



*Providing Personalized Representation to  
Community Associations Throughout Florida*

# Jumping Into the Present: Why Updating the Governing Documents of Your Association is Critically Important

presented by:

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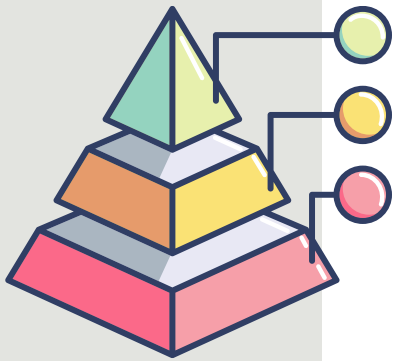


Kerstin Henze graduated Magna Cum Laude from the University of Miami, in 2003, with a Bachelor of Arts in International Studies, and received her Juris Doctor from the Shepard Broad Law Center at Nova Southeastern University in 2006. Following law school, Ms. Henze practiced law with the Law Office of Patrick J. Murphy and Associates, P.A., where her areas of practice included covenant enforcement, foreclosure, commercial litigation, and probate matters. In 2010, Ms. Henze joined Kaye and Bender, P.L. (n/k/a Kaye Bender Rembaum) to concentrate on community association law, with a primary focus on assisting the Firm's association clients on all aspects of community association operation.

In August 2023, Ms. Henze was elevated to a Firm Member and managing attorney of the Firm's Tampa, Florida office, where she continues to focus her practice on condominium, homeowner, and cooperative associations. As General Counsel to community associations, Ms. Henze assists board members with their day-to-day operations, including, without limitation, budgets/reserves, corporate governance, drafting and amending governing documents, drafting, revising and negotiating contracts (including complex, multi-million-dollar construction contracts), enforcement of association covenants, management issues, and other association-related matters. Ms. Henze is a frequent lecturer on community association law, and leads seminars on an array of topics of interest to Board members and property managers.

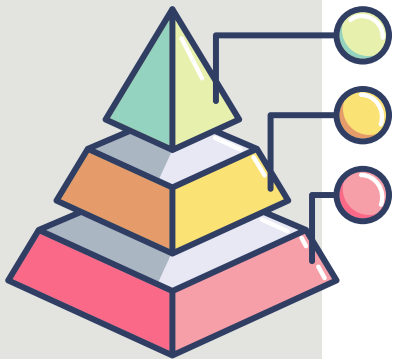
# Hierarchy of Governing Documents

## CONDOMINIUM ASSOCIATIONS



- ▶ Declaration of Condominium
- ▶ Articles of Incorporation
- ▶ Bylaws
- ▶ Rules and Regulations & Maintenance Standards & Policies

## HOMEOWNERS' ASSOCIATIONS

