Revenue Code section 190) for barrier removal costs or alterations to improve accessibility regardless of the size of the business.

Compliance dates:

- On or after March 15, 2012: All newly constructed or altered facilities of public entities and public accommodations, including pools, must comply with the 2010 standards.
- On or after March 15, 2012: All existing facilities of public entities and public accommodations, except pools, must comply with the 2010 standards to the extent required under Title II program accessibility or Title III readily achievable barrier removal requirements.
- On or after January 31, 2013: Subject to other provisions of this guidance, all existing pools of public entities and public accommodations must comply with the 2010 standards to the extent required under Title II program accessibility or Title III readily achievable barrier removal requirements.

FHA accessible pool requirements

Although residential facilities are not required to comply with ADA regulations for swimming pools, they must comply with the Fair Housing Act. Under this legislation, privately owned residential communities must provide a barrier-free pathway up to the edge of a pool. In addition, they cannot prevent residents from using their own apparatus to gain access to the pool, providing it does not provide a hazard for other residents. In other words, if a resident has a portable pool lift and keeps it in storage when not in use, the facility cannot prevent that resident from using the lift to gain access to the pool.

For technical assistance on the guidelines for swimming pools, wading pools, and spas, download the Access Board Accessibility Guidelines at: *http://www.access-board.gov/recreation/guides/pools.htm.*

Endnotes

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7. http://www.ada.gov/cguide.htm#anchor63409.
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9. What You Should Know About Disabled Access Requirements for New Building Construction and/or Remodeling of Existing Buildings : A public information service of Miami-Dade Building Department Permitting & Inspection Center11805 S.W. 26th Street (coral Way) Miami, Florida 33175-2474; http://buildit.miamidade.gov.
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12. Fair Housing Regulation 100.201.
13. http://www.meisner-law.com/articles/disabled_owners.htm Community Associations and the Disabled Owner as of 2009, By Robert M. Meisner, Esq.
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15. U.S. Department Of Housing And Urban Development Office Of Fair Housing And Equal Opportunity U.S. Department Of Justice Civil Rights Division Washington, D.C. April 30, 2013 Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Accessibility.
16. http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/fhguidelines/fhefha1#background.
17. ("Regulations") at 24 C.F.R. Part 100 on January 23, 1989, the Guidelines on March 6, 1991, the Questions and Answers on June 28, 1994, and the Design Manual (issued in 1996 and revised and republished in 1998).
18. 54 Fed. Reg.3,232, 3,238 (Jan. 23, 1989).
19. The federal regulation specifying the types of residential buildings and facilities that are subject to the design and construction requirements of the Act appears at 24 C.F.R. § 100.201.

20. See Final Report of HUD Review of Model Building Codes, 65 Fed. Reg.15,740, 15,746-47 (Mar. 23, 2000).
21. Preamble to the Guidelines, 56 Fed. Reg. At 9,481.
22. See 42 U.S.C. §§ 3604(f)(3)(C), (f)(7).
23. See Preamble to the Guidelines, 56 Fed. Reg.at 9,477.
24. 42 U.S.C. § 3604(f)(3)(A). HUD regulations pertaining to reasonable modifications may be found at 24 C.F.R. § 100.203.
25. Accessible elevators shall be on an accessible route and shall comply with UFAS § 4.10 and with the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, ANSI A17.1-1978 and A17.1a-1979. See UFAS § 4.10; Figures20, 22 and 23.
26. At least one (1) accessible route complying with UFAS § 4.3 shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones, if provided, and public streets or sidewalks to an accessible building entrance. See UFAS §§ 4.1.1(1); 4.3. In addition, UFAS requires that at least one (1) accessible route complying with UFAS § 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility. See UFAS §§ 4.1.2(1); 4.3.
27. If laundry equipment is provided within individual dwelling units, or if separate laundry facilities serve one or more accessible dwelling units, then they shall meet the requirements of UFAS §§ 4.34.71 through 4.34.7.3.
28. "Cluster boxes," common in multifamily housing developments, are routinely placed in sequential order. However, if a customer is unable to access his/her mailbox due to a disability, the customer may submit a request under the U.S. Postal Service's "Hardship Clause" and request the relocation of the mailbox to a lower, accessible level. The manager evaluates the individual request and takes appropriate action. If the postal service is unable to relocate the mailbox, the postal service may provide an alternate accommodation such as door delivery.
29. The highest operable part of all controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in §§ 4.2.5 and 4.2.6. Except where the use of special equipment dictates otherwise, electrical and communications system receptacles on walls shall be mounted no less than 15" above the finish floor. See UFAS § 4.27.37.
30. If emergency warning systems are provided, they shall include both audible alarms complying with UFAS § 4.28.2 and visual alarms complying with UFAS § 4.28.3. See UFAS § 4.1.2 (13) .
31. Accessible or adaptable kitchens and their components shall be on an accessible route and shall comply with the requirements of UFAS § 4.34.6. However, the PHA will not be required to make all elements of the kitchen accessible, unless requested by the resident with a disability. The resident may request specific accessible kitchen elements.
32. Accessible or adaptable bathrooms shall be on an accessible route and shall comply with UFAS § 4.34.5. However, the PHA will not be required to make all elements of the bathroom accessible, unless requested by the resident with a disability. The resident may request specific accessible bathroom elements.
33. See, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 2d 703, 710 (D. Md. 2001), affirmed 2002 WL 2012545 (4th Cir. 2002).
34. 42 USC 12102(2).
35. See Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999).
36. See FHA 42 U.S.C. § 3604(f)(3)(c) and the implementing regulations at 24 C.F.R. § 100.205. Additional technical guidance on the design and construction requirements can also be found on HUD's website and the Fair Housing Accessibility FIRST website at: http://www.fairhousingfirst.org.
37. As provided for in Section 101.1.3 and 201.1 of the Accessibility Code.
38. (Design And Construction) Requirements For Covered Multifamily Dwellings Under The Fair Housing Act U.S. Department Of Housing And Urban Development; Office Of Fair Housing And Equal Opportunity U.S. Department Of Justice Civil Rights Division; Washington, D.C.; April 30, 2013, Joint Statement Of The Department Of Housing And Urban Development And The Department Of Justice Accessibility Statement.
39. Handicap Parking: What Your Homeowners Association Must Know; November 2010; https://www.hoaleader.com.
40. Shapiro v. Cadman Towers, Inc., 51 F3d 328 (1995).
41. Janet L.S. Powers and Timothy Graves, Dealing with the Disabilities Act ADA, Common Ground, January/ February 1997.
42. In Avato v Green Tree Run Condominium Community Association, Community Association Law Reporter, July 1998.
43. In Gittleman v Woodhaven Condominium Association, Inc., 972 FSUPP 894 (1997).
44. For more information about barrier removal, see the Title III regulations at Section 36.304.

Resources and references

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- ADA Information and Technical Assistance: http://www.ada.gov/ta-pubs-pg2.htm.
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- Florida Building Codes http://www2.iccsafe.org/states/Florida_Codes/index.htm.
- Florida Building Code: http://www.floridabuilding.org/bc/bc_default.aspx.
- Florida Building Commission Accessibility Information: http://www.floridabuilding.org/FBC/information/accessibility.htm.
- Florida Building Commission Website; Accessibility: http://www.floridabuilding.org/FBC/information/accessibility.htm.
- Guidelines for Swimming Pools, Wading Pools, and Spas: Access Board accessibility guidelines at http://www.access-board.gov/recreation/guides/pools.htm.
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- How ADA Compliance Will Affect Your Swimming Facilities: http://www.communityassociationmanagement.com/legal-compliance/ada-accomodations.html.
- HUD Portal: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/fhguidelines/.
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Final examination questions

Select the best answer for each question and mark your answers on the Final Examination Answer Sheet found on page 128 or complete your test online at **CAMS.EliteCME.com**.

21. The terms "handicap" and "disability" do not have the same legal meaning.

○ True ○ False

22. Title VIII of the Civil Rights Act (the Fair Housing Act) was amended in 1988 (effective March 12, 1989) by the Fair Housing Amendments Act (FHAA) to prohibit discrimination based on disability.

○ True ○ False

23. The 2010 amended ADA states that wheelchairs (and other devices designed for use by people with mobility impairments) must be permitted in all areas open to pedestrian use.

○ True ○ False

24. While the ADA does not generally define community associations as "commercial facilities" or places of "public accommodation," certain areas within an otherwise private entity may qualify as a place of public accommodation, depending on the nature of its use.

○ True ○ False

25. In buildings with four or more dwelling units and at least one elevator, all dwelling units and all public and common use areas are exempt from the Fair Housing Act's design and construction requirements.

○ True ○ False

26. Under the Fair Housing Act, a reasonable accommodation is a structural change made to the premises, whereas a reasonable modification is a change, exception, or adjustment to a rule, policy, practice, or service.

○ True ○ False

27. Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it would impose an undue financial and administrative burden on the housing provider, or it would fundamentally alter the nature of the provider's operations.

○ True ○ False

28. If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for the upkeep and maintenance of the modification.

○ True ○ False

29. Housing providers may make approval of the requested modification dependent on the requester obtaining special liability insurance.

○ True ○ False

30. Community association swimming pools are not subject to the ADA accessibility requirements or the Accessibility Code if they are part of common use areas of apartment buildings and developments intended solely for the use of residents and their guests, and not otherwise available to the general public.

○ True ○ False

Chapter 5: Dealing with Delinquency and Foreclosure

4 CE Hours

By: Valerie Wohl

Learning objectives

- Name some of the major factors contributing to Florida's lengthy mortgage foreclosure process.
- Recall three controversial provisions of the Mortgage Foreclosure Act and explain why they are problematic.
- List the laws that most directly address community association policies and practices on delinquency and foreclosure.
- Describe how an association can use an order to show cause to facilitate the sale of foreclosed property.
- Define a lien and explain how it is implemented by mortgage lenders and associations.
- List three ways the eviction process has changed in the past few years and its effect, if any, on community associations.
- Describe what is meant by the "Safe Harbor" provision.
- Distinguish between community association rights that can and cannot be suspended in response to an owner's delinquency.
- Describe the obligations and responsibilities of timeshare transfer companies.
- List three strategies for increasing collections with multiple delinquent or vacant units.

Introduction

Florida has earned its reputation as a national foreclosure hotspot, with foreclosures in the state totaling more than three times the national average. While times continue to be economically difficult, the foreclosure rate is slowing, both in Florida and throughout the country. The national foreclosure rate dropped 32 percent from July 2012 to July 2013, according to a RealtyTrac marketing research report.[1] As of mid-2012, more than 75 percent of loans in foreclosure throughout the country originated between 2004 and 2008.

While new cases in Palm Beach County, one of the hardest-hit areas, declined by 68 percent between 2012 and 2013, reaching the lowest rate seen since July 2006, many large metropolitan areas, including Palm Beach as well as Broward and Miami-Dade counties, still suffer the highest foreclosure rates in the nation. Florida is also infamous for the slowest foreclosures. In 2012, it took an average of 382 days for a lender in the U.S. to complete a mortgage foreclosure. In Florida, in 2013, the same process took an average of almost 900 days to complete, among the lengthiest procedures in the country.[2]

Throughout these lengthy and difficult foreclosures, community associations have had to pick up the financial slack, stuck with the bills and debt created by delinquent owners, vacant units, and banks with little or no incentive to speed things along. As a community association manager, you may be aware that property owners are more likely to be delinquent in paying assessments or other fees to the association than they are to neglect making mortgage payments to their lender.[3,4] You are also likely aware of the dangerous effects of mortgage foreclosures on the association budget, and the complications of dealing with shortfalls and delinquent association members.

Over the past few years, there has been considerable development in legislation intended to bring relief from the foreclosure crisis to many types of residences, including community associations. The past few years have brought considerable clarification of the obligations and responsibilities of associations dealing with delinquency. These laws also expanded associations' legal authority to collect or recover assessments on delinquent units.

This course will discuss current community association foreclosure law and legal judgments associated with those laws, noting provisions that give associations more legal muscle to address delinquencies, vacant units, or units rented to tenants by a delinquent owner.

NOTE: For the purposes of this chapter, the following terms are used interchangeably:

- "Bank," "lender," " mortgagee," "foreclosing entity," and "financial institution."
- "Debtor," "borrower," "owner," and "consumer."

FORECLOSURE LAW IN THE 2013 LEGISLATIVE SESSION

Real estate law in the U.S. has historically been slow to change. The same has been true in Florida. In recent years, however, a flurry of legislative activity prompted by the foreclosure crisis has created a more developed legal structure for foreclosures and delinquencies designed to bring economic relief as quickly as possible. The 2013 legislative session enacted many laws

addressing the procedures, policies, rights, and responsibilities of community associations in cases of owner delinquency and foreclosure.

Real estate law is not consistent among all forms of community associations. Although a number of provisions in Chapters 718, 719, and 720 FS appear virtually identical, some provisions may contain subtle differences, while others are entirely different. If there is any question about an association's legal obligations, confirm the law is relevant to your specific organization and consult with a legal expert.

The following laws made the most substantial changes to community association collections and foreclosure law:

- Chapter 2013-137 (HB 87): Relating to Mortgage Foreclosures.
- Chapter 2013-136 (HB 77): Relating to Landlords and Tenants.

The following three laws were introduced as companion bills and have substantial overlap among them.

- Chapter 2013-188 (HB 73): Relating to Residential Properties.
- Chapter 2013-218 (HB 7119): Relating to Homeowners Associations.
- Chapter 2013-159 (HB 7025): Relating to Vacation and Timeshare Plans.

Chapter 2013-137 (HB 87) Relating to Mortgage Foreclosures

Former House Bill 87, now Chapter 2013-137 Florida Statutes (FS),[1] was introduced as a bill in two sessions before it became law in 2013. The law substantially changes procedures and conditions for mortgage foreclosures filed in Florida.

Given the lengthy Florida foreclosure process and that delinquent owners commonly refuse to pay assessments or other fees during the two or more years required to complete a foreclosure, associations can easily lose money each day the lender waits to acquire the title, with the association forced to make up the difference to avert budget shortfalls. Among its strategies, the law targeted financial institutions because many considered banks largely responsible for delays in foreclosure and resale of delinquent units.

The law was intended to clear the foreclosure backlog in the courts by accelerating the foreclosure process, revising provisions to deter owners from unreasonably delaying foreclosures with specious arguments, and limiting the time a lender has to pursue a deficiency judgment.

In cases where proceeds from the sale of the mortgaged property are insufficient to pay the property owner's debt in full, the mortgagee creditor may obtain a deficiency judgment to recover the deficient portion of the loan. A deficiency judgment on behalf of the lender against the borrower can demand the outstanding balance of the mortgage note, plus costs and attorneys' fees, and the value of the property foreclosed.

The law also provided more muscle to community associations by giving them the authority apply for a show-cause hearing, a role formerly restricted to lenders.

The amended law includes the following main provisions:

- Lenders must submit more evidence to the court to show that they have the right to initiate a foreclosure.
- Lenders may request a "show-cause" hearing, where defendants will have to show a specific, bona fide (meaning truthful, without deceit or fraud) defense to further delay a foreclosure.
- Community associations with liens may apply for show-cause hearings if the lender does not do so.
- Innocent third-party purchasers of a foreclosed property cannot be deprived of that home even if the foreclosure is later found to be fraudulent.
- The statute of limitations to seek a deficiency judgment against a foreclosed homeowner was reduced from five years to one year.

Bringing a foreclosure complaint

The law's most substantial change for lenders is the creation of Section 702.015 FS.

To bring a complaint to foreclose a mortgage on residential real property designed principally for occupation by one to four families, including condominiums and cooperatives but not timeshare interests (according to Part III of Chapter 721, F.S), the foreclosure complaint must establish the following:

- The plaintiff holds the original note, or is a person entitled to enforce a promissory note.
- If a plaintiff has been delegated the authority to institute a foreclosure action on behalf of the person entitled to enforce the note, the complaint must specifically describe the authority of the plaintiff and the document that grants this authority to the plaintiff.
- A plaintiff seeking to enforce a lost, destroyed, or stolen note must attach to the complaint an affidavit executed under penalty of perjury, detailing the sequence of all endorsements, transfers, or assignments of the promissory note, and providing documents proving that the plaintiff is entitled to enforce the note.
- A plaintiff in possession of the original promissory note must certify, under penalty of perjury, that the plaintiff possesses the original note.
- An "original note" or "original promissory note" refers to the signed or executed promissory note, including a renewal, replacement, consolidation, or amended and restated note or instrument that substitutes for the previous promissory note. The term includes a transferrable record, but not copies of these documents.
- The required certification must be submitted along with the foreclosure complaint, providing a number of specific details, including the location of the note.
- The original note and all other relevant documents must be filed with the court before the entry of any judgment of foreclosure or judgment on the note.

Adequate protections for lost, destroyed, or stolen notes

The law creates 702.11 FS, which applies to a pending cause of action. It provides that the following items constitute adequate protection of the enforcing note:

- A written indemnification agreement by a person reasonably believed to have sufficient assets or funds.
- A surety bond.
- A letter of credit issued by a financial institution.
- A deposit of cash collateral with the clerk of the court,
- Another form of security considered appropriate by the court.

A person who falsely claims to be the holder of a note or to be entitled to enforce a lost, stolen, or destroyed note is liable to the actual holder of the note for damages, attorney fees, and costs. The law specifies that the actual holder of the note can pursue any other claims or remedies it may have against the person who wrongly claimed to be the holder, or any person who facilitated or participated in the false claim.

Reduced statute of limitations

The law significantly limits the amount of time lenders are allowed to seek a deficiency judgment on a note that is secured by a mortgage on a one- to four-family residential property. The time-period has been reduced substantially, from five years to one year. This is the case for any deficiency action initiated after July 1, 2013, regardless of when the cause of action occurred. This one-year statute of limitations begins the day the certificate of title is issued in a mortgage foreclosure case or the date the deed is accepted by the mortgagee in lieu of foreclosure.

Deficiency judgments

A deficiency judgment is an award typically in an amount equal to the difference between the funds received from a court sale of property and the balance remaining on a debt. Deficiency judgments are commonly issued when a property owner fails to pay amounts owed on a mortgage and the property securing the mortgage is sold to satisfy the debt, but the proceeds from the sale are less than the amount owed.

The law limits the amount recoverable in a deficiency judgment for an owner-occupied residential property. The new value is the difference between the judgment amount and the "fair market value" of the unit on the foreclosure sale date.

The law also limits the amount recoverable in a deficiency judgment for a short sale, stating it may not be more than the difference between the amount of outstanding debt and the fair market value of the unit on the sale date.

Finality of mortgage foreclosure judgment

The law provides that an action to challenge the validity of a final judgment of mortgage foreclosure or to establish or re-establish a lien or encumbrance of property is limited to monetary damages if all the following items apply:

- The party seeking relief from the final judgment of mortgage foreclosure was properly served in the foreclosure lawsuit.
- The final judgment of mortgage foreclosure correctly designated the property.
- All applicable appeals periods for the final judgment have expired, with no appeals or settlements during that period.
- The property has been acquired for value by a person not affiliated with the foreclosing lender or the foreclosed owner, at a time in which no lis pendens (a notice that shows the property is the subject of litigation) regarding the suit has been filed with the official county records The law defines affiliates of the foreclosing lender to include:
    - Any loan servicer for the loan being foreclosed and any past or present owner or holder of the loan being foreclosed, and:
        - A parent entity, subsidiary, or other person who directly or indirectly controls, is controlled by, or under common control of any of these entities; or
        - A maintenance company, holding company, foreclosure services company or law firm under contract with these entities.

The law provides that:

- The former owner can continue to pursue monetary damages against the lender as long as the former owner's claims do not affect the marketability of the new owner's property.
- In cases when a mortgage foreclosure is based on a lost, destroyed, or stolen note, once the property belongs to a person not affiliated with the foreclosing lender or the foreclosed owner, a person claiming to hold the promissory note secured by the mortgage but who was not party to the foreclosure action has no claim against the foreclosed property. This individual may, however, legally pursue the party who wrongfully claimed entitlement to the note, from the maker of the note, or any other person against whom a claim may be made, under adequate protection provisions in s. 673.3091, F.S.

Show-cause procedure

Many communities face a situation in which there is little to no equity in the unit, meaning the association will not benefit financially from the sale of the property at public auction. The association's most immediate goal is usually finding a new owner who can begin paying assessments as soon as possible. Filling those vacant units becomes more challenging and frustrating when a bank is holding things up, and has little incentive to move. This law was designed to give associations more legal "muscle" to speed up the bank's foreclosure action.

The law amends s. 702.10 FS, allowing condominiums, homeowners associations, and cooperative associations named as a party in a mortgage foreclosure action to ask the court for an "order to show cause" for the entry of final judgment. Previously, only the lender/mortgage holder (usually a financial institution) was permitted to ask the court for the show-cause order. The application of this law to community association foreclosure law is intended to give associations greater authority and control over the length of the foreclosure process. Now that they have this right, it is anticipated that the show-cause procedure will become more common among associations than traditional foreclosure procedures.

Much of the appeal of this process is that a judge is required to set a hearing date very soon after the complaint is served to the defendant, giving associations a legal mechanism to expedite a foreclosure action stalled by a bank. Because associations historically had little leverage with banks, there was not much an association could do to impel a bank to foreclose in a timely manner. This law forces a bank to commit to a short timetable, unless it produces a sufficiently compelling reason why it cannot, and substantially shortens the time in which a bank may seek a deficiency against the borrower, reducing it from five years to one year after issue of the certificate of title or delivery of a deed in lieu of foreclosure.

The law makes the following revisions:

- After filing a complaint, the plaintiff may request an order to show cause for the entry of final judgment, and the court must immediately review the request and the court file in chambers without a hearing.
- If the complaint is verified, complies with the requirements in s. 702.015, F.S., and alleges a cause of action to foreclose on real property, the court must issue an order to show cause why a final judgment of foreclosure should not be entered to the other parties named in the action. The law adds a number of elements that must be included in the court's order to show cause. These are sent to the other parties named in the action.
- The hearing is no longer required to be held within 60 days of the date of service. The amended law requires the court to set a hearing date for either 20 days after service of the order to show cause, or 45 days after service of the initial complaint, whichever occurs first.
- An alternative show-cause procedure may run simultaneously with other court proceedings.
- Before the court can enter a final judgment of foreclosure, and after the court has found that all defendants have waived the right to be heard, the law now requires the plaintiff to file the original note, establish a lost note, or show the court the promissory note is not evidence for foreclosure.
- If the hearing time is too short to complete proceedings, the court may continue the order for the show-cause hearing.
- The law exempts foreclosures of owner-occupied residences from these provisions, meaning, while the foreclosure proceedings are pending, plaintiffs cannot request the court to enter an order to:
  - Show cause why it should not pursue payments.
  - Vacate the premises.
- Unless the defendant raises a "genuine issue of material fact which would preclude summary judgment,"[5] the judge may provide a foreclosure judgment at the hearing. It has been estimated that this statute might cut in half the time required to complete a foreclosure.

Magistrate jurisdiction

This section of the law sets out procedures for expediting the foreclosure process. To implement the new law, the legislature requested the Florida Supreme Court to amend the Florida Rules of Civil Procedure 1.490, to be consistent with the law's provisions. These amendments are intended to increase the use of magistrates to help reduce the residential mortgage foreclosure case backlog.

It provides the following background and rational for the revisions:

> "A significant number of mortgage foreclosure cases are pending in the trial courts, and it is estimated that 680,000 new foreclosure cases will be filed over the next three years. In January 2013, the commission established the Foreclosure Initiative Workgroup (workgroup) to propose strategies to significantly reduce the mortgage foreclosure case backlog …"
>
> "The workgroup's report identified systemic problems associated with the processing of mortgage foreclosure cases. One of the problems identified in the report is the limited availability of judicial resources to address the foreclosure case backlog, exacerbated by statutory provisions requiring retired judges to refrain from working as senior judges, except on a voluntary basis, for 12 months after retirement."

To address the shortage of senior judges, the workgroup expanded the role of magistrates to process foreclosure cases. Rule 1.490 was amended to authorize referral of residential mortgage foreclosure cases to a general magistrate with the "implied consent of the parties." Magistrates appointed to handle residential mortgage foreclosure matters only are not required to give bond or surety.

All parties have the opportunity to object to the referral within 10 days of the service of the order of referral:

- If the time set for hearing is less than 10 days after service of the order, the objection must be made before the hearing.
- If the order is served within the first 20 days after service of the order, the time period for filing an objection is extended to the time within which a responsive pleading is due.

Implied consent means the court interprets the failure to file a written objection to the referral within the applicable time period as consent by the party to the referral.

Will it speed up foreclosures?

While the mortgage foreclosure law was intended to provide associations with faster, more efficient foreclosure strategies and procedures, there is considerable disagreement about whether the law fulfills those objectives. This section will address some of the main concerns voiced by the law's opponents or concerned proponents. Three main areas have attracted the most controversy.

Critics are primarily concerned that:

- New requirements for documentation will increase, rather than decrease, the duration of foreclosures by inserting more time-consuming obstacles into the process.
- Some of the law's provisions may be unconstitutional, and are likely to face legal challenges and possible amendment in the near future, further complicating foreclosure cases.
- The law may unintentionally work against the interests of the organizations or individuals it was meant to assist, while rewarding other organizations and individuals in unanticipated ways.

Too much paperwork?

The law is specific and comprehensive in its requirements for condominium and cooperative foreclosure claims. The claim is required to contain documentation to affirm allegations stated in the lawsuit, provide evidence relating to the note's authenticity, and specify on what basis the plaintiff is entitled to enforce the note.

These new provisions found in Section 673.3091(2), F.S., require that all parties are adequately protected. This translates into a need for documentation, requiring lenders to do more paperwork that must be filed before a final judgment. Those who fail to comply with this statute are subject to sanctions.

Here are a number of its provisions:

- If the plaintiff holds the original note, then an affidavit certifying its possession is required at the time the complaint is filed. The affidavit must include copies of the original note with the proper attachments and accompanied by the certification and the complaint. The original note and accompanying materials must be filed with the court prior to foreclosure or judgment on the note.
- If the original note is lost, destroyed, or stolen, the plaintiff must attach an affidavit with copies to the complaint describing all transfers, with the goal of demonstrating that the plaintiff is entitled to enforce the note.
- The organization filing the claim must collect all the necessary documentation before it can begin the process, because all materials must be filed at one time.

Some suggest the amount of time necessary to complete these tasks and arrange logistics (obtaining an affidavit, certifying documents, request and receive documents from external agencies or individuals, etc.) is no small matter. Additionally, the process cannot begin until all materials are collected, so a single hard-to-find document could delay a filing indefinitely.

Potentially unconstitutional?

Critics cite a number of provisions that will likely be challenged as unconstitutional. The two primary areas of controversy are related to the allocation of judges and acceleration of the eviction process.

The law allocates judicial responsibilities to magistrates and retired judges, both of which may be unconstitutional. There is some question about whether the legislature has the authority to unilaterally authorize these individuals for the purpose of clearing out the foreclosure backlog and streamlining its progress through the court system. Neither the retired judges nor the magistrates would be subject to requirements established for active judges, such as re-election or re-appointment, as specified in the Florida constitution.

Opponents of the law worry that the eviction process has been accelerated to a point that puts the homeowner at an unfair disadvantage. The current law leaves little time or opportunity to pursue a range of strategies or alternatives to foreclosure, such as the use of mediation, reverse mortgages, or short sales. Shortening this transitional period, which is often psychologically difficult for the homeowner, will also limit homeowners ability to find useful resources for new housing or relocation assistance.

Other issues of concern include:

- A lack of provisions for monitoring or reporting by the Office of Mortgage Settlement Oversight, the federal authority that oversees bank compliance with provisions in the National Mortgage Settlement Act.
- Potential property rights violations associated with due process, equal protection, and retroactive portions of the law.

Who will benefit?

There is some question whether the law will affect the different entities and individuals involved in foreclosure as envisioned or create unintended or undesirable benefits and costs to various parties. Some suggest lawyers will be the real beneficiaries, but as the following examples demonstrate, many of the law's provisions will affect owners, lenders, and community associations in both negative and positive respects.

Lenders or borrowers?[6]
It has been suggested that the law works to the benefit of owners/borrowers, and to the detriment of lenders because it:

- Reduces the amount of time a lender or association can seek a deficiency judgment.
- Requires the lender to compile a number of legal documents that must be filed with the claim in a relatively brief amount of time.

However, it has also been suggested that it works to the owner/borrower's detriment, and the lender's benefit because:

- The homeowner has little time to prepare a defense after the lender files the foreclosure action.
- It makes evictions easier and faster, reducing the time the delinquent owner is in the home and delinquent.
- Procedures in the initial court proceedings may conflict with the due process rights of homeowners.

Community associations?
The law was intended to streamline the foreclosure process, to the benefit of community associations mired in foreclosure limbo for years while the delinquent owner waited it out in the unit. Accelerating the foreclosure process was expected to reduce budget shortfalls created by delinquency, but there is some concern that ambiguous and potentially unconstitutional provisions in the legislation may end up complicating the foreclosure procedure, with legal challenges to the law potentially extending rather than shortening the time required to foreclose and sell the property.

Another concern is that a streamlined foreclosure process will mean a large number of homes will be "dumped" on a real estate market unable to absorb them. Not only will the law of supply and demand mean a fall in property values, but homes that have been neglected by owners or banks also may be in some state of deterioration, which means lower property values. Because the market lacks individuals and families willing or able to buy these homes, they can be purchased economically, in bulk, by large investment companies for purposes of rental and eventual "flipping."

Mega-investors?
As the number of foreclosed properties in Florida increased and real estate prices dropped, the numbers of large investment companies purchasing blocks of property increased. A 2012 Sun Sentinel article[7] focused on one investor in particular who purchased thousands of single-family homes, many of them in community associations. While large investors, such as hedge funds and investment groups, may solve a number of immediate problems for an association, they may also bring significant costs.

Associations have concerns that these large companies will provide the minimum necessary repairs to the property in order to rent it, then sell the home when real estate prices rebound and properties can be sold at a profit.[8] This fear stems in part from an understandable uneasiness based on the fact that the owner is a big impersonal company (sometimes based in a foreign country), and the association is one among a multitude of community associations owned by the company that could easily get lost in the shuffle of so many other properties.

Many investment companies purchasing blocks of housing express a preference for homes in community associations because they provide more stability than conventional neighborhoods, Community associations have a greater incentive, in general, to attend to a home's disrepair because of the close relationship of property values within the community association. Unfortunately, this means community associations are more likely to pick up the slack when an owner is lax in maintaining a rented or empty home; a drop in one unit's value is likely to devalue others.

One aspect of institutional ownership that varies considerably is how the company chooses to be represented in operational issues, such as voting and attending meetings. Community associations should ensure that these corporate owners name a representative to vote on its behalf. Some companies are more involved in day-to-day operations than others. It is not uncommon for a large investment company's representative to run for a position on the association's board of directors, particularly if the company owns a large number of properties in the community.

Renters?[9]
Another aspect of the foreclosure crisis and association property ownership by large investors is a far larger number of renters in most associations than were ever anticipated before the economic downfall. Many homes purchased by these mega-investors are intended for the rental market. At one time, associations eschewed renters because they were thought to be far less invested than owners in maintaining a home's value, and more likely to move after a short period of time. Now, these factors are less of a concern to community association than vacant properties and past-due assessments.

With so many individuals renting community association properties, it is important that the associations governing documents address issues policies on renters as well as those for owners. Condominium associations are more likely to have provisions for rental in their governing documents than homeowners associations. Now, with so many large investors preferring to buy blocks of properties in homeowners associations for the specific purpose of renting them, HOAs should ensure their governing documents address the concerns of renters, as well as those in owner-occupied units.

As more community associations seek options to recoup fund from delinquent owners, more governing documents have allowed provisions for rental than in previous decades, when it was felt that allowing rentals might be disruptive to association members or reduce property values. Recent years have seen this law develop to clarify rights and responsibilities of unit holder/landlords, the association and the renter/tenant. In that tradition, this law amends Part II of Chapter 83, Florida Statutes, the Florida Residential Landlord and Tenant Act.

Eviction

The law authorizes eviction procedures under the Florida Landlord and Tenant Act rather than standard mortgage foreclosure procedures for circumstances, such as a case of a person occupying a dwelling based on a lease-purchase agreement. Provisions in Section 83.56 (2) FS on evictions were intended to facilitate the process by which landlords evict tenants, partly by reducing the time allowed the tenant to repair a violation, which is the tenant's right after receipt of an initial violation notice, according to 83.56 (2) FS.

Associations confronted by a tenant who fails to comply with s. 83.52 or meet financial obligations of the rental agreement must notify the tenant of the violation in writing and ensure it is communicated to the individual in an appropriate manner.

In this case, the association's notice would make a statement such as the following:

> Demand is hereby made that you remedy the noncompliance within seven (7) days of receipt of this notice, or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without your being given an opportunity to cure the noncompliance.

If an association is compelled to write a second warning because of a second violation or continuing period of noncompliance within one year of the first notice, the association is not required to provide a second notice before initiating an eviction action if the landlord provided an initial notice of noncompliance within the past 12 months.

To alert the tenant that he or she must leave the premises, the association's notice would make a statement such as the following:

> You are advised that your lease is terminated effective immediately. You shall have seven (7) days from the delivery of this letter to vacate the premises. This action is taken because (describe the violation).

Acts of noncompliance fall into two different categories. One gives the tenant a second chance; the other does not. If the noncompliant act is of certain nature, the tenant is provided an opportunity to "cure" the situation. Examples include having unauthorized pets or guests in the home; parking in an unauthorized manner or allowing others to do so; and failing to keep the property clean and sanitary, among many other possible prohibitions in the lease.

If this is the case, the association's notice should make a statement such as the following:

> Demand is hereby made that you remedy the noncompliance within seven (7) days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without your being given an opportunity to cure the noncompliance.

Examples of noncompliance that do not give the tenant a second chance include the intentional destruction, damage, or misuse of the landlord's or other tenants' property. Any of these actions, even if they are a first violation, are legitimate grounds for terminating the rental agreement. The tenant must be given seven days (beginning on the date that the association's notice was delivered) to vacate the premises.

In this case, the association's notice would make a statement such as the following:

> You are advised that your lease is terminated effective immediately. You shall have seven (7) days from the delivery of this letter to vacate the premises. This action is taken because (describe the violation).

Chapter 83.62(1) FS applies to situations where a judgment of eviction has occurred. Under the amended Florida law, the Florida clerk must issue a writ to the local sheriff to allow the landlord to take physical possession of the property within 24 hours after a notice is posted in a highly visible location on the unit premises. Legal holidays, Saturdays, and Sundays are not excluded from the 24-hour schedule, meaning evictions may occur those days.

On attorney fees, the law:

- Provides that the right of the prevailing party to attorney fees for enforcing a rental agreement may not be waived in the rental agreement.
- Provides that attorney fees may not be awarded in a claim for personal injury damages based on a breach of duty to maintain the rental premises.

On leases, the law:

- Provides that the right to legally required notices before a landlord or tenant may terminate a lease may not be waived in the lease.
- Revises the notice the landlord is required to provide a tenant that describes how advance rent and security deposits will be held, used by the landlord, and returned to the tenant.
- Provides that a right or duty enforced by civil action under the Florida Landlord and Tenant Act does not rule out the possibility of prosecution for a criminal offense related to a lease or leased property.

- Provides that a lease requires a landlord to give advance notice of the intent to non-renew the lease if the lease requires a tenant to give advance notice to a landlord of the intent to vacate the premises at the end of the lease.

The law:

- Creates a rebuttable presumption that a new owner of a rental property receives the security deposits paid by a tenant to the previous owner, but limit's the presumption to one-month's rent. (A rebuttable presumption is an assumption made by a court, taken to be true unless someone comes forward to challenge it and provide evidence to the contrary.)
- Provides that a landlord who accepts partial payment may still pursue termination of the rental agreement or bring a civil action for noncompliance.
- Allows landlords to withdraw advance rents when the advance notice period commences without notice to tenants.
- Eliminates a landlord's obligation to make certain disclosures on fire safety to tenants.

In cases where the association is the landlord, the association should consult a legal expert to ensure the current rental agreement or lease conforms to the new law, because proper legal footing will expedite procedures if removing a tenant becomes necessary. Confirm that you have amended these forms to be consistent with current law.

The law includes a new provision, amending Section 83.64, Retaliatory Conduct, stating that landlords may not retaliate against a tenant if the tenant has paid rent to a condominium, cooperative, or homeowners association after demand is made by the association in order to pay the landlord's obligation to the association. Note the addition of (1)(e) below.

83.64 Retaliatory conduct.

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:
   (a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;
   (b) The tenant has organized, encouraged, or participated in a tenants organization;
   (c) The tenant has complained to the landlord pursuant to s. 83.56(1);
   (d) The tenant is a service member who has terminated a rental agreement pursuant to s. 83.682;
   (e) The tenant has paid rent to a condominium, cooperative, or homeowners association after demand from the association in order to pay the landlord's obligation to the association; or
   (f) The tenant has exercised his or her rights under local, state, or federal fair housing laws.

The Federal Fair Debt Collections Practices Act and the Florida Consumer Collections Practice Act

The Federal Fair Debt Collections Practices Act and the Florida Consumer Collections Practice Act were designed to protect consumers from abuse or harassment in the collection of debts. Community association managers should ensure that the association's collection practices – whether the form of payment is rent from a tenant or an assessment from an owner – are in compliance with all applicable federal and state debt collection requirements.

The Florida Consumer Collection Practice Act

The Florida Consumer Collection Practice Act is found in Title 33, PART VI, Sections 559.55 to 559.785 Florida Statutes. Section 559.72 provides a list of prohibited practices, which include a variety of threats, misrepresentations, forms of harassment, publication of certain information, unreasonable employer or third-party communication, and communicating with a consumer known to be represented by an attorney or other legal counsel.

Florida law provides for the right of consumers to sue a party or parties in violation of this law for the amount of actual damages or $1,000, plus costs and attorneys' fees.

The Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (15 U.S.C. §§ 1692-1692p, as amended) protects consumers by regulating the actions of certain debt collectors in their attempts to collect a consumer debt.

Some examples of debt collectors subject to regulation under this law include collection agencies that purchase debts from an original creditor, collectors who buy a debt from a bank or a finance company, law firms hired to collect a debt for a company, and collectors using a company name unlike the company that originally provided the loan.

This law applies when third-party debt collectors, such as those indicated above, attempt to collect a consumer debt from an individual. A consumer debt is one incurred for personal, family or household services, and a wide variety of debts, such as one created when a person purchases a home with a bank loan, or buys insurance for a home. The law applies to debt collection

phone calls, written communications, and conditions under which the debt will be provided to a credit reporting agency.

The law provides the following obligations and responsibilities in consumer debt collection:

- If a debt collector calls the consumer in an attempt to collect a debt, the laws dictate the debt collector must identify him/herself as a debt collector. This also applies if the collector leaves a voicemail message.
- If the consumer has disputed a debt in writing, it must be communicated to the credit reporting agency.
- The debt collector is required to give the consumer certain notices in the initial communication, or send it within the following five days. This information includes:
  - The amount owed.
  - The creditor's name (the name of the lender/bank, etc., that made the loan).
  - A notice that the debt collector will assume the debt is valid (real, unpaid) if the consumer does not dispute the debt's validity within 30 days of the date the notice was received.
  - A notice that the debt collector will send the consumer verification of the debt or a copy of a judgment against the consumer, if he or she responds to the debt collector within 30 days after receiving the notice to state that he or she wants to dispute the debt.
  - A notice that the debt collector will give the consumer the original creditor's name and address if different from the current creditor if he or she responds to the debt collector within 30 days after receiving the notice to request this information).
- The debt collector is prohibited from:
  - Lying or deceiving a consumer in trying to collect a debt.
  - Calling the consumer repeatedly with the intent to harass him or her.
  - Threaten violence or use profane or abusive language.
  - Divulging to the consumer's friends, neighbors, or employers that he or she owes a debt.
  - Threatening to sue the consumer when the debt collector does not intend to do so.
  - Charging the consumer interest or fees not expressly authorized by the agreement that created the debt, or permitted by law.
  - Threatening to deposit or actually deposit a post-dated check before the date the consumer wrote on the check.
  - Contacting the consumer at an unusual place or time that is disruptive or obviously inconvenient (such as a call at 5 a.m.).
  - Sending the consumer information on a postcard.

If a collector violates the FDCPA and a lawsuit against the person or entity is successful, the consumer could be entitled to recover actual damages, statutory damages up to $1,000, court costs, and attorneys' fees.

CHAPTER 2013-188 (HB 73) RELATING TO RESIDENTIAL PROPERTIES

Assessments liability

Florida's Condominium Act (Chapter 718) places responsibility for the payment of all assessments due during the period in which the individual legally owned the condominium unit. "Assessment" refers to a share of the funds periodically assessed against the unit owner, required for the payment of common expenses.

Florida Statute 718.116 clarifies the following liabilities for assessments and other fees:

- A unit owner, regardless of how the title was acquired (even if purchased through a foreclosure sale or by deed in lieu of foreclosure), is liable for all assessments due during the period he or she is the unit owner.
- A unit owner is individually liable as well as jointly liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is assessed without regard to any right the current owner may have to recover amounts he paid on behalf of the previous owner.
- The financial liability of the lender/first mortgagee (or those who later take title to a unit by foreclosure or by deed in lieu of foreclosure) is limited by the provisions of the condominium owner's association covenants. The question of collection depends on the language contained in applicable condominium association, mortgage, and loan documents.
- In the "Safe Harbor" provision, the liability of a first mortgagee for the unpaid assessments that became due before the mortgagee's acquisition of title is limited to the lesser of:
  - The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or
  - One percent of the original mortgage debt.
- These provisions apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent who could be served by the mortgagee.

Use of foreclosure liens

The association has a lien on each condominium parcel to secure the payment of assessments. The lien becomes effective at the time the claim of lien is recorded in the public records of the county in which the property is located. The following conditions apply to an association's claim of lien:

- To be valid, a claim of lien must be formally executed by an association officer, and state the description of the condominium parcel, name of the owner on record, name and address of the association, the amount due and due dates. The lien is not effective one year after the claim of

lien was recorded unless an action to enforce the lien is begun within a one-year period.
- The one-year period is extended automatically for any period of time the association is prevented from filing a foreclosure action by an automatic stay resulting from the parcel owner filing a bankruptcy petition, or other person claiming an interest in the unit.
- The claim of lien secures all unpaid assessments that are due and that may accrue from the time the claim of lien is recorded until the entry of a final judgment, as well as interest and all reasonable costs and attorney's fees incurred by the association incident to the collection process.

The amended law clarifies that a condominium association that acquires title to a parcel through foreclosure of its lien for assessments is not liable for unpaid assessments and other amounts that came due before the association's acquisition of title.

Revisions to recent legislation

In recent years, Chapter 718 FS was amended to authorize community associations to demand rent directly from a unit owner's tenant if the unit owner was delinquent in its financial obligations to the condominium association. The current law clarifies that the "future monetary obligations" mentioned in past versions of the law includes all subsequent rent due from the tenant to the unit owner, which must go directly to the condominium association until all delinquent accounts are paid in full.

The current legislation also provides a revised Demand for Rent form, which must be sent to tenants by the condominium association. It explains the tenant's obligation to pay rent to the condominium association, and clarifies that the tenant is immune from any claim by the landlord/unit owner relating to the rent, as long as all payments are made directly to the association in a timely manner following the tenant's receipt of the written demand for rent.

Suspensions

In recent years, Chapter 718 FS was amended to authorize a community association to suspend the right of a unit owner to use common elements and facilities of the association if the unit owner was more than 90 days delinquent in payments to the association. The law allowed suspension of common-element use rights for nonpayment and failure to comply with condominium documents.

The current law clarifies which rights can and cannot be suspended. Suspension of an owner's rights does not apply to:
- Limited common elements that are intended for use by that owner alone.
- Common elements needed to access the unit or home.
- Utility services to the unit or home.
- Parking spaces.
- Use of elevators.

The current law also provides that a hearing is required to suspend rights for failure to comply with condominium documents. No hearing is required for suspension as a result of delinquency, but the suspension must be approved by the board at a meeting that provides sufficient advance notice.

Delinquent owners also face suspension of voting rights. The legislation clarifies that if voting rights are suspended as a result of a delinquency, the suspended vote does not count toward quorum requirements or a vote required to approve an action.

Bulk buyers

In recent years, Chapter 718 FS was amended to include the Distressed Condominium Relief Act, which provides protections to bulk buyers and bulk assignees from assuming the original developer's liabilities and responsibilities. The current law makes the following changes to this section:
- It amends the definition of a "bulk buyer" and "bulk assignee" to mean a person who acquires more than seven condominium parcels in a "single condominium."
- It clarifies that a mortgagee who acquires title of a condominium due to a judgment of foreclosure is not a bulk assignee or developer, unless the mortgagee exercises any developer rights other than those specified in the Distressed Condominium Relief Act.

Chapter 2013-159 (HB 7025): Relating to Timeshares, Relating to Vacation and Timeshare Plans

This law amends provisions of the Florida Vacation Plan and Timesharing Act. Under the revised statute, timeshare lienholders appoint a trustee to serve the required foreclosure notices and forms on the timeshare interest holder. This trustee foreclosure process is a non-judicial one that applies only to the foreclosure of liens on timeshare interests, including liens based on unpaid assessments and unpaid mortgage obligations.

These amendments provide regulation for timeshare interest transfer companies, businesses that seek out timeshare owners who may be interested in transferring the ownership of their timeshare to another individual or entity to free themselves of

the financial obligations (maintenance fees, etc.) that come with timeshare ownership.

The law requires:

- Timeshare transfer companies or their agents provide an estoppel letter to the managing entity of the timeshare plan. An estoppel letter indicates whether all assessments and other money owed to the managing entity by the timeshare interest owner have been paid.
- Timeshare transfer companies deliver a signed, written resale transfer agreement to the consumer.
    - No fees or costs will be paid before delivery to the consumer timeshare reseller and managing entity of written evidence that the transfer services have been performed.
    - The agreement must also identify the escrow agent.

The law specifies the person providing transfer services must establish an escrow account, with the following specifications:

- Funds or property must be held with the escrow agent until the transfer company has fully complied with the obligations under the agreement.
- Escrow records must be kept for five years.
- It is a third-degree felony to intentionally fail to comply with the escrow and recordkeeping requirements of this law.

Managing entities have a private right of action to recover actual damages plus attorney fees and court costs if bringing an action for a declaratory judgment or an action to obtain an injunction. The law provides exemptions for real estate brokers, licensed attorneys, title insurers, or agents who receive total consideration from a consumer reseller in an amount less than $600, as well as transfers that originate from a timeshare reseller to the developer or managing entity of that timeshare plan.

The law provides:

- That the initiation of a foreclosure proceeding against a timeshare interest does not automatically act as a lis pendens (a notice, recorded in the chain of title to real property, indicating the property is involved in litigation). The section also specifies the information that must be included in a formal notice of lis pendens.
- That the determination of whether the obligor (the individual owing the debt) is the person who signed the receipt of the notice of default and intent to foreclose follows a good-faith standard. In a related amendment, the law revises a provision on a trustee's incorrect determination of who signed the notice receipt. Previously, this error might potentially constitute a third-degree felony. Under the current law, a trustee making this error would not be penalized if he or she made a good-faith effort to find out if the obligor signed the return receipt in accordance with the good-faith standards provided in this law.
- The specific information that must be included in the publication notice that is required if the obligor cannot be served with a notice of default and intent to foreclose.

Chapter 2013-218 (HB 7119): Relating to Homeowners Associations

The law brings homeowners associations under the umbrella of the Division of Florida Condominiums, Timeshares, and Mobile Homes (within the Department of Business and Professional Regulation) for reporting purposes, and incorporates many organizational and governing elements of the Condominium Act in the Homeowners Association Act.

The law primarily provides information for homeowners associations, duplicating in Chapter 720 FS much of the legal structure of revisions made to Chapters 718 FS and 719 FS by companion bills that became law.

One very important amendment that applies to all licensed community association managers is found in Section 468.436(2)(b) FS, which states that any community association manager who violates a provision in Chapters 718, 719 or 720 FS during the course of performing their professional services is subject to disciplinary action.

The new law makes revisions relevant to delinquency and foreclosure in the following sections of the Homeowners Association Act (Chapter 720 FS).

Liability for unpaid assessments

The revised law eliminates a homeowners association's liability for assessments on any property during the time the association holds title to the property. While associations will not be able to collect funds for assessments incurred while in possession of the title, they will be able to pursue collection of other past-due assessments from the bank or subsequent owner.

The law clarifies that:

- Homeowners associations that acquire title to a property through foreclosure of a lien based on delinquent assessments are not responsible for unpaid assessments and other fees that came due before the association acquired the title.
- Homeowners associations that foreclosed on a delinquent property are still entitled to collect unpaid assessments that accrued before the association took title from third-party purchasers at the lender's foreclosure sale.
- The liability for unpaid assessments by the property owner subsequent to ownership by the homeowners association is limited to any unpaid assessments that accrued before the homeowners association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

Amendments on an association's legal liability for assessments were prompted in part by a significant legal judgment made in January 2013. In the case of Aventura Management, LLC v. Spiaggia Ocean Condominium Association, Inc., the court ruled that an HOA could not collect any past-due assessments from a subsequent owner (including the bank), if it foreclosed

before the bank, because this qualified the HOA as a "previous owner," as defined at the time.

Before these recent amendments, all owners were jointly and individually liable with previous owners for unpaid assessments, even in cases of foreclosure. When the Aventura v. Spiaggia decision held that an association should be treated as a "previous owner," it was requiring it to assume joint and individual liability, making the association unable to recover funds from third-party purchasers when the property is sold.

The revised law excludes homeowners associations that acquire title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The current law amends Section 720.3085 FS, changing the definition of "previous owner" to effectively exempt an HOA from liability for assessments during the period it holds title. The same section allows Florida HOAs to collect past due assessments from a subsequent owner.

720.3085 Payment for assessments; lien claims
(2)(b) A parcel owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the present parcel owner may have to recover any amounts paid by the present owner from the previous owner. For the purposes of this paragraph, the term "previous owner" shall not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present parcel owner's liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

The provisions exempting homeowners associations from these regulations were not incorporated into Chapter 718, the Condominium Act, or Chapter 719, the Cooperative Act.

Suspension of rights

In recent years, Chapter 720 FS, was amended to provide legal authorization for homeowners associations to suspend a delinquent property owners voting rights or prohibit the owners from using the association's common areas and other association property if the owner became more than 90 days delinquent in his or her financial obligations to the HOA. The suspension may continue until the parcel owner is up-to-date in assessments and other fees.

The revised law Section 720.305(2)(a) FS, "Suspensions," clarifies that suspension of an owner's common area use rights cannot extend to the common elements needed to access the unit, utility services to the unit, parking spaces, and elevators. It cannot impede parking, vehicular and pedestrian entry or exit from the parcel, and utility services and use of common areas that provide access may not be suspended. Notably, the statute is still silent on the authority of the association to suspend cable television.

Suspension procedure
The legislation allows suspension of common-area use rights for not only nonpayment but also for failure to comply with the homeowners association documents — with a hearing required for suspension as a result of failure to comply with homeowners association documents, but no hearing required for suspension as a result of delinquency. The legislation clarifies that if voting rights are suspended as a result of a delinquency, the suspended vote does not count toward quorum requirements or a vote required to approve an action. Although suspensions of use rights for nonpayment of assessments will not require a hearing, the board has to approve such suspensions at a properly noticed meeting.

Attachment of rent
In recent years, Chapter 720 of the Florida Statutes was amended to authorize a homeowners association to require that a parcel owner's tenant pay rent directly to the homeowners association if a parcel owner is delinquent in paying monetary obligations to the homeowners association. The current legislation clarifies that what was previously referred to as "future monetary obligations" includes all subsequent rent due from the tenant to the parcel owner and must be paid to the homeowners association until all delinquent accounts are paid in full.

The legislation also provides a demand letter form that must be sent to tenants by the homeowners association that explains the tenant's obligation to pay rent directly to the homeowners association. It also clarifies that the tenant is immune from any claim by the landlord/unit owner relating to the rent, as long as the tenant pays it in a timely manner after receiving the written demand for rent from the association.

Homeowners association developers

Section 720.307 FS, "Transition of association control in a community," provides examples of events that trigger an "automatic transition" from developer to member control. These trigger events include:

- The developer abandons or deserts responsibility to pay assessments; the law assumes a situation of abandonment and desertion if the developer has unpaid assessments of guaranteed amounts for more than two years.
- The developer abandons or deserts responsibility to maintain or complete amenities or infrastructure, as stated in the governing documents.
- The developer files a petition for Chapter 7 bankruptcy.
- The developer loses title to the property through a foreclosure action or the transfer of a deed in lieu of foreclosure.
- A receiver for the developer is appointed by a circuit court and is not discharged within 30 days (unless the court determines that this would be detrimental to the association or its members).

The section also provides that members other than the developer are entitled to elect at least one board member if 50 percent of the parcels in all phases have been sold to the members.

Prohibited clauses in association documents

Section 720.3075 FS, "Prohibited clauses in association documents," already prohibited developers from making changes unilaterally (on his or her own) to HOA governing documents after 90 percent of the parcels have been sold to members. The revised law also prohibits certain changes before that point. Developers' amendments to governing documents are now required to meet certain standards; the changes must be made in good faith and with good reason, within conditions specified by the law.

Protecting Tenants at Foreclosure Act – the 90-day notice law

The Protecting Tenants at Foreclosure Act protects tenants from eviction due to foreclosure. These provisions took effect on May 20, 2009, and originally were scheduled to expire on December 31, 2012. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) changed the expiration date to December 31, 2014.

The tenant protection provisions apply in the case of any foreclosure on a "federally related mortgage loan" or on any dwelling or residential real property. "Federally related mortgage loan" is defined as any loan secured by a lien on one- to four-family residential real property, including individual units of condominiums and cooperatives.

Under this law, "any immediate successor in interest" in such a foreclosed property, including a bank that takes title to a house upon foreclosure, will assume the interest subject to the rights of any bona fide (legitimate or good faith) tenant, and will need to comply with certain notice requirements. The immediate successor must provide tenants with a notice to vacate at least 90 days before the effective date of the notice. The date of a "notice of foreclosure" is defined as the date on which complete title to a property is transferred to a successor entity or a person, as a result of a court order, or pursuant to provisions in a mortgage, deed of trust, or security deed.

Tenants must be permitted to stay in the residence until the end of their leases, with two exceptions:

1. When the property is sold after foreclosure to a purchaser who will occupy the property as a primary residence or,
2. When there is no lease, or the lease can be terminated at will under state law.

The 90-day notice requirement is not dependent upon the tenant, providing he or she is a legitimate tenant or paying rent. The bank is prohibited from filing an eviction for non-payment of rent without first providing the PTFA 90-day notice and waiting the 90 days.

The Case of Castro v. Charter Club Inc.

In the case of Castro v. Charter Club Inc., the court reversed a final judgment of foreclosure because it felt the Charter Club had not satisfied requirements of the constructive notice statute. Because it determined publication of the notice had been improper, it made the foreclosure judgment against the homeowners null and void.[10]

Florida law requires community associations to pursue "constructive service" on an owner who cannot be located. This includes strictly adhering to the law, making a diligent inquiry, and exerting an honest and conscientious effort as necessary to obtain the information necessary to serve the defendant. This case demonstrates a particularly egregious example of an ineffective constructive service process.

The association's process server was guilty of a large number of errors in this case, including attempting to serve the notice at what he thought was Castro's address, but was found to be his daughter's home. She provided the process server with her father's address, which the process server did not write down. The association never attempted to contact the property's tenants to see if they knew the correct address for Castro. After attempting to find Castro at one more location, no further attempts were made to locate or inform Castro.

Not only did the process server not return to the daughter's house to check the address given him earlier, he neglected to inform the daughter that he was there to serve her father with a complaint for foreclosure. Even more appalling, the association had approved that Castro lease the unit to a tenant who paid rent directly to the association, for the purpose of paying down debt related to delinquency, meaning the association received rent payments for two years before initiating the foreclosure action.

While it is a rare association that makes such a multitude of errors, it is a good reminder to always consult an attorney and thoroughly research all documentation on a potential claim of foreclosure, because the legal process is often expensive and unforgiving.

Association strategies addressing delinquency

A community association has a number of possible options to pursue when confronted with a delinquent owner. Associations can:

- Exert pressure on a bank, now more effectively using an order to show cause.
- File a foreclosure action, based upon past due assessments, against the bank that foreclosed the property, and, as the new owner, is responsible for paying assessments.

- File a deficiency judgment lawsuit against the unit owner to recover all past due assessments, regardless of whether the association or the bank filed the foreclosure of the unit.
- File a foreclosure action, based upon past due assessments, against the unit owner, using association right of lien.
- Consider options to foreclosing on a lien.
- File a reverse foreclosure notice to take the title of the property or use a short sale strategy.

Exert pressure on a bank, now more effectively using an order to show cause.
As discussed at length in this chapter, associations are better able to impel banks to move on a foreclosure, now that they have the authority to request an order to show cause. While banks have had little motivation to proceed at a faster pace, this new legislation is expected to improve the rate at which a property moves through the foreclosure process and help community associations facilitate its completion and sale of the property.

File a foreclosure action, based upon past-due assessments, against the bank that foreclosed the property, and, as the new owner, is responsible for paying assessments.
There are increasing numbers of lawsuits in which associations are pursuing banks for unpaid dues on homes the banks have repossessed.[11] Associations have a legal right under Florida law and the governing documents of the community association to act on those rights against an owner, whether the owner is a huge corporation or one individual. Banks that fail to pay their fair share have lost homes to community associations.

File a deficiency judgment lawsuit against the unit owner to recover all past due assessments, regardless of whether the association or the bank filed the foreclosure of the unit.
An association may file a deficiency judgment lawsuit against a unit owner who has stopped paying assessments. A deficiency judgment is typically in an amount equal to the difference between the funds received from a court sale of property and the balance remaining on a debt. They are issued when a property owner fails to pay amounts owed on a mortgage and the property securing the mortgage is sold to satisfy the debt, but the proceeds from the sale are less than the amount owed.

Recent changes to legal provisions on deficiency judgment lawsuits provide that community associations have the potential to recover funds from personal assets, such as the unit holder's banking and investment accounts.

File a foreclosure action, based upon past-due assessments, against the unit owner, using the association right of lien.
Community association governing documents and Florida state law provide a legal right for an association to file a lien against the property. A lien is a claim against a property for a debt.

A lien foreclosure is a lawsuit filed to foreclose a lien against a property for unpaid assessments. It allows an association to foreclose a lien in a similar manner that a bank would foreclose a mortgage. If the owner does not pay all amounts secured by the lien, then the property is sold at an open public auction.

The association is awarded a "judgment credit" to use during the auction to automatically bid on the property, up to the amount of judgment, without the association needing to provide collateral. If the association provides the only bid, it takes ownership of the property. If a party bids higher than the amount of the judgment credit, the association loses the property to that party at the auction, but receives the proceeds of the sale to satisfy the amount of judgment.

There are a number of important pros and cons to pursuing a lien foreclosure. Like other lawsuits, a lien foreclosure is a lawsuit, requiring the payment of attorney's fees and court costs, among other expenses, although these may subsequently be charged to the owner. The condition of the property and whether it is vacant or occupied should figure largely in this decision.

If an association plants to rent the property once it takes title, the property may require an additional investment of resources to make it appealing to a new tenant. Although some association members are not pleased by the trend, renting may be the best way for the association to collect assessments. The community association's governing document should be reviewed to ensure there are no provisions prohibiting rentals. If there are, new provisions should be drafted with the input of legal professionals and association members.

Relationship to the lender
An association's foreclosure claim is subordinate to that of the lender. This means if an association elects to foreclose its lien and takes title to a property, it will take title subject to the right of the first mortgagee to foreclose its mortgage. In the past, associations were reluctant to initiate foreclosure if the lender had already began a foreclosure action, or in cases where the value of the property was less than the debt secured by the first mortgage. That has changed as the foreclosure process has lengthened, encouraging associations to consider every option to recoup their losses from delinquent units.

Recent legislative changes have given associations a bit more authority and wiggle room, which they are using to their advantage by trying to get cases dismissed due to an unreasonable wait, and contemplating their own lien foreclosure of the property. While associations cannot continue with their own lien foreclosure actions when the owner is served with a mortgage foreclosure, the association's attorney can monitor the legal proceedings in case there is a change in the case's status. This happens more often than one might think.

Why file a response?
When a community association is served as a defendant in a mortgage foreclosure, association members may question the merits of filing a response. Legal experts recommend filing a response because it serves a number of important purposes. Perhaps the most important reason to do so is because filing a response with the court is necessary for the association to maintain its legal rights to the property. Failure to do so can result in a waiver of an association's lien claims.

Associations that file a response to a bank's complaint can remain part of the lawsuit. This means an association is able to monitor the foreclosure proceedings, with access to lawsuit pleadings, motions, and orders. When the bank appears to be moving more slowly than necessary, the association can file a motion asking the court to enter an order compelling the bank to free the property for sale or rent.

One situation in which filing a response and waiting paid off was in the case of the Peninsula Condominium Association v. US Bank, N.A.[12,13] In this judgment, the condominium association filed a foreclosure action for unpaid condominium fees, even though the association was aware that the mortgage lender intended to file a foreclosure action on the property. The association was able to prove that the statute of limitations for the bank to file its claim of foreclosure against the property had run out. In this case, watching and waiting paid off for the association. Banks rarely miss such important deadlines, but it would have been irrelevant if the association had not been monitoring the foreclosure process.

Options to foreclosing on a lien

The most common result of a lien foreclosure action is the association taking title to the unit. As the title holder, the association has the right to rent out the unit, according to the terms of the community association's governing documents, using association funds as necessary to bring the property into a condition in which it can be rented. In some cases, an association may prefer not to take title to a unit as the result of a foreclosure action. In that case, the association can consider some of the following alternatives to foreclosing on a lien or taking possession of a property subsequent to a foreclosure claim.

- **Rentals**

  Smart associations take advantage of empty properties and the painfully long foreclosure process to rent out the unit and regain as much of their losses as possible. While not all community associations are able to do this, it can be an effective strategy to bring in funds and fill empty units.

  Both Chapters 718 and 720 of the Florida statutes permit an association to demand rent from a tenant if the owner is delinquent to the association. Once a tenant pays the association, that tenant cannot be evicted by the landlord for failure to pay rent. Demanding rent is an efficient way to bring in financial resources to replace lost assessments. If a tenant refuses to make payments, the association can initiate an eviction process to remove him or her.

  An assignment of the right to rent can be implemented if a property is vacant and the association is in communication with the delinquent owner. This option gives the association the right to rent out the property, the funds of which are applied to the outstanding balance. In return, the association agrees not to pursue collection options against the owner through the duration of the agreement. This strategy not only keeps the property occupied and in good repair, it provides regular payments to the association. The only obstacle in obtaining the right to rent the property is that it requires the owner's cooperation.
- **Personal judgments against owners**

  Obtaining a personal judgment against the owner for the amount of unpaid assessments is another potential collection option. A personal judgment can usually be obtained in a shorter time frame than a foreclosure judgment. Obtaining a personal judgment does not result in an owner's eviction, but creates a record of the judgment against the owner. Once the record is established, the association will need to take a separate action to collect the personal judgment, which can be a complicated process.

  Suspension of use and voting rights have already been discussed as strategies to assertively encourage the delinquent owner to make payments, especially if he or she enjoys use of the pool or tennis courts on a regular basis. There are important limitations on suspension of rights. The association should confirm it is compliant with recent legislation.

  Associations should be willing to negotiate directly with a delinquent owner to collect an assessment. During these discussions, the association representative should try to determine the owner's ability to pay, the collection options available, and the expenses associated with each option. The success of direct negotiation is largely dependent on the delinquent individual. If he or she has been a reliable association member with a sound payment history, a brief financial setback can be understood and tolerated.

  Unfortunately, determining an owner's solvency and willingness to pay are nearly impossible. Delinquent owners may spend a lot of time delaying and making promises that are not realized. It may ultimately waste time if the owner does not follow through with a payment plan because it can delay further collection efforts.
- **Tender a deed in lieu of foreclosure to the bank**

  Another option for an association that takes title to the unit but does not want to take possession of the property is to tender a deed in lieu of foreclosure to the bank. A bank may refuse, but may be amenable to this option or a short sale if its case was dismissed. In rare situations, an association that has taken title to a property may choose to file a second suit following the lien foreclosure case (a "quiet" title action) against the bank to remove the mortgage against the property.

  Associations are choosing to foreclose more because of the substantial backlog in the system and banks' foreclosure cases. Delays are due to the volume of cases in the court system and the other cases competing for the attention of the lender's lawyers and efforts by the owner to delay the foreclosure.
- **Using a claim of foreclosure to compel payment from a delinquent owner**

  In some cases, a claim of foreclosure is the most effective tool for collecting delinquent assessments. Associations may be able to benefit from a completed foreclosure, but the threat and initiation of foreclosure proceedings is a persuasive means for convincing owners to pay up. Owners with a means to pay will often take the association demands more seriously once they see the repercussions of delinquent assessments. Owners tend to find associations less threatening than lenders, resulting in more consistent or frequent payments to the lender, if there is a choice to make. Most owners with the means to pay choose to stay in possession of the title.

  Owners unable or unwilling to pay assessments or negotiate a rental arrangement were once able to take advantage of the lengthy mortgage foreclosures process, adding to it with their own stalling tactics, stretching out the process for a period of years, in some cases. An association can effectively cut short the owner's efforts to delay by foreclosing the association's lien. Additionally, recent legislative changes streamlining the eviction process make removing a delinquent tenant a far less time-consuming process. When the owner is divested of title

by the association, the lender can take possession of the title and begin to pay assessments.

- **File a reverse foreclosure notice to take the title of the property, then compel the bank through legal means to take the title back, including responsibility for all association fees.**
  In some cases, a bank may be unable to sell a home because of a bank lien on the property, or the bank appears uninterested in taking possession. Some banks see no need to move quickly on mortgage foreclosures because they do not want the responsibility for upkeep required in a residential property, and prefer not to have the loss on their books, given the fact that most foreclosed community association homes are financially "under water," (of less value than the amount owed the lender).

  In such cases, an association may attempt to force the bank to take back title to the home by legal means, thereby making the bank responsible for payment of assessments and fees. A recent ruling did just that, forcing a bank in Florida pay a foreclosed home's association fees as well as its legal fees and court costs. While banks and mortgage lenders are not liable for more than 12 months of past-due payments or 1 percent of the total mortgage amount, whichever is less, this is still a considerable and welcome income stream for the association.

- **Short sales**
  Short sales have become a popular foreclosure alternative for increasing numbers of Florida community associations. An offer submitted to an association for a short sale is less than the full amount owed to the association, but may be more desirable than waiting indefinitely for the full amount. An association taking title to a unit can attempt to negotiate a short sale with the bank, although it may be a difficult and lengthy process.

  The short sale asking price is not an agreement to sell at that price. A short sale is a sale of real estate at less than what the seller owes on the mortgage balance. The owner is required to negotiate a settlement with all creditors in order to sell the property free and clear of liens. Real estate listing agents typically dictate at what price the property is listed. Some may be listed at unrealistic prices to attract attention and a range of offers. Counteroffers are common.

  Lenders provide no information or advice on a price until after a purchase contract is submitted by the seller. Listings with prices labeled "lender approved" may expedite sales for those with pre-approved financing, good credit scores, and a sufficient down payment. Associations should consult with real estate and legal professionals to negotiate a price and discuss what constitutes a reasonable offer for a short sale.

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DEALING WITH DELINQUENCY AND FORECLOSURE

Final examination questions

Select the best answer for each question and mark your answers on the Final Examination Answer Sheet found on page 128 or complete your test online at **CAMS.EliteCME.com**.

31. Real estate law is not consistent among all forms of community associations.

    ○ True ○ False

32. The mortgage foreclosure law substantially increased the amount of time lenders are allowed to seek a deficiency judgment on a note from one year to five years.

    ○ True ○ False

33. Deficiency judgments are commonly issued when a property owner fails to pay amounts owed on a mortgage and the property securing the mortgage is sold to satisfy the debt, but the proceeds from the sale are less than the amount owed.

    ○ True ○ False

34. The law amends s. 702.10 FS allowing condominium, homeowners associations, and cooperative associations named as a party in a mortgage foreclosure action to ask the court for an "order to show cause" for the entry of final judgment.

    ○ True ○ False

35. The Landlord and Tenant law includes a new provision amending Section 83.64, Retaliatory Conduct, stating that landlords may not retaliate against a tenant if the tenant has paid rent to a condominium, cooperative, or homeowners association after demand is made by the association to pay the landlord's obligation to the association.

    ○ True ○ False

36. A lien becomes effective at the time the claim of lien is recorded in the public records of the county in which the property is located.

    ○ True ○ False

37. An estoppel letter is a notice, recorded in the chain of title to real property, indicating the property is involved in litigation.

    ○ True ○ False

38. The revised Homeowners Association Act establishes a homeowners association's liability for assessments on any property during the time the association holds title to the property.

    ○ True ○ False

39. Developers' amendments to governing documents changes must be made in good faith and with good reason.

    ○ True ○ False

40. A "judgment credit" is required to suspend a delinquent owner's voting rights.

    ○ True ○ False

CAMFL04DFE14

Chapter 6: Swimming Pool and Spa Laws and Safety

4 CE Hours

By: Valerie Wohl

Learning objectives

- Explain the factors that put children age 1 to 5 at the greatest risk for submersion-related injuries and drowning in swimming pools.
- Name the federal and state laws that apply most directly to swimming pools in Florida.
- List a community association's legal obligations under the Virginia Graeme Baker Pool and Spa Safety Act (P&SS).
- Explain why some pool and spa drain covers were recalled in 2011 and the procedures for replacing them.
- Differentiate between community association types and areas that are subject to the 2010 Americans with Disabilities Act (ADA) and those that are not covered.
- Determine whether a specific community association pool is a public or private facility according to each of the following: ADA, P&SS Act, FHA, and Chapter 64E-9.
- Discuss the responsibilities of the Florida Department of Health, county health departments, and local building departments, respectively, as delegated by amendments to Chapter 514 FS in 2011 and 2012.
- Explain the application procedure for obtaining a valid swimming pool or spa operating permit, how often renewal is required, and the penalties for operating without one.
- List the fence and barrier requirements for community association pool and spa facilities required by Chapter 64E-9.
- Explain the function of a monthly swimming pool report and requirements for submitting it to the local county health department.
- Explain the purpose of the Florida Energy Law and how it relates to community association pools and spas.
- Explain the need for a "multi-layered" protection system at any facility with a swimming pool or spa, and provide examples of five commonly used devices or strategies that can be used together.

Introduction

Community association swimming pools and spas are wonderful places to exercise, play, and relax, but they can also be terribly dangerous, particularly for non-swimmers, unsupervised children, or frail adults. In Florida, the need for increased safety is particularly acute, because Florida typically leads the nation in drowning deaths among young children, with the majority of deaths under the age of 5 occurring in swimming pools and spas.[1]

This course contains the following subject matter:

- Why increased safety measures are needed for pools and spas.
- Federal and state requirements for community association swimming pools and spas.
- Determining which pool and spa safety regulations apply to your community association.
- Behaviors and strategies for preventing drowning and submersion injuries.
- Links to further resources or assistance.

The information provided in this course will help you make your community association swimming pool and spa not only legally compliant with current regulations, but a better, safer environment for everyone at the association.

Some notes on terminology:

- While many consider "hot tubs" and "spas" distinct from one another, they are treated as equivalent by the law presented in this chapter, so here the terms will be used interchangeably. Both a hot tub and a spa may be a "whirlpool," which refers to the circular motion of the water. Hot tubs and spas are sometimes referred to as "Jacuzzis," which is not a type of tub but the brand name of one of the first companies to make whirlpool baths and spas.
- An in-ground spa is a permanent, non-factory built structure, typically with a concrete or vinyl bottom, with several return jets. A "kiddie," "baby," or wading pool is a permanent, built-in fixture, generally found at public facilities, with its own separate circulation system and a maximum depth of 18-24 inches.

Scope of the problem[2]

Each year, hundreds of children drown, and thousands come close to death from submersion in residential swimming pools and spas. In Florida, where drowning is the leading cause of death among children ages 1 to 5, more children die from drowning than in any other state. According to the Florida Department of Health (DOH, or department), which researched

the subject, this rate is 186 percent higher than the national average.[3]

While older children are also at risk, it is not of the same magnitude and typically declines as the child grows older; a recent report analyzing death and injury statistics concluded that children under the age of 5 are two times more likely than children between the ages of 5 and 9 to be swimming pool drowning victims, and three times more likely than children age 10 and older.[4]

While the majority of swimming pool drowning accidents are associated with children, individuals in certain at-risk populations, including those who are medicated, frail, elderly, unwell, in recuperation, and some people with disabilities, are also at increased risk of drowning or near-drowning injuries. Drowning is a significant cause of death among senior citizens in Florida. Those with visual disabilities or conditions that have the potential to affect balance or coordination, such as a heart condition, diabetes, or dementia, are especially vulnerable to the risk of injury or drowning without appropriate supervision.[5]

A study of Florida drowning deaths for the five-year period 1992-1997, provided the following data:[6]

- A total of 448 individuals age 65 and older were victims of drowning in the state.
- An estimated 195 of these individuals had medical problems, such as Alzheimer's disease, confusion, balance or vision impairment, a heart problem, or diabetes.

Of special concern to swimming pool operators:

- A total of 145 drowned in swimming pools.
- In cases where it was documented, more than half (52 percent) of these older Floridians who drowned fell into the swimming pool when others did not expect them to be in or near the water.

The chart below shows the relationship between age, sex, and fatality rates from drowning for Florida residents. The age range of 1-4 shows the highest drowning rates for both sexes. After that, the rate drops sharply, showing the lowest fatality rate among children ages 5-14. At every age range, males (indicated by the top line of the graph) are consistently more likely than females (bottom line of the graph) to die from drowning.

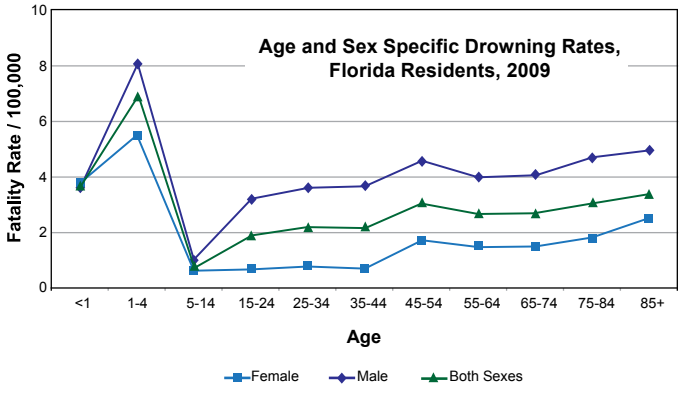

Chart 1: Graph showing 2009 drowning rates for Florida residents by age and sex

The Consumer Product Safety Commission, which collects and studies data on fatal drowning and near-fatal submersions, conducted an in-depth examination of incidents in the states of California, Arizona and Florida. These states were chosen because of their larger numbers of swimming pools and the fact they are used throughout the year.

Here are some of the most significant and disturbing findings from that study[7]:

- Most of the victims were under the supervision of one or both parents when the swimming pool accident occurred.
- Nearly half of the child victims were in the home shortly before the pool accident occurred, while an additional 23 percent of the accident victims found drowned or submerged were last seen outdoors but outside the vicinity of the pool, meaning more than two-thirds of the children were not expected to be at or in the pool at that time.
- Seventy-seven percent of the swimming pool accident victims had been missing for five minutes or less when discovered drowned or submerged in the pool. A tragic characteristic of drowning deaths is how quickly and quietly they occur. By the time a child's absence is noted, the child may already have drowned. Pools are particularly hazardous to toddlers because they are curious and impulsive, with little ability to sense danger. They also can move very quickly.
- Children drown silently. Splashing and screaming are rare, so caregivers are unaware the child is in trouble.
- It is possible for a young child to drown in a very small amount of water. Some drownings involve less than two inches of liquid, which is unlikely to be perceived as a threat to children by adults.
- Sixty-five percent of the accidents occurred in a pool owned by the victim's immediate family, and 33 percent of the accidents occurred in pools owned by relatives or friends. Fewer than 2 percent of the pool accidents were a result of children trespassing on property where they were not allowed or did not live.
- The overwhelming majority of non-fatal submersion injuries occur in pools.[8] For every child who drowns, four suffer brain injury from near-drowning incidents, with an unknown number of hospitalizations from these injuries resulting in permanent disability. Advances in medical technology are allowing more near-drowning victims to survive, but many are surviving with serious, permanent neurological damage.

In sum, the data demonstrate that children who become drowning victims often had adults present to supervise them, but the adults were not physically close to the child and did not have the child in their sights. Because pool submersions happen quickly and quietly, with most children who drown out of view for less than five minutes, even a short break from supervising children can be deadly.

Similarly, a large percentage of drowning accidents among the elderly occur when caregivers may be near the victim but do not notice when he or she falls in the water or slips under the water's surface.

While these statistics are tragic, they suggested a strong possibility that deaths or injuries caused by submersion could be reduced by establishing stronger pool and spa safety requirements. Over the past decade, legislative changes to federal, state, and local laws and codes have established regulations addressing and minimizing pool and spa risks

associated with faulty parts and equipment, lack of appropriate barriers, lack of public awareness of potential pool and spa risks, and educational programs to teach safety skills and strategies. These laws also have implemented significant changes in construction and sanitation standards, technician qualifications, and accessibility requirements.

Regulations governing swimming pool and spa safety

Regulations governing swimming pool and spa safety can be found in many areas of federal, state, and local laws, rules, and codes. The information most relevant to community associations is primarily contained in the following documents:

- Federal law:
  - Virginia Graeme Baker Pool and Spa Safety Act (P&SS Act), enacted in 2007.
  - Americans with Disabilities Act (ADA), enacted in 1990, and amended by the 2010 ADA.
  - Fair Housing Act (FHA), as amended in 1988.
  - U.S. Code Title 15: Chapter 106 – Pool And Spa Safety.
- Florida state law:
  - Chapter 514 Florida Statutes (FS): Public Swimming and Bathing Facilities.
  - Chapter 515 FS: Residential Swimming Pool Safety Act.
  - Chapter 553 FS: Part IV, Florida Building Code.
  - Chapter 64E-9 Florida Administrative Code (FAC): Public Swimming Pools and Bathing Places.
  - Chapter 64E-21.001 FAC – Drowning Prevention Education/Public Information Publication.
  - Chapter 4 Florida Building Code (FBC), Section 424, Swimming Pools and Bathing Places, including the Florida Energy Law, enacted in 2008.

Which rules apply?

Not all laws on swimming pools and spas are consistently applied to all types of community associations, but recent legislative updates show a trend toward equal treatment of all entities under the community association umbrella. This chapter will review laws, rules, and codes that affect community associations, but it is not exhaustive, and laws are regularly revised. If there are any questions about whether your association pool or spa is compliant with current law, consult an appropriately trained expert.

PART I: FEDERAL SWIMMING POOL AND SPA REGULATIONS

The Virginia Graeme Baker Pool and Spa Safety Act[9] (P&SS Act)

The Virginia Graeme Baker Pool and Spa Safety Act (P&SS Act) became effective in December 2008. It was created to:

- Enhance the safety of public and private pools and spas.
- Encourage the use of multiple layers of protection.
- Reduce the risk of children drowning in pools and spas.
- Reduce the number of suction entrapment incidents, injuries, and deaths.
- Educate the public about the importance of constant supervision of children in and around water.

The Virginia Graeme Baker Pool and Spa Safety Act (P&SS Act) takes its name from Virginia Graeme Baker (known as "Graeme"), a young girl who drowned in June 2002. Graeme became entrapped by a hot tub drain and was unable to pull herself free from it because of the powerful suction. Drain entrapments typically result when a swimmer's body, hair, limbs, or clothing becomes entangled in a faulty or flat drain or grate. Even a capable swimmer can be trapped; 7-year-old Graeme was a member of her community swimming and diving team, and had been able to swim without assistance since she was 3 years old. Efforts by Graeme's mother to pull her from the drain were unsuccessful. The two men who eventually freed Graeme from the spa drain had to break the drain cover to do so. Graeme died from drowning, but the real cause of her death was suction entrapment because of a faulty drain cover. After her tragic death, her mother, Nancy Baker, became a strong advocate for pool and spa safety, successfully lobbying Congress to require anti-entrapment drain covers and other safety devices.

According to the act, virtually any pool operated by a community association (including almost all Florida pools and spas in condominiums, homeowners' associations, health clubs, and hotels) must be fitted with new safety-rated domed drain covers. While pools serving between two and five residences and those in condominium complexes with fewer than 32 units were previously exempt under state rules, the P&SS Act brought all such facilities under federal regulations, allowing few, if any, exemptions from the law.

Public pools and spas

The following types of pools and spas are defined as "public" by the act, and covered by the law's public pool and spa regulations:

- All pools and spas generally open to the public.
- Pools open only to residents of apartment buildings, condominium complexes, or multifamily residential areas.
- Pools and spas open to guests of a hotel or resort.
- Government pool facilities.

The P&SS Act requires public pool owners and operators to:

- Replace the main drain/grate cover with a code-compliant cover meeting the current standards established by the American Society of Mechanical Engineers and the American National Standards Institute (ASME/ANSI).
- Modify suction drainage systems to minimize the likelihood of becoming stuck or trapped in the drain. Some of the options include installing a gravity drainage system with a collector tank, installing an automatic pump shut-off system, or a drain-disabling device.

The public requirements of the P&SS Act do not apply to:

- **Therapy pools:** A therapy pool at a rehabilitation center limited at all times to the center's patients and not open to the public would generally not be subject to the requirements of the act. However, a therapy pool in a salon/spa would meet the definition of a "public pool" and would be subject to the act.
- **Fountains:** Fountains are not subject to the law unless they are intended for swimming or recreational bathing.

Additional entrapment prevention options

In addition to having a drain cover or another anti-entrapment device that complies with ASME/ASNI standards, the P&SS Act requires pools and spas using a single main drain, other than an unblockable drain, to add one or more of the following options:

- **Safety vacuum release system (SVRS):** A safety vacuum release system stops operation of the pump, reverses the circulation flow, and provides a vacuum release at a suction outlet upon detecting a blockage.
- **Suction-limiting vent system:** A suction-limiting vent system with a tamper-resistant atmospheric opening, also called an atmospheric vent, which has a pipe on the suction side of the circulation system on one end and is open to the atmosphere on the opposite end. When a blockage occurs at the main drain, air introduced into the suction line causes the pump to relieve suction forces at the main drain.
- **Gravity drainage system:** A gravity drainage system uses a collector tank with a separate water storage vessel that feeds water to the pool circulation pump. Atmospheric pressure, gravity, and displacement of water by bathers move water from the pool to the collector, removing the need for direct suction at the pool. This system is also known as a reservoir, surge tank, or surge pit.
- **Automatic pump shut-off system:** An automatic pump shut-off system senses a drain blockage and automatically shuts down the pump system.
- **Drain disablement:** To qualify as drain disablement, the drain/outlet must be physically removed from the system by filling the sump with concrete, cutting and capping the piping in the equipment room, or re-plumbing the section line to create a return line and reverse flow. This is the only option that eliminates rather than mitigates this hazard.
- **Other systems:** Any other system determined by the commission to be equally effective as or better than the safety systems listed here.

Consumer Product Safety Commission (CPSC) enforcement authority

The P&SS Act also strengthened the Consumer Product Safety Commission's (CPSC) civil and criminal authority, giving the agency the power to shut down pools or spas that are not compliant with the law. State health departments and attorney general offices will support the CPSC in enforcing the act by assisting with compliance checks or other participation. Health inspectors, who conduct public pool inspections twice each year, will examine drains and covers as part of their safety review.

Regulators will initially focus their attention on wading pools/kiddie pools and spas. Pools designed specifically for young children, such as shallow wading/kiddie pools, that have easily accessible suction outlets; in-ground spas that have flat suction outlet grates; and single suction outlet systems pose the greatest danger of entrapment and evisceration to young children, who are at the greatest risk of entrapment accidents.

2011 Revocation of rule on unblockable drains

In 2011, the CPSC clarified a 2010 final rule implementing the additional entrapment options listed above. In the original decision, a covered drain qualified as an "unblockable drain," so was not required to have a secondary anti-entrapment system. Concerned consumers and professionals alike informed authorities that drain covers, regardless of their size, can come off or break over the course of the life of a pool or spa. Even when the owners and operators have the best intentions, they explained, backup systems are necessary, and a swimming pool or spa with a single main drain cannot be made unblockable by the simple installation of a drain cover meeting certain requirements.

In September 2011, the CPSC clarified the meaning of an "unblockable drain," defining it as "a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard," consistent with wording

in the P&SS Act. This ruling revoked the previous year's interpretation of the law, which permitted the use of a drain cover meeting certain specifications to be attached to a drain for the purpose of converting a blockable drain into an unblockable drain. The decision affirmed that a blockable drain cannot be made unblockable by use of a cover alone.

The 2011 decision concluded:

- An unblockable suction outlet cover can no longer be used to convert a blockable suction outlet to an unblockable suction outlet.
- A single suction outlet of a blockable size must be equipped with a secondary anti-entrapment device or system.[10]

The following are not affected by this decision:

- Pools and spas that use a single, unblockable cover over an equally large suction outlet.
- Pools and spas with multiple suction outlets per pump, with covers or grates at least three feet apart, measured center to center.
- Smaller suction outlet covers or grates that are not labeled or sold as unblockable.

The following are affected by this decision:

- Pools and spas with multiple outlets that are less than three feet apart, measured center to center.
- Pools and spas with single suction outlets or single main drains.

For example, a facility with a large unblockable drain cover installed over a smaller blockable drain/suction outlet does not need to remove or replace the cover, but must install a secondary or backup anti-entrapment system to be compliant with the P&SS Act. If a pool has dual or multiple main drains more than three feet apart, it may be exempt from the requirement described above. Pools and spas with single main drains that are unblockable may also exempt from this requirement.

The best defense against entrapments is the installation of federally compliant drain covers, which are domed instead of flat, designed to prevent entrapment. Drain covers should be inspected on a regular basis to make sure they are intact and in place. A pool contractor should verify that the pool or spa is in compliance with the act.

Drain cover recall

In early summer 2011, many pool and spa owners were obligated to find replacement drain covers in a hurry before pools could be opened for the season because of a massive drain cover recall, initially involving eight major manufacturers of pool and in-ground spa drain covers. The U.S. Consumer Product Safety Commission in cooperation with those companies issued a voluntary recall of the products and issued a statement warning consumers to stop using the recalled products immediately because they posed a possible entrapment hazard to swimmers. The recalled items were associated with increased safety risks, because the labeled flow rate was incorrect and potentially unable to handle the flow of water through the cover.

By March 2012, the CPSC had recalled more than 1 million incorrectly rated pool and spa drain covers.[11] All drain covers installed after December 2008 in kiddie pools, in-ground spas, and swimming pools with a single drain are subject to the recall. Swimming pools [as opposed to built-in wading (kiddie) pools or in-ground spas] that have more than one drain per pump or a gravity drainage system are not affected by this recall. Pool owners and operators who have one of the recalled pool or spa drain covers should have the main drain or grate cover replaced with one that is code compliant, meeting the standards established by the American Society of Mechanical Engineers (ASME).

If affected by the recall, contact the manufacturer to receive a replacement or retrofit, depending on the part make and model. A qualified professional must perform all replacements or retrofits of a drain cover. Drain covers should never be removed unless a replacement cover and qualified professional ready to install it are immediately available.

Covers were manufactured in the United States and China and distributed to many different independent professional pool and spa suppliers, builders, and installers, but were not sold directly to consumers.[12] Because the faulty covers pose a potential entrapment risk to pool and spa users, resale and attempted resale of the covers is prohibited.

The Association of Pool and Spa Professionals (APSP) established a drain cover manufacturers' recall webpage at *http://www.apsp.org/safety/content.cfm?ItemNumber=1000,* with answers to frequently asked questions and links to information and assistance specific to consumers, builders, installers, owners, operators, and service companies, to help them identify the defective covers, provide remedies, and present how-to information. A list of the defective cover manufacturers can be found at the website.

2010 ADA accessible pool requirements

The Americans with Disabilities Act (ADA) of 1990 was revised in 2010 (2010 ADA), creating new standards and minimum requirements for swimming pool, wading pool, and spa (pool) accessibility. All newly constructed and altered pools must meet these requirements. Public accommodations must bring existing pools into compliance with the 2010 standards to the extent that it is readily achievable to do so.

The 2010 standards establish two categories of pools: large pools with more than 300 linear feet of pool wall, and smaller pools with less than 300 linear feet of wall. Large pools must have two accessible means of entry, with at least one being a pool lift or sloped entry; smaller pools are only required to have one accessible means of entry, provided it is either a pool lift or a sloped entry.

There are a limited number of exceptions to the requirements. One applies to multiple spas provided in a cluster. A second applies to wave pools, lazy rivers, sand bottom pools, and other pools that have only one point of entry. All new construction of pool facilities built by state and local governments, public accommodations, and commercial facilities must be accessible to and usable by persons with disabilities.

Title III readily achievable barrier removal

Title III of the ADA requires that places of public accommodation (e.g., hotels, resorts, swim clubs, and sites of events open to the public) remove physical barriers in existing pools to the extent that it is readily achievable to do so (i.e., easily accomplishable and able to be carried out without much difficulty or expense). Removing barriers in existing pools may involve installation of a fixed pool lift with independent operation by the user or other accessible means of entry that comply with the 2010 ADA standards – again, to the extent it is "readily achievable."

Determining what is readily achievable will depend on circumstances and timing, and will vary from business to business. In making a determination, public accommodations should consider the following factors:

- The nature and cost of the action.
- Overall resources of the site or sites involved.
- The geographic separateness and relationship of the site to any parent corporation or entity.
- The overall resources of any parent corporation or entity, if applicable.
- The type of operation or operations of any parent corporation or entity, if applicable.

Pool alterations must meet 2010 ADA standards to the maximum extent feasible. An alteration is a physical change to a swimming pool affecting or potentially affecting the usability of the pool. Changes to the mechanical and electrical systems, such as filtration and chlorination systems, are not alterations.

Entities must ensure that an alteration does not decrease accessibility below the requirements for new construction. For example, if a hotel installs a fixed pool lift powered by water pressure, it must ensure that the hose connecting to the lift does not create a barrier across the accessible route to the pool.

Application to community association pools

According to "Accessibility Requirements for Existing Swimming Pools at Hotels and Other Public Accommodation" as published by the U.S. Department of Justice and Section 553.503, Florida Statutes, community association swimming pools are not subject to the ADA accessibility requirements or the Accessibility Code if any of the following apply:

- They are part of common use areas of apartment buildings and developments intended solely for the use of residents and their guests (and not otherwise available to the general public).
- They are not the recipients of government assistance or sponsorship.
- They are not "public swimming pools" according to Section 424.1, which defines a public pool as "a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses. The term does not include a swimming pool located on the grounds of a private residence."

The new ADA pool accessibility requirements do not apply to most community associations because the pools and amenities at typical condominiums and homeowners associations are strictly for the use of the residents and their guests and are not open to the public. However, community associations that operate as a resort/hotel condominium and are therefore open to the public will be required to meet the new ADA pool accessibility requirements. Communities hosting swimming competitions, water aerobics, water exercise or physical therapy sessions may be required to comply. If there is any ambiguity, the association should consult an attorney to determine whether the association pool or spa is required to meet new ADA accessibility requirements.

In general:

- If a community association allows nonmembers of the association to use its pool in exchange for some form of compensation, the pool is likely to qualify as a public accommodation and should have been compliant with the ADA standards for accessible entry and exits by January 21, 2013. For technical assistance in ensuring compliance of common areas, see the ADA Title III Technical Assistance Manual at *http://www.ada.gov/taman3.html.*
- Areas within multifamily residential facilities that are not limited exclusively to owners, residents, and their guests are likely to qualify as places of public accommodation, with those areas subject to ADA regulation.
    - **Example 1:** A private residential apartment complex includes a swimming pool for use by apartment

tenants and their guests. The complex also sells pool "memberships" generally to the public. The pool qualifies as a place of public accommodation.

- **Example 2:** A residential condominium association maintains a long-standing policy of restricting use of its swimming pool to owners, residents, and their guests. Consistent with that policy, it refuses to rent the pool to local businesses and community organizations as a meeting place for educational seminars. The pool is not a place of public accommodation.
- **Example 3:** A swimming pool/club located in a residential community is made available to the public for rental or an event open to the public. The entire swimming pool/club area qualifies as a place of public accommodation. Any community associations that allow the use or rental of their pool for events and activities that are open to the public must provide accessible means of entry and exit from pools.

Private clubs may or may not be subject to ADA regulation: If a private club limits use of its facilities strictly to members and their guests, then the club would not be subject to ADA regulations. However, if that club hosts swimming competitions or any other type of activity that opens the pool to nonmembers, the club would be required to follow ADA regulations for the pool. The determination of what constitutes a private club is based on its control of operations, membership requirements, and associated fees and expenses. Operations that have limited or no membership requirements and minimal charges or dues are less likely to fall under the private club exclusion.

Accessible pool features must be maintained in operable, working condition so that persons with disabilities have access to the pool whenever the pool is open to others. For example, a portable pool lift may be stored when the pool is closed but it must be at poolside and fully operational during all open pool hours.

An entity should recognize that certain types of equipment might require more staff support and maintenance than others (e.g., ensuring there are enough batteries for a pool lift to maintain a continued charge during pool hours). Entities should plan for these issues and modify operational policies as needed to provide accessible means of entry while the pool is open.

It is important to note that the barrier removal obligation is a continuing one, and it is expected that a facility will take steps to improve accessibility over time. When selecting equipment, the public accommodation should factor in the staff and financial resources needed to keep the pool equipment available and in working condition at poolside.[13]

In some cases, Title III entities may be able to take advantage of federal tax credits for small businesses (Internal Revenue Code section 44) or deductions (Internal Revenue Code section 190) for barrier removal costs or alterations to improve accessibility, regardless of the size of the business.

Depending on the type of facility in question, pools and spas should have been compliant with 2010 ADA requirements by March 2012 or January 2013 at the latest:

- All newly constructed or altered facilities of public entities and public accommodations, including pools, should have been in compliance with the 2010 ADA standards as of March 15, 2012.
- All existing facilities of public entities and public accommodations except pools, should have been in compliance with the 2010 standards to the extent required under Title II Program Accessibility or Title III Readily Achievable Barrier Removal requirements as of March 15, 2012.
- All existing pools of public entities and public accommodations should have been in compliance with the 2010 standards to the extent required under Title II Program Accessibility or Title III Readily Achievable Barrier Removal requirements as of January 31, 2013.

2013 clarification of 2010 ADA requirements

In April 2013, the Department of Justice (DOJ) issued another clarification of 2010 ADA requirements for compliance of portable pool lifts to meet barrier removal obligations. Generally, lifts purchased after March 15, 2012, must be of the fixed type if it is readily achievable to do so. However, if a facility purchased a non-fixed lift before March 15, 2012, that otherwise complies with the requirements in the 2010 standards for pool lifts (such as seat size, etc.), it may be used as long as it is kept in position for use at the pool and operational during all times that the pool is open to guests. If these conditions are not met, the DOJ can prosecute the violation.

Ongoing staff training is essential to ensure that accessible equipment (particularly pool lifts) and pool facilities are available whenever a pool is open. Staff training should include instruction on what accessible features are available, how to operate and maintain them, and any necessary safety considerations.

FHA accessible pool requirements

Although residential facilities are not required to comply with ADA regulations for swimming pools, they must comply with the Fair Housing Act. Under this legislation, privately owned residential communities must provide a barrier-free pathway up to the edge of a pool. In addition, they cannot prevent residents from using their own apparatus to gain access to the pool, providing it does not provide a hazard for other residents. For example, if a resident has a portable pool lift and keeps it in storage when not in use, the facility cannot prevent that resident from using the lift to gain access to the pool.

For technical assistance on the guidelines for swimming pools, wading pools, and spas, download the Access Board Accessibility Guidelines at: *http://www.access-board.gov/recreation/guides/pools.htm.*

U.S. Code provisions: Swimming pools

Title 15 of the United States Code, Chapter 106, Pool and Spa Safety, required states to establish minimum pool safety standards consistent with the P&SS Act and provide enforcing authority; states in compliance are eligible for a state grant specified by Section 8004 of Chapter 106

PART II: FLORIDA STATE SWIMMING POOL AND SPA REGULATIONS

Chapter 514 Florida Statutes: Public Swimming and Bathing Facilities

Chapter 514 F.S, Public Swimming and Bathing Facilities, created in 1985, is the primary law regulating public pools and spas in Florida. It establishes enforcement authority for pool and spa regulations, sanitation and safety standards, and provides definitions and rationale for distinguishing public from residential facilities. In most cases, there is consistency in terminology and standards among state, federal, and local safety regulations; in each case, however, public and residential pools and spas are subject to different standards. The distinctions between public and residential facilities established in Chapter 514 FS determine which laws apply to a particular association's pool or spa, and, more specifically, that association's legal obligations.

Chapter 514 FS defines the majority of community association pools as "public pools," providing the following definitions in Section 514.011 F.S.:

- A **"public swimming pool"** or **"public pool"** is:
  "A conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses."
- A **"private pool"** is a facility used only by an individual, family, or members of a living unit and their guests, which "does not serve any type of cooperative housing or joint tenancy of five or more living units."

In 2009, Chapter 514 FS was extensively revised, with significant changes to the "exemptions" section, which was separated from the "variance" section to stand alone, and provided new requirements for community association exemption from the law. Before that year, all community associations except homeowner associations were eligible to apply for exemptions from certain safety requirements listed in the chapter. Once approved, exemptions did not expire. Section 514.0115 narrowed exemption qualifications, and provides that exempt pools reapply to renew their status every two years.

Section 514.0115 exempts the following types of pools and spas:

- Private pools used for swimming instruction.
- Any pool serving certain qualifying residential childcare agencies.
- Water therapy facilities connected with hospitals, medical doctors' offices, and licensed physical therapy establishments.

It also exempts:

- Pools serving 32 or fewer condominium or cooperative units that are not operated as a public lodging establishment.
- Pools serving condominium or cooperative associations of more than 32 units and whose governing documents completely prohibit rentals of fewer than 60 days (or a sublease, in the case of cooperatives). However:
  - The condominium or cooperative owner or association is still required to file applications with the department, obtain construction plan approval, and secure an initial operating permit through the Department of Health (DOH).
  - These facilities are still subject to inspection by the DOH annually or if requested by a unit owner to determine compliance with department rules on water quality and lifesaving equipment. The department does require compliance with rules on lifeguards.

No matter what their size (smaller or larger than 32 units), all condominium and cooperative associations must comply with water quality standards and maintain requisite lifesaving equipment.

Recent amendments

In 2011, Section 514.031 FS was created to address discrepancies between federal and state law, making Florida state standards consistent with the federal P&SS Act and calling for additional safety features, including anti-entrapment systems and regulations addressing single-drain pools. Federal law required the installation of an anti-entrapment device or system for all public pools by December 2008. Association spas were required to be retrofitted for gravity drainage according to Department of Health (DOH) regulation by July 1, 2011.

In 2012, Chapter 514 was substantially amended to meet or exceed federal requirements of the P&SS Act. Section 514.0315 required many of the safety features for public swimming pools and spas previously required by federal law, but also added a provision that the individual installing the compliant anti-entrapment system or device must be a licensed contractor. Revisions in 2012 also amended areas of the law on enforcement authority, and responsibility for sanitation, safety, permits, and construction plan approval, among other areas.

A number of revisions to pool service licensing will become effective in October 2014. The law revises a number of definitions, categorizes pool cleaning and maintenance subject to pool licensing, and removes the one-year work experience requirement needed to obtain the pool service license. The law is intended to eliminate a barrier to pool service licensing and ensure all individuals working with pools and spas have the necessary education and licensure. The amendment also exempts some direct employees of a facility, such as a hotel, from the pool service licensing requirement.

One of the most significant changes in the law, currently in effect, was a shift in responsibilities among agencies responsible for swimming pool and spa safety. Sections 514.021 FS and 514.025 FS, Department Authorization and Responsibilities, and Assignment of Authority to County Health Departments, respectively, established the following roles and responsibilities for the Department of Health (DOH, or department), county health departments (CHD), and local building departments (LBD):

- DOH responsibilities:
  - The Department of Health is authorized to set sanitation and safety standards for public swimming pools and public bathing places, and may take enforcement measures against public swimming pools that present a significant risk to public health by failing to meet sanitation and safety standards.
  - The DOH's authority is restricted to sanitation and safety standards limited to the following areas: source of pool and spa water; its microbiological, chemical, and physical qualities; methods of water purification; treatment and disinfection; and lifesaving equipment and behaviors.
  - The DOH has no authority over the construction, erection, or demolition of public swimming pools. This is the function of the Florida Building Commission (FBC) through adoption and maintenance of the Florida Building Code.
- CHD responsibilities:
  - County health departments (CHDs) are responsible for routine surveillance of water quality in all public swimming pools and bathing places, including routine inspections, complaint investigations, and enforcement procedures.
  - CHDs staffed with qualified engineering personnel will review applications and plans for the construction, development, or modification of public swimming pools or bathing places.
  - CHDs are responsible for conducting inspections and issuing all permits.
- LBD responsibilities:
  - Rules governing swimming pool construction are now the domain of Florida's county and city building departments (local building departments, or LBDs), who bear the responsibility of ensuring compliance with Chapter 4, Section 424 of the Florida Building Code (FBC), and have the sole authority to review public pool applications and engineering plans and issue approval if the planned construction is FBC-compliant. Once approved, the building department issues a construction permit and conducts necessary construction inspections, per Chapter 553, FS. Upon completion and successful final inspection, the LBD provides proof of approval to the CHD.

Checklist for pool plan reviews

The following checklist, current as of May 2012, is used by the Department of Health (DOH) and Building Association Officials of Florida (BOAF) to determine whether spa plans are compliant with FBC Section 424:[14] To see the public pool and wading pool checklists, which are too lengthy to include here, see FBC checklists at *www.myfloridaeh.com/water/swim/index.html*.

Note that Chapter 64E-9 FAC requirements are included in this checklist because they are considered critical to public health, so these items are examined by the county health department at the first operating permit inspection after the building official's approval of the construction.

Florida Building Code or Florida Administrative Code	
Section	
424.1.8.2	___ Color, pattern or finish of the interior does not obscure existence of objects or surfaces.
424.1.8.3	___ Minimum water depth is 2½ feet, and maximum water depth is 4 feet (except swim spas may have a maximum 5-foot depth).
424.1.8.3	___ Spas over 200 square feet of water surface area have depth markers.
424.1.8.4	___ Steps or ladders are provided (one set for each 75 feet, or major fraction thereof, of pool perimeter).
424.1.8.4	___ Steps for spas with more than 200 square feet of water surface area comply with Section 424.1.2.5 for pools: 1. Step treads have a minimum width of 10 inches for a minimum continuous tread length of 12 inches. 2. Step riser heights do not exceed 12 inches.
424.1.8.4	___ Intermediate treads and risers between the top and bottom treads and risers are uniform in height and width.
424.1.8.4	___ Steps have contrasting markings on the leading edges of the intersections of the treads and risers.
424.1.8.4	___ Submerged benches have contrasting markings on the leading edges.
424.1.8.4.1	___ Handrails are provided for all steps and are anchored in the bottom step and in the deck.
424.1.8.4.1	___ Handrails are located to provide maximum access to the steps, and extend at least 28 inches above the deck.
424.1.8.4.2	___ Where figure 4 handrails are used, they are anchored in the deck, and extend laterally to any point above the bottom step.
424.1.8.4.2	___ Figure 4 handrails are located to provide maximum access to the steps, and extend at least 28 inches above the deck.
424.1.8.5	___ Spa decks have a minimum 4 foot wide unobstructed width around the entire pool perimeter except: spa pools less than 120 square feet of water surface may have a min. 4-feet-wide unobstructed deck around a minimum of 50 percent of the pool perimeter. If 120 square feet or greater, only 10 percent may by obstructed.
424.1.8.5	___ Decks less than 4 feet wide have barriers to prevent their use.
424.1.8.5	___ Deck is not more than 10 inches below the top of the pool.
424.1.8.6.1	___ Return lines of spa therapy or jet systems are independent of recirculation filtration and heating systems.
424.1.8.6.2	___ Therapy or jet pumps take suction from a collector tank (collector tank size to take this flow gallonage into account).
424.1.8.7	___ Spa pools with less than 20 feet of perimeter have a minimum of two equally spaced adjustable inlets.
424.1.8.8	___ Spa pool has a minimum filtration turnover of one every 30 minutes.
424.1.8.8	___ Piping, fittings and hydraulic requirements comply with Section 424.1.6.5
424.1.8.8	___ All recirculation lines to and from the pool are individually valved with proportional type control valves.
424.1.8.9	___ Spa pool with more than 200 square feet of water surface area has provision for vacuuming.
64E-9.008(7)	___ General pool rules sign required to be posted.
64E-9.010(6)(c)	___ Cold plunge spa has chiller. (therapy/jet system not required)
64E-9.010(6)(d)	___ Heated system provides 15-minute patron-activated timer on therapy pump circuit.
64E-9.010(13)	___ Automated oxidation-reduction potential (ORP) and pH controllers are provided.
64E-9.010(14)(a)	___ Maximum water temperature 104 degrees F is posted on pool rules sign.
64E-9.010(14)(b,c)	___ Child supervision and health advisories are posted on pool rules sign.
64E-9.010(14)(d)	___ Maximum use 15 minutes is posted on pool rules sign.
64E-9.010(15)	___ A clock is visible from the spa.
64E-9.010(16)	___ If spa has emergency cut-off switch, 80-decibel alarm and signage is provided.
Offset spa	
424.1.8.10	___ If the spa pool is part of a conventional pool, it is offset from the main pool area, with the same water depth as the main pool area.
424.1.8.10	___ The offset spa pool meets all other requirements of this section.
424.1.8.10	___ The deck area at the offset spa is protected by 30-inch-high connected stanchions or other impediment.
424.1.8.10	___ The deck perimeter of the offset spa area does not exceed 15 percent of the total swimming pool perimeter.
424.1.8.10	___ All benches have contrasting markings on the leading edges of the intersection of the bench seats.
424.1.8.10	___ Tile used for intersecting edge markings is slip resistant.

Operating permits

A public swimming pool cannot operate without a valid permit from the CHD. Permits must be renewed annually, with the most recent posted in a highly visible place. The permit application requires the following information:

1. Description of the source or sources of water supply and the amount and quality of water available and intended for use.
2. Method and manner of water purification, treatment, disinfection, and heating.
3. Safety equipment and standards used.
4. Any other relevant information considered by the department.

If an applicant is denied approval, he or she can reapply for a permit once the situation is corrected. Operating permits may be transferred from one name or owner to another, but the new owner must submit his or her own application form within 30 days of the transfer. The department has the authority to deny an application, suspend or revoke a permit, impose an administrative fine, close a public pool, or bring legal action against a facility for lack of compliance with the provisions of this chapter and its related rules.

Chapter 515 Florida Statutes: Residential Swimming Pool Safety Act

In 2000, the state passed the Residential Swimming Pool Safety Act, Chapter 515 FS, (also known as the Florida pool fencing law, and formally titled the Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act). The law required all residential pools to adopt protective features focused on keeping children without supervision from the pool area. While it did not apply to most community associations, it is an important document because fencing laws applicable to Florida community associations were patterned on standards established in this act.

The law was informed by data from the CSPC drowning study and those like it. Unlike previous safety measures, the law acknowledged the inevitability that a child might be unsupervised at some point. It required the installation of fences or other barriers that would act as obstacles between an unsupervised child and access to a residential pool to increase the amount of time it would take an accident to happen or prevent it entirely by delaying the child and alerting caregivers.

The act requires outdoor swimming pools to have a four-foot fence or other barrier around the outer perimeter of the pool, with no gaps, and far enough away from the pool's edge to create a buffer should a child be able to get through the fence. Entry through the barrier and to the pool must open outward, and include a self-closing and self-locking device that is out of a child's reach. Indoor pools or those within a screened area are not required to have a fence or barrier if all windows and doors that provide access to the pool have a wired safety alarm or a self-closing, self- latching device that is 4½ feet or taller.

Chapter 64E-9 of the Florida Administrative Code (FAC)

Chapter 64E-9 FAC, Public Swimming Pools and Bathing Places, contains a great deal of detailed information necessary for building or operating a swimming pool compliant with the standards specified in Chapter 514 FS. Chapter 64E-9 FAC was comprehensively amended in 2009 to meet federal standards established by the P&SS Act. The new law made community associations subject to barrier laws, like those in Chapter 515 FS, and established even more rigorous standards for community association pool and spa compliance.

This chapter classifies all pools as public pools that do not meet the definition of a private pool, which is a facility used only by an individual, family, or members of a living unit and their guests that "does not serve any type of cooperative housing or joint tenancy of five or more living units." This section presents a brief overview of Chapter 64E-9 FAC, which provides technical information on minimum design, construction, and operation requirements. Given its length and complexity, it is recommended you refer directly to the law for further information or clarification on any point.

Section 64E-9.001, General, explains the rationale behind the regulation of public swimming pools and bathing places, which the department considers of significant value in the prevention of disease, unsanitary conditions, and accidents that threaten the health or safety of pool patrons. This section also establishes the authority of the department to suspend or revoke operation of a pool or spa if it finds conditions unsanitary or dangerous to public health or safety, and asserts that the department will establish appropriate standards if they do not currently exist to protect the health and safety of pool and spa users.

Section 64E-9.0035 FAC, Exemptions, codifies exemptions established in Chapter 514 FS, and provides instructions and supporting documents for condominium associations and cooperatives desiring exempt status according to the qualifications stated in 514.0115 FS. As noted earlier, before 2009, exemptions available to qualifying condominiums and cooperatives, once issued, did not require renewal. Under the revised chapter, state permits for exemptions must be renewed every two years. Currently, homeowners associations must comply with regulations governing all public pools, without possibility of exemption. The Department of Health inspects all public pools, including those at homeowners associations, condominiums, cooperatives, and subdivisions, yearly to determine compliance.

Applying for an exemption requires the following steps:

- A person seeking an initial exemption or an existing facility claiming to be exempt from department regulation must apply to the department using forms provided for that purpose. Applications must be renewed every two years by July 1 of each even-numbered year. Applicants

for swimming pool exemption must submit the following information along with the application form:

- For condominiums: The recorded declaration of condominium; the condominium's articles of incorporation; bylaws, and all duly adopted and recorded amendments; supplements and recorded exhibits; a copy of a plot plan diagram for the proposed property; and form DH 4065 for 32 units or less, or DH 1704 for more than 32 units.
- For cooperatives: The articles of incorporation of the association; bylaws and the ground lease or other underlying lease, if any; the document evidencing a unit owner's membership or share in the association; and the document recognizing a unit owner's title or right of possession to his or her unit; a copy of a plot plan diagram for the proposed property; and a completed form DH 4065 for 32 units or less, or DH 1704 for more than 32 units
- For exemption as a water therapy facility pool: Along with a completed form DH4144, a written statement signed by a medical professional that he or she has already or intends to prescribe medical water therapy for a patient in the pool. For subsequent biannual exemption renewals, in addition to the signed written statement, each water therapy facility must provide a list of the Florida licensed physical therapists, occupational therapists, and athletic trainers providing therapy in the pool.

A person granted an exemption must notify the DOH if the conditions upon which the exemption was based change. An exemption from DOH rules does not exempt the pool from Florida Building Code requirements, found in Sections 11 and 424.1.

Section 64E-9.004, Operational Requirements, provides valuable information on water cleanliness, chemistry, testing, and recordkeeping essential to ensuring water quality. Because so many of the requirements specified in this section are included in a state of Florida Health Department inspection checklist for swimming pools, spas, and wading pools, it is outlined here:

- **Water quality** – The water supply for all pools shall be an approved potable (safe to drink) water system or shall meet the requirements for potable water systems by the submission from the operator of bacteriological and chemical laboratory reports to the county health department. Saltwater sources are exempt from the potable water chemical standards except for iron and color requirements.
  - **Cross-connection prevention** – An atmospheric break or approved backflow prevention device must be provided in each pool water supply line that is connected to a public water supply. Vacuum breakers must be installed on all hose bibbs.
  - **Bacteriological quality** – The pool water shall be free of coliform bacteria contamination.
  - **Clarity** – The pool water shall be 0.5 or less NTU, and the main drain grate must be readily visible from the pool deck.
- **Chemical quality** – Chemicals used in controlling the quality of the pool water must be tested and approved using the National Sanitation Foundation (NSF-ANSI) Standard, Drinking Water Treatment Chemicals – Health Effects, which incorporates these rules and must be compatible with other accepted chemicals used in pools. The following regulations are required for pool water treatment:
  - pH – 7.2 to 7.8.
  - Disinfection:
    - The free chlorine residual must measure from 1 milligram per liter (mg/L) to 10 mg/L in conventional swimming pools, and from 2 mg/L to 10 mg/L, in all other types of pools, including spas and fountains.
    - The bromine residual must measure from 1.5 mg/L to 10 mg/L in conventional swimming pools, and from 3 mg/L to 10 mg/L in all other types of pools.
    - The following maximum disinfectant levels apply to indoor conventional swimming pools: 5 mg/L free chlorine or 6 mg/L bromine.
    - When oxidation-reduction potential controllers are required, the water potential must be maintained between 700 and 850 millivolts. Even if these units are used, manual daily testing, according to 64E-9.004(13), F.A.C, is still required.
    - Cyanuric acid – 100 mg/L maximum in pools, with 40 mg/L as the recommended maximum, and 40 mg/L maximum in spa pools.
    - Quaternary ammonium – 5 mg/L maximum.
    - Copper – 1 mg/L maximum.
    - Silver – 0.1 mg/L maximum.
  - In 2009, a provision was added requiring that any landscape irrigation water that wets the deck area of the pool, the pool itself, enters the collector tank, or wets an interactive water feature, must be potable (safe to drink) water from a public water system.
  - Manual addition of chemicals is allowed only under special conditions and requires that the pool be closed for a period prior to their addition and as long as necessary after to ensure sufficient and safe distribution. After treatment for breakpoint chlorination and algae prevention, pool use may resume when the free chlorine levels drop to 10 mg/L.
- **Cleanliness** – The pool and pool deck must be kept free from sediment, floating debris, visible dirt and algae. Pools must be refinished when the pool surfaces cannot be maintained in a safe and sanitary condition.
  - Food and beverages are prohibited in the pool and on the pool wet deck area; animals and glass containers are prohibited within the fenced pool area, or 50 feet from the pool edge when no fence exists.
  - The pool recirculation system must be operated at all times when the pool is open for use. The recirculation system may be shut off three hours after the pool closes, but must resume operation three hours before the pool opens. A time clock must be used to control shutdown time.
  - The pool water level must be maintained at an elevation suitable for continuous skimming without flooding during periods of non-use.
  - All equipment and other items located at or belonging to the facility must be kept in good repair.
  - When use of a public swimming pool requires an admission or a membership fee, the most recent pool inspection report must be posted in plain view of existing and potential members and patrons.

- Sanitary facilities must be clean, with supplies such as toilet paper, paper towels or blow dryer, soap, and wastebaskets available and in a sanitary condition.
- Footbaths are prohibited.

- **Test kits** – Test kits are required to be on the premises of all pools to determine free active chlorine and total chlorine using N,N-diethyl-p-phenylenediamine (DPD), or bromine level, total alkalinity, calcium hardness, and pH.
  - The following test kits must be provided if the corresponding chemicals are used: cyanuric acid, sodium chloride, quaternary ammonium, ozone and copper.
  - When silver is added as a supplemental disinfectant, a water analysis must be performed every six months and be submitted to the department upon request.
  - A test kit may be used for multiple pools, provided the pools have common ownership and are located on contiguous property.
  - The test kit must be capable of measuring the level of disinfectant in the normal operating range.
  - Sports accessories such as volleyball and basketball nets may be used at designated times, provided a clear four-foot deck area exists behind the structures. When the pool is open for general use, they must be removed.
- **Monthly report** – The pool owner or operator is responsible for keeping a daily record of information on pool operation, using the Monthly Swimming Pool Report (report) – DH 921 3/98, obtained from the local county health department. The report shows values for manually conducted pool water tests for pH and disinfectant levels performed at least once every 24 hours, and, new in 2009, weekly testing for cyanuric acid when chlorinated isocyanurates are used at spas and pools. The report must be kept in a secure location at the pool or submitted monthly, as required by the local health department.
- **Human fecal accidents** – In 2009, a new section addressing human fecal accidents was added, requiring the pool operator or owner to comply with all procedures and recommendations found in the Centers for Disease Control and Prevention's (CDC) "Fecal accident Response Recommendations for Aquatics Staff" dated February 15, 2008, and found on the department's website at *http://www.floridashealth.org/Environment/water/swim/index.html.* Alternative emergency disinfection methods developed by industry by the application of new disinfection technology or by the use of chemical disinfectants that are effective, safe and appropriate for public bathing facilities, and are approved by the CDC, may also be used.
- **Lighting** – Additional lighting sources are specified for pools used at night or when adequate natural lighting is not available.

Sections 64E-9.005, Construction Plan or Modification Plan Approval, and 64E-9.006, Construction Plan Approval Standards, provide lengthy, detailed specfications for developing construction or modification plans that comply with revised standards and qualify for approval. It is illegal to begin construction or modification of any public pool without first receiving written approval from the department.

Section 64E-9.007, Recirculation and Treatment System Requirements, establishes that recirculation and treatment equipment such as filters, recessed automatic surface skimmers, ionizers, ozone generators, disinfection feeders and chlorine generators must be tested and approved using the National Science Foundation/American National Standards Institute (NSF/ANSI), Standards for Circulation System Components and Related Materials for Swimming Pools and Spas. This section incorporates those standards into the chapter, and establishes that a manufacturer must work with an NSF- or ANSI-approved agency to develop standards if none exist for a specific product. All water features using water from a pool must be designed to return the water to the pool.

In 2009, a new paragraph dedicated to collector tank retrofitting established requirements to eliminate direct suction through a main drain, setting dates for compliance in 2011 and 2012.

It states:

- All pools built without a main drain collector tank must be retrofitted with a properly sized and piped collector tank.
- Main drain covers/grates installed after the effective date of this rule must comply with current ASME/ANSI standards and the water velocity requirement of this rule.
- Disinfection and pH adjustment should be added to the pool recirculation flow using automatic feeders meeting current NSF/ANSI standards, with all chemicals fed into the return line after the pump, heater, and filters, unless the feeder was designed by the manufacturer and approved by the NSF to feed to the collector tank or into the suction side of the pump.
- Dual or multiuse feeders may be approved on an individual basis.
- Feeding chlorinated isocyanurates disinfectant is prohibited in spas, wading pools, and interactive water attractions. Feeders of this type are no longer allowed, and should have been replaced with non-isocyanurate chlorinators, or an equivalent, and a pH adjustment feeder, in 2011.

Another paragraph added in 2009 addressed the use of ultraviolet (UV) light disinfectant equipment. The section encourages its use for elimination or reduction of chlorine-resistant pathogens, especially the protozoan Cryptosporidium, and authorizes UV light disinfection equipment to be used as a supplemental water treatment for public pools, subject to manufacturer's specifications and the following conditions:

1. UV equipment and electrical components and wiring must comply with the National Electrical Code (NEC), and the manufacturer must provide certification of this fact.
2. UV equipment must meet Underwriters Laboratory (UL) standards and be electrically interlocked with recirculation pump(s) on all pools to assure pump(s) are disabled and do not operate if the UV equipment fails to produce the requisite dosage, as measured by an automated sensor.
3. UV equipment functionality must be validated by an appropriately trained professional to ensure it delivers the required UV dose, in a predictable manner, at the specified flow, lamp power, and water UV transmittance conditions. It must be in compliance with all Environmental Protection Agency (EPA) professional practices summarized in the EPA Publication Number 815-R-06-007, available at *http://www.floridashealth.org/Environment/water/swim/index.html, or http://www.epa.gov/safewater/disinfect ion/lt2/pdfs/guide_lt2_uvguidance.pdf.*

4. UV equipment produces a constant proven dosage of at least 40 mJ/cm2 (milliJoules per square centimeter) at the end of lamp life.
5. The UV equipment cannot be located in a sidestream flow, but must be placed in a location and manner that treats all water returning to the pool.

Section 64E-9.008 FAC, Supervision and Safety, places the burden of responsibility for the supervision and safety of the pool squarely on the shoulders of all owners, managers, lifeguards, and swimming instructors in charge of or working at a public swimming pool. While the section does not require lifeguards or swimming instructors, if they are provided by the facility, they must have the authority to enforce all safety regulations. The section also mandates:

- Lifeguards and swimming must be certified in lifeguarding or swimming instruction, respectively, by the American Red Cross, the YMCA, or an other agency meeting established training standards.
- Lifeguards and swimming instructors must be currently certified in first aid and in adult, child and infant cardiopulmonary resuscitation through the American Red Cross, American Heart Association, National Safety Council, or other approved agency.
- Swim coaches are exempt from the swimming instructor certification requirement only if they are training advanced level swimmers for competition.
- Swimming instructors of developmentally disabled students must be certified according to Section 514.072, FS.

Section 64E-9.009, Wading Pools, and 64E-9.010, Spa Pools, establish additional standards for wading pools and spas, as well as address procedural requirements in case of a fecal accident. Should one occur, the wading pool or spa must be drained, and the pool, filter system, and plumbing properly disinfected according to subsection 64E-9.004(14), F.A.C, which requires the pool operator or owner to follow recommendations published in the Center for Disease and Prevention's (CDC) Fecal accident response recommendations for Aquatics Staff found at *http://www.floridashealth.org/Environment/water/swim/index.html.* Alternative emergency disinfection methods, if approved by the CDC, may also be used. Refer to *http://www.doh.state.fl.us/environment/water/swim/fecal_accident_response_reco.pdf.*

Section 64E-9.011, Water Recreation Attractions and Specialized Pools, requires that these structures are designed and constructed in a sound manner. Specific rules for compliance are largely dependent on a specific pool's design and function. The section applies to the following water attractions:

- Water slide plunge pools.
- Plunge pools.
- Water activity pools.
- Wave pools.
- River rides.
- Zero depth entry pools.
- Interactive water features (IWFs).
- Water theme parks.

Section 64E-9.017, Enforcement, asserts that any public pool with the following Chapter 64E-9, F.A.C violations can be immediately closed by the department:

- If a main drain grate is missing, unsecured, improperly secured, damaged, or does not meet the requirements of subparagraph 64E-9.007(10)(f)2., FAC.
- If the pool is operating without a valid permit.
- If direct suction exists on the main drain or other outlets, except vacuum fittings, automatic surface skimmers, and their equalizer grates, provided the flow velocity through the grate does not exceed 1.5 feet per second, or corrective actions specified in paragraphs 64E-9.007(3)(b) and (10)(f), FAC, were not completed.
- If any other conditions that endanger the health, safety, or welfare of persons using the pool exist, including, but not limited to, a drowning hazard, broken glass, sharp-edged or broken tile or metal, fecal accidents, electrical code violation, or severe biological growth.

Section 64E-9.018, Public Pool Service Technician Certification, created in 2009, requires that individuals maintaining the cleanliness, water quality, and chemical balance of public pools must be certified, and establishes a course of training and testing for certification. Proof of certification must be posted and visible in the equipment room of each pool served by that individual, and available for inspection by the department.

This checklist of pool and spa requirements is used for inspection purposes by the Florida State Department of Health to assess compliance with Chapter 64E-9 FAC:[15] You may find it valuable to examine the association pool and spa as you review each point to confirm that your facility could pass inspection.

POOL AREA
1. Pool appearance/algae control. 64E-9.004(3). The pool shall be free from floating material, sediment, visible dirt, algae, and the main drain shall be visible.
2. Deck/walkway. 64E-9.004(3). Wet deck areas shall be a minimum of 4 feet wide, of concrete or other nonabsorbent material with a smooth, slip-resistant finish. Wood and carpet are prohibited, and the area must be unobstructed by furniture, planters, hoses, etc., and be free of dirt, grass, algae or standing water.
3. Tile/pool finish. 64E-9.004(3) and 64E-9.008(12)(a). Pool finish and tile shall be in good repair.
4. Depth markers. 64E-9.008(12)(h). Minimum 4-inch-high, permanent, contrasting depth markings must be located on both sides of the pool at the shallow end, slope break, deep point and deep end wall, and every 25 feet. The markers must be installed inside and outside the pool, and have feet and inches spelled out.
5. Handrail/ladder. 64E-9.008(12)(n). Handrails must be provided for all pool steps and must be securely anchored in the pool deck and the bottom step. "Figure four" handrails must be securely anchored in the pool deck and must extend to the bottom step. Ladders must be provided and must be securely anchored in the pool deck and must rest against the pool wall with a 3- to 6-inch clearance.
6. Step markings. 64E-9.008(12)(n). All step edges must have a 2-inch contrasting marking on the tread and riser (3/4-inch by 2-inch bullnose tile may be substituted) which shall extend the full length of each step.
7. Main drain grate. 64E-9.008(2) and 64E-9.004(7). The grating shall be secured and fully intact.
8. Gutter grates/skimmer. 64E-9.004(7). Gutter drains must be covered by a fully intact grate. Skimmers must have a weir in place, deck cover in place, and the basket must be in place and clean. Skimmers with a direct connection to the pump must have an equalizer valve.
9. Lighting pool/area. 64E-9.008(8). Underwater lighting and overhead lighting shall be provided for night swimming, or the pool must close at dark.
10. No diving markings. 64E-9.008(12)(k). All areas of the pool which are not part of an approved diving bowl shall have "NO DIVING" markings every 25 feet.
11. Diving board. 64E-9.008(12)(o). Diving boards must be secured and slip resistant. If diving boards are removed, the stanchions must be removed.
12. Pool cover. 64E-9.008(4). Pools utilizing floating blankets must be inaccessible when the blanket is in use. Blanket shall not obstruct deck when removed.
13. Poolside shower. 64E-9.008(13). All outdoor pools must have a rinse shower located within 20 feet of the pool on the pool deck.
POOL SAFETY
14. Life hook with pole. 64E-9.008(2). A shepherd's hook securely attached to a one-piece 16-foot pole must be provided. The life hook must be fully accessible and visible from the pool. Pools over 50 feet in length must have at least one pole along each of the longer sides of the pool.
15. Life ring with rope. 64E-9.008(2). An 18-inch lifesaving ring with sufficient rope attached to reach all parts of the pool must be provided. The rope must be in good condition, free of frays. The ring must be fully accessible, which means visible and not tied down or locked. Pools over 50 feet in length must have at least one ring along each of the longer sides of the pool.
16. Safety line/2-inch marking. 64E-9.008(3) and 64E-9.008(12)(g). Pool floors having a slope break must have a two-inch contrasting stripe at the slope break. The marking must extend across the bottom of the pool and up both sides to the tile line. A safety line must be mounted 2 feet before the slope break towards the shallow end using cup anchors. The safety line must have visible floats at least every seven feet.
17. Rules posted. 64E-9.008(7). The following rules must be posted in minimum one-inch letters and must be visible from the pool/spa deck: 1. No food or beverages in pool or on pool wet deck. 2. No glass or animals in the fenced pool area (or 50 feet from unfenced pool). 3. Bathing load: ___ persons. 4. Pool/spa hours: __ a.m. to __ p.m. 5. Shower before entering. Pools of 200 square feet in area or greater without an approved diving well configuration shall have "NO DIVING," in four-inch letters included with the above listed pool rules. In addition to these requirements, spa pool signs shall include the following: 1. Maximum water temperature l04 degrees F. 2. Children under 12 must have adult supervision. 3. Pregnant women, small children, people with health problems and people using alcohol, narcotics or other drugs that cause drowsiness should not use spa pools without first consulting a doctor. 4. Maximum use 15 minutes. A clock shall be visible from the spa pool to assist the patron in meeting this requirement.
18. Lifeguard/instructor/pool technician certification. 64E-9.008(1)&(a). If lifeguards or instructors are provided, they must be certified by the American Red Cross, YMCA or other nationally recognized organization. Proof of proper certification is required at the pool site. Pool maintenance personnel shall be certified.
SANITARY FACILITIES
19. Supplies. 64E-9.004(9). Sanitary facilities must have toilet paper, soap, paper towels and waste can.
20. Clean. 64E-9.004(9). Sanitary facilities shall be maintained in a clean condition.

WATER QUALITY
21. Approved test kit. 64E-9.004(11). All pools must have an approved test kit on site capable of testing free chlorine (DPD), combined chlorine, pH, calcium hardness and total alkalinity. Pools utilizing chlorine generators must have a sodium chloride test kit. Pools using quaternary ammonium compounds must have a quaternary ammonium test kit. Pools using chlorine stabilizer must have a cyanuric acid test kit.
22. Free chlorine/bromine. 64E-9.004(1)(d). Free chlorine level must be between 1-10mg/L (parts per million) in conventional swimming pools (1½-10 ppm bromine). Spas must maintain 2-10 mg/L chlorine (3-10mg/L bromine). The maximum disinfectant level for indoor conventional swimming pools is 5 ppm chlorine or 6 ppm bromine.
23. pH. 64E-9.004(1)(d). The pH in all pools shall be maintained between 7.2 and 7.8.
24. Chlorine stabilizer. 64E-9.004(1)(d). The concentration of chlorine stabilizer (cyanuric acid) shall not exceed 100 ppm in conventional pools or 40 ppm in spas.
25. Spa 104 degrees air vent/equalizer valve. 64E-9.008(9). Spa pools have a maximum temperature of 104 degrees F. All spa pools that have suction lines on the main drain must have a minimum two-inch air vent line attached to the suction line (older spas). Main drains will discharge to collector tanks on new pools. Spas whose skimmers are on direct suction to the pump must have an equalizer valve.
EQUIPMENT ROOM
26. Wading pool: Quick dump. 64E-9.008(15)(g). All wading pools must have emergency drainage capabilities.
27. Water level/control. 64E-9.008(14)(k)6.f. The pool water level shall be maintained for continuous skimming flow. A manual and automatic fill device shall be provided and shall discharge into the collector tank.
28. Disinfection feeder. 64E-9.008(14)(q). A properly sized disinfection feeder shall be provided. Electrical pumps must be electrically interlocked with the recirculation pump.
29. pH feeder. 64E-9.008(14)(q). PH adjustment feeders must be provided on all pools; pH feeders must be electrically interlocked with the recirculation pump.
30. Chemical container/labeled. 64E-9.008(14)(q)2. Solution reservoirs shall have at least 50 percent storage capacity of the solution pump and shall be labeled.
31. Filter pump. 64E-9.008(14)(d). The filter pump shall be properly sized and operable.
32. Vacuum cleaner. 64E-9.008(14)(m). All pools shall have a vacuum cleaning system. (Except for spa and wading pools of less than 200 square feet.)
33. Flowmeter. 64E-9.008(14)(n). All pools shall have a flowmeter capable of reading from ½ to 1½ the design flow rate.
34. Thermometer. 64E-9.008(9). Pools equipped with a heater must have an in-line thermometer mounted downstream of the heater outlet.
35. Pressure/vacuum gauges. 64E-9.008(14)(e). All vacuum filter systems shall have a vacuum gauge before the pump. All pressure filter systems shall have a pressure gauge mounted before and after the filter.
36. Equipment room drainage/vent/lighting/clean. 64E-9.008(13)(e). The equipment room shall have proper drainage, forced or cross ventilation, lighting and be relatively clean and clutter free.
37. Cross connection. 64E-9.004(l)(a). An air gap must be provided in the fill line and in the waste line. Vacuum breakers shall be provided on all hose bibbs in the sanitary facilities, pool area and equipment room area.
38. Gas chlorine: Mask/scales/chains. 64E-9.008(14)(q). Pools that utilize gas chlorine must have a gas mask with valid cartridges, scales to weigh the cylinders, and all cylinders must be chained.
39. Wastewater disposal. 64E-9.008(14)(p). Wastewater must discharge through an air gap and be disposed of in accordance with local requirements.
40. D.E. separator. 64E-9.008(14)(p). Pools with D.E. filters shall be equipped with D.E. separation devices.
41. Other equipment. 64E-9.008(18). Auxiliary equipment must not interfere with the attainment of the design flow, i.e. ionizers, ozone generators, etc.
42. Equipment change. 64E-9.008(18). All equipment changes must have prior approval from the department.
43. Approved chemicals. 64E-9.004(1)(d). All chemicals used in public pools must meet NSF Standard 60.
44. Maintenance log. 64E-9.004(13). Maintenance logs must be kept on all pools.
45. Inspection posted. 64E-9.004(8). Pools that require membership for use must post the latest pool inspection by the department in a conspicuous place.
46. 514.0315(2), Florida Statutes, Safety: 64E-9.008(13)(k)4. All anti-entrapment devices and systems must be in compliance with statute and in good working order.
47. Fence: 64E-9.008(13)(h). Pools approved after 2004 code revision shall have a minimum 48-inch-high fence with self-closing self-latching gates.

Chapter 64E-21.001 FAC: Drowning Prevention Education/Public Information Publication

This section mandates educational requirements for rescue and lifesaving programs, using standards consistent with the American Red Cross Community Water Safety Course, and refers to information on drowning prevention and responsibilities of pool ownership contained in the 1994 U.S. Consumer Product Safety Commission publication No. 362, Safety Barrier Guidelines for Home Pools.

While these laws have increased safety significantly, without an awareness of the potential dangers associated with swimming pools and spas and knowledge of protective strategies such as behavioral modifications, the level of risk at a community pool may still be unacceptably high. The following section discusses how to minimize risk through a system of multiple layers and strategies working together.

Florida Building Code (FBC) Chapter 424[16]

Chapter 424 of the Florida Building Code specifies design and construction standards for swimming pools and bathing places: Section 424.1 addresses public swimming pools and bathing places, and Section 424.2 provides requirements for private swimming pools.

Florida Energy and Conservation Code (Florida Energy Law)[17]

The Florida Energy and Conservation Code (Florida Energy Law) requires compliance with national energy standards for residential pools and in-ground spas (ANSI/APSP 15) and portable spas (ANSI/APSP 14), all of which have been incorporated into Chapter 4 of the 2010 FBC, and in effect since March 15, 2012.

The law requires existing pools and spas to have pumps, motors, controls, heaters, and portable spas that meet the following 2010 Florida Energy & Conservation Code standards for pool and spa energy efficiency:[18]

- Residential filtration pool pump motors cannot be split-phased, shaded-pole or capacitor start-induction run types.
- If the total horsepower (HP) of a residential filtration pool pump or filtration pool pump motor is one HP or larger than the pump and pump motor, it must have at least two speeds.
- Residential pool filter pump controls, for use with a multi-speed pump, must be capable of operating at a minimum of two speeds.
- Default pool filtration speed must be a speed that results in a flow rate that will NOT turn over the pool in less than six hours, and any high-speed override must default back to the pool filtration speed in less than 24 hours. This allows solar pool heating systems to run at higher speeds during periods of usable heat gain.
- Thermal efficiency of gas and oil-fired heaters must not be less than 78 percent.
- Heat pump heaters shall have a coefficient of performance at low temperature of not less than 4.0 (COP).
- Natural and LP gas-fired heaters shall not be equipped with constant burning pilots.
- All heaters shall have a readily accessible on-off switch that is mounted on the outside of the heater and that allows shutting off the heater without adjusting the thermostat setting.

All pool and spa heaters meet federal and state efficiency requirements, but not all meet the Florida requirement for readily accessible on/off switches, among other features, necessary for Florida but not federal compliance. The Florida law does not cover pumps and pump motors installed in addition to the pool filtration pump, provided the pump is used exclusively for other purposes, such as booster pumps for cleaners, water feature pumps, etc. This applies to auxiliary pumps that include a filter, provided the auxiliary pump filtered flow is not used and not needed to meet the swimming pool's turnover requirements.

To ensure the pump or motor meets current requirements and learn what pumps or pump motors are available for a specific pool, the Association of Pool and Spa Professionals (APSP) has established a pump motor database at *http://www.apsp.org/Public/StandardsTechnical/PoolPumpDatabase/index.cfm*.

Because companies are likely to continue to manufacture single-speed pumps and pump motors for non-pool filtration purposes, it is the installers' responsibility to choose and install a compliant model when replacing a pool filter pump or pool filter pump motor. Building departments will have the ability to enforce these requirements on both new and existing residential pools. If a particular building department does not require a permit for a replacement pump or motor on an existing pool, this does not discount that the law and code requires the replacement pump/motor to comply.

If repairing an existing pump or pump motor, an existing single speed pump or motor can still be used, but if it is replaced, it is subject to the new requirements. If existing pool filter pump controls are replaced, controls capable of operating at a minimum two-speed are required to be installed, even for single-speed pumps.

These following requirements apply only to new construction:

- Pool filter pumps must be sized based on a specified formula so that the resulting flow rate will turn over the pool water volume in more than six hours or 36 gpm, whichever is greater. The effect is to limit the performance of single-speed pool filter pumps so the residential pool will not exceed public pool turnover flow rates. Some common one-half and three-quarter HP pumps move too much water and cannot be used as pool filter pumps.
- A time switch must be installed to allow pool owners to run the pool filtration pump only during the off-peak period.
- Pool filtration piping must be sized so that the velocity of the water at maximum flow does not exceed 8 feet per second in the return line, and 6 feet per second in the suction line. Note: Do not confuse these requirements with ANSI-7 water velocity requirements for entrapment prevention purposes. Pools must comply with both.
- Filters (cartridge, sand, and DE) must have a minimum area based on the six-hour turnover flow rate (pool gallons/360 minutes).
- When used, filter backwash valves must be two inches or the diameter of the return pipe, whichever is greater.
- For pool filtration pumps, a length of straight pipe that is at least four pipe diameters shall be installed before the pump.
- Directional inlet fittings are required.

- Eighteen-inches of pipe, valves, tees, or installed pipe from pool to pad are required to allow for future solar connections.
- Sweep elbows are encouraged, but not required.

Part III: Multi-layered preventive measures

As the first part of this course has demonstrated, community pools and spas are required by law to implement a specific set of safety regulations, including the installation of safety devices, and observe proper water safety behaviors. The Consumer Product Safety Commission and other experts favor multiple safety steps for swimming pools and spas, from the installation of pool and spa barriers to teaching children to swim. When combined, these safety strategies provide adults and children better protection in and around the water.

Studies suggest best practices to prevent pool and spa submersion deaths and injuries include:[19]

- A law requiring pool barriers.
- Four-sided (isolated) pool fencing.
- CPR training.
- Arms-length adult supervision of young children near water.
- Lifeguard supervision.
- Self-closing and self-latching pool gates.
- Learning to swim and teaching young children to swim.
- Enhanced staffing and training of personnel supervising pools.
- Development of appropriate guidelines for water-related emergencies.
- Public education on issues related to water safety and drowning prevention.

A multi-layered safety system

The greatest water safety assurance in swimming pools and spas comes from adopting and practicing as many water safety measures as possible. Because children can drown in a few moments – the time it takes to answer the telephone or check something on the stove – a child may face danger before an adult knows it. To minimize the risk to children, swimming pools and spas must provide a number of obstacles between the child and potential danger.

Protective measures must always be used in conjunction with adult supervision and appropriate safety systems and devices to delay unsupervised access or warn of a child's entry into a specific area. Barriers, alarms and safety covers are critical water safety steps, yet none are sufficient as the sole safety system for a pool or spa. Practicing multiple water safety steps in public and residential pools and spas can significantly reduce the number of children who are injured in non-fatal submersions or who drown every year.

Supervision

Responsible adult supervision is key to pool and spa safety for children. There should always be an adult designated to maintain constant visual contact with children whenever they are near or could get near any body of water, even a shallow "baby" or wading pool. There is no replacement for constant adult supervision.

Adults should always be near, alert, and attentive to children in and around the pool.

- A child must never be unattended in a pool or spa and must always be supervised by an adult when he or she is in or near water.
- Children should be taught basic water safety tips and how to swim.
- Children should be kept away from pool drains, pipes, and other openings to avoid entrapments.
- Pools should have an easily accessible way to call for medical assistance.
- A pool or spa should be checked first if a child is missing.
- Safety instructions should be made public and posted near the pool so they are readily available to everyone.

The Keep Your Eyes on the Kids Project is a program that originated in Arizona and now exists in Florida. It designates one adult responsible for closely supervising children playing in and around the pool or spa (or any body of water) for a specific period. The individual is identified with some visual marker, such as a "water watcher tag," which is simply a lanyard worn by the designated adult that makes clear that he or she is responsible for supervising children's activities at the facility. The individual formally transfers the lanyard, along with the supervising responsibility, to another person at the end of the period to ensure constant watchfulness.

The power of the water watcher tag or another type of obvious marker is that:

- It officially designates an adult to watch the children. Many times, adults assume that someone else is supervising the children when, in fact, no one is watching them.
- It reminds the adult who is acting as the "water watcher" that he or she must officially turn over responsibility for watching children to another adult with the physical transfer of the lanyard.

Adding a whistle to the lanyard provides an extra measure of safety, because it quickly draws attention to the situation and alerts individuals some distance away. It is useful to hang one by the pool, with an explanation regarding its use, to remind adults that supervision is the best way to prevent children from drowning, and encourage them to use it whenever possible.

Learning water safety skills

An absolutely critical step in preventing drowning is making sure everyone in the pool knows how to swim, and as many as possible know water rescue and lifesaving skills, such as CPR, in case of a pool emergency. Teaching children and adults to swim cannot guarantee that they will not drown, but it provides an important survival skill that can only prove beneficial, if not lifesaving.

Preventing drain entrapment

A drain entrapment occurs when an article of clothing, jewelry, hair, or a limb is caught when a body is pulled toward a faulty drain by the pool or spa's suction. Children's public wading pools, other pools designed specifically for young children, and in-ground spas that have flat drain grates and single main drain systems pose the greatest risk of entrapment. The best defense against entrapment is to prevent it before it can happen by being watchful in and around a pool or spa.

The most common entanglements and entrapments involve:

- **Body:** A body part, often the torso or bottom, covers a drain and is held down by the intensity of the suction.
- **Hair:** Long hair is caught in a faulty drain cover.
- **Limbs:** Arms, legs, feet or fingers are lodged in a suction opening.
- **Mechanical:** Jewelry, bathing suits or other materials are entangled in a drain cover.
- **Evisceration/disembowelment:** When suction draws out the intestines and organs.

Implementing these water safety practices reduces the hazard of drain entrapments and entanglements:

- Keep children away from pool drains, pipes and other openings to avoid entrapments and entanglements. Warn people not to lean against a drain or put their hands or feet near a drain.
- Make sure that loose items, such as long hair, clothing or jewelry, are not dangling when swimming in a pool or sitting in a spa. Swimmers with long hair should wear a bathing cap or tie their hair so that loose strands cannot become entangled in the drain.
- Confirm the pool or spa has compliant drain covers; that drain covers are not loose, broken or missing; and that they can be seen clearly through the water.
- Install a safety vacuum release system (SVRS), a device that will automatically shut off a pump if a blockage is detected, or other automatic shut-off systems
- Know the location of the pump's main switches and how to quickly shut the pump down. Plainly mark the location of the electrical cutoff switch for the pool or spa pump.

If someone is trapped, do the following:

- Immediately switch off the pump.
- Rather than attempt to pull the person away from strong suction of the drain or grate, push a finger or small object between the drain and the person's body to break the seal; then use a rolling motion to free them.

Hot tub safety

Individuals using hot tubs must be aware of how they might react to the high temperature of the water. It is important to understand that infants and toddlers should never be permitted in a hot tub because a baby's thin skin increases his or her risk of overheating. Additionally, children not yet toilet trained can potentially contaminate the pool, and unsanitary conditions must be rectified, meaning it must be closed and cleaned.

All individuals who use a hot tub, but especially young children, should be encouraged to drink water while in the water. If the bather feels nauseated, dizzy, or sleepy, he or she should leave the spa with assistance. Entering and exiting the spa should be done very carefully, because there are risks associated with slipping on wet tile, lightheadedness from a change in blood pressure when standing up and climbing out of the spa, disorientation due to the heat, and so on.

A child should not be allowed in a hot tub until he or she is able to stand on the bottom with his or her head remaining completely above the water. Children who are big enough to be in a hot tub should not use it for more than five minutes at a time, especially at the maximum temperature of 104 degrees. Even at a temperature of 98 degrees, children should remain in a hot tub for no more than 15 minutes at a time. If available, children should sit on "jump seats" that permit waist-deep immersion, rather than full-body immersion.

Lifesaving and rescue equipment

Facilities should have reliable rescue and lifesaving equipment, as well as individuals on location able to use them effectively. All rescue equipment should be placed near the pool in a clearly marked and readily accessible spot, and periodically checked to make sure it is still in good working condition.

The following items should be readily available:

- **Landline telephone (as well as cell phones).**
- **Life ring, shepherd's crook (hook):** These are devices used to pull someone from the pool to safety. Have lifesaving equipment such as life rings and reaching poles available for use.
- **First aid kit:** A first aid kit should be kept in a safe and convenient location and periodically checked to make sure it is well stocked with all essentials, including life rings and reaching poles

- **Personnel trained in lifesaving and rescue strategies who can immediately be available to assist in a pool emergency.**
- **Post CPR, emergency contact information (911 and other), and warning signs in clearly visible spots near the pool.** An association may even perform routine safety drills to make residents and employees aware of what to do in case of emergency.

Other items that affect the safety of individuals using a pool:

- **Rope and float line:** Placed across the pool, the rope and float line alerts swimmers to the separation between the deep and shallow ends of the pool.
- **Toys, games, and floats:** Ensure all recreational equipment is safe and age-appropriate to the individual. Loose objects should be secured in a safe place and never left in or around the pool.
- **Maintenance supplies:** All cleaners, chemicals, and maintenance supplies should be kept in a locked storage area, away from children and pets. Check labels for proper storage and expiration dates, and follow manufacturers' guidelines.

Protecting the elderly, frail, or disabled

Moving in water can restore agility and strength to people of all ages and abilities, improving circulation and providing benefits when other types of physical therapy are not feasible. Although young children are the most frequent victims of pool drownings, people in poor health, of advanced years, and those with disabilities are also at higher risk of drowning or near-drowning injuries than the adult population.

Many times, the individual slips under the water's surface silently, not noticed until too much time has passed. Those who suffer from ailments affecting their vision, judgment, balance, or coordination, such as epilepsy, Alzheimer's disease, diabetes, or a heart condition, can be particularly vulnerable to risk near the water. The two most important strategies to protect adults at risk are better caregiver supervision and the use of pool alarms.[20]

Alarms

Alarms can warn of potential danger with loud noises and bright lights, or even set off video cameras or automatically alert someone by phone. Community associations have a choice of many types of pool alarms, with different functions appropriate for a range of locations. Alarms should be installed on all doors, gates, and windows that surround a pool or spa to alert adults when unsupervised children enter the area.

Audible alarms are commonly mounted on:

- Pool and spa gates that activate when the gate is opened to alert as many people as possible that an unsupervised child may have entered the restricted area.
- Windows and doors on the perimeter of a pool or spa; in cases where a building serves as the fourth wall surrounding a pool or spa, all windows or doors on the side of the building bordering the pool or spa must sound an alarm when opened.
- The edge of the pool, to sense if someone enters the pool or spa water. Many types of audible alarms sound in response to motion when water is displaced. These alarms may float on the surface (surface wave alarm) or underwater as well.

Upon activation, alarms should:

- Sound for 30 seconds or more, and within seven seconds after activation.
- Meet the requirements of UL 2017 General-Purpose Signaling Devices and Systems, Section 77.
- Be loud, at least 85 decibels when measured 10 feet away from the alarm mechanism.
- Sound distinct from other sounds or alarms, such as the smoke alarm.
- Have an automatic reset feature and a switch that allows adults to temporarily deactivate the alarm for up to 15 seconds. (The deactivation switch may be a keypad code or a manual switch, located out of reach of children.)

An "immersion" pool alarm is designed specifically to prevent at-risk adults from drowning. Immersion pool alarms have a water-activated sensor that the individual wears on a bathing suit, wristband, or bathing cap. If that person falls into a pool or spa or slips below the surface, the sensor generates a loud alarm. This device effectively counteracts the silence that makes accidental submersions so deadly.

An outdoor swimming pool barrier is a physical obstacle that surrounds an outdoor pool or spa so that access to the water is limited to adults. A successful pool barrier prevents a child from getting over, under or through it to gain access to the pool or spa. Barriers also provide parents additional time to locate a child before he or she can get into trouble. Barriers such as fences, walls, or gates can also be very attractive, adding aesthetic and monetary value to the association property. It is important, however, before proceeding, to confirm that plans and designs have been presented to all appropriate authorities and regulatory organizations (local building code office, community association residents or board, etc.,) and approval has been secured.

Barriers and alarms work more effectively together. Barriers prevent entry, and alarms alert others to the fact that an entry has been attempted or has occurred. The first part of this course discusses how federal and state regulations on barriers to pool and spa entry evolved. Those requirements are summarized here.

Pool operators and owners are required to:

- Install a fence around the perimeter of the pool and spa area that uses a self-closing and self-latching mechanism on any gates. The barrier should measure at least four feet in height. It should have no footholds or handholds that could be used by a child to climb over. Young children can be very good at climbing, and may be able to overcome a pool barrier that is too low or easy to climb.

- Ensure vertical fence slats are less than four inches apart to prevent a child from squeezing through.
- Ensure that no part of the diamond-shaped opening of a chain link fence is larger than 1 3/4 inches.
- Ensure the maximum clearance at the bottom of the barrier does not exceed four inches above grade.

If a gate is properly designed, even if it is not completely latched, a young child pushing on the gate to enter the pool area will effectively close the gate, with the possibility of engaging the latch.

Gates must:
- Open out from the pool.
- Be self-closing and self-latching.
- Be well maintained so it can close and latch easily.
- Have release mechanisms out of a child's reach and at least three inches below the top of the gate on the side facing the pool.
- Have no opening greater than ½-inch within 18 inches of the latch release mechanism to prevent a child from reaching through the gate to release the latch.

Safety covers

A pool or spa safety cover is a barrier that can be placed over the water's surface, and is easily opened or closed. Safety covers for pools can be manual or motorized, while covers for spas are generally manual. A non-penetrating cover can completely cover the pool and block access to pool water. The Association of Pool and Spa Professionals (APSP) recommends that all hot tub owners use a safety cover that locks.

When a safety cover is properly in place over the pool or spa, it provides a high level of security for children less than 5 years of age by inhibiting their access to the water as well as visually demonstrating to them that the pool is not open for use. It is critical to remove all ladders and slides when using covers on pools, so no access is possible. Maintain pool and spa covers in good working order to ensure they function properly.

Choose those with the following characteristics:
- All safety cover types should conform to the specifications in American Society for Testing and Materials (ASTM) for labeling requirements and performance.
- Pool covers should be able to be removed easily and quickly in case of emergency.

Sumps[21]

Field-built sumps must have a depth, when measured from the bottom of the cover to the top of the outlet piping, of 1.5 times the diameter of the piping, consistent with the current ANSI/APSP-16 2011 performance standard and specifications of the P&SS Act. Compliant drain covers that can be safely secured to a preexisting sump with a properly controlled flow rate are also compliant.

In some cases, sumps may need to be replaced to comply with the act. Although it does not generally require pool owners and operators to replace a sump, work should be carried out if:
- A professional engineer (PE) determines that additional engineering work needs to be done to the sump to bring it into compliance with the standard and ensure a secure connection with a new cover.
- A PE determines that a new drain cover cannot be safely placed on a pre-existing sump, and the sump should be removed and replaced with a new, compliant sump that is compatible with the compliant drain cover.

Drain covers

To comply with the P&SS Act, public pools and spas in the United States must:
- Employ entrapment protections established by the ANSI/APSP-16 2011 performance standards regulating swimming pools and spas.
- Use compliant drain covers. For pools and spas with a single main drain other than an unblockable drain, they must be equipped with secondary safety devices or systems designed to prevent entrapment by pool or spa drains and that meet the act's requirements.

All drain covers must be compliant with the current ANSI/ASME performance standard. The ASME standard requires covers to display:
- Use – single or multiple.
- Flow rate GPM.
- Life or the number of years.
- Wall or floor mount.
- Manufacturer's name.
- Model number.
- Flow rates and single drains.

Additional protection

In addition to having a drain cover or other anti-entrapment device that complies with the ANSI/ASME A112.19.8 performance standard or the successor standard ANSI/APSP-16 2011, public pools and spas with single, blockable main drains must have additional protections by using one of the following systems or devices:
- Safety vacuum release system.
- Suction-limiting vent system.
- Gravity pools.
- Automatic pump shut-off system.
- Drain disablement.

Professional maintenance and inspection

Pool inspection by a trained and qualified inspector is a vital step in assuring the safety of a public swimming pool or spa. Engineers and pool technicians, among other qualified professionals, ensure that a public swimming pool or spa is operating safely. By properly installing safety devices, accurately measuring the water flow rate through a spa or hot tub, evaluating water quality, and examining the safety equipment and physical condition of facility, trained pool and spa professionals maintain the security of residential and public pools or spas, reducing the risk of drowning, submersion injuries, and entrapment. Confirm that professionals are licensed or certified in Florida and carrying insurance or similar protection.

Conclusion

If your association provides a pool or spa, you have a role to play in alerting pool and spa users to strategies and behaviors that reduce the risk of drowning and entrapment. By adopting safety standards and implementing them effectively, you can help reduce the risk of submersion injuries and fatalities at your association.

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SWIMMING POOL AND SPA LAWS AND SAFETY

Final examination questions

Select the best answer for each question and mark your answers on the Final Examination Answer Sheet found on page 128 or complete your test online at **CAMS.EliteCME.com**.

41. Florida typically leads the nation in drowning deaths among young children, with the majority of deaths under the age of 5 occurring in swimming pools and spas.

○ True ○ False

42. The Virginia Graeme Baker Pool and Spa Safety Act (P&SS Act) was enacted to provide legal enforcement authority to prosecute caregivers who are not supervising individuals under their care properly in and around water.

○ True ○ False

43. According to the P&SS Act, community associations (including almost all Florida pools and spas in condominiums, homeowners' associations, health clubs, and hotels) are exempt from the law.

○ True ○ False

44. A suction-limiting vent system is a safety vacuum release system that stops operation of the pump, reverses the circulation flow, and provides a vacuum release at a suction outlet upon detecting a blockage.

○ True ○ False

45. Pools designed specifically for young children, such as shallow wading/kiddie pools, that have easily accessible suction outlets; in-ground spas that have flat suction outlet grates; and single suction outlet systems pose the greatest danger of entrapment and evisceration to young children, who are at the greatest risk of entrapment accidents.

○ True ○ False

46. The best defense against entrapments is the installation of flat, instead of domed, drain covers, which are designed to prevent entrapment.

○ True ○ False

47. If a community association allows nonmembers of the association to use its pool in exchange for some form of compensation, the pool is likely to qualify as a public accommodation, and should have been compliant with the ADA standards for accessible entry and exits by January 21, 2013.

○ True ○ False

48. Under the Fair Housing Act (FHA), a privately owned residential community must provide a barrier-free pathway up to the edge of a pool.

○ True ○ False

49. County health departments (CHD) are responsible for conducting inspections and issuing all permits.

○ True ○ False

50. In 2009, a provision was added to Section 64E-9.004, Operational Requirements, requiring that any landscape irrigation water that wets the deck area of the pool, the pool itself, enters the collector tank, or wets an interactive water feature, must be potable (safe to drink) water from a public water system.

○ True ○ False

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3 ○	○	8 ○	○	13 ○	○	23 ○	○	33 ○	○	43 ○	○
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				17 ○	○	27 ○	○	37 ○	○	47 ○	○
				18 ○	○	28 ○	○	38 ○	○	48 ○	○
				19 ○	○	29 ○	○	39 ○	○	49 ○	○
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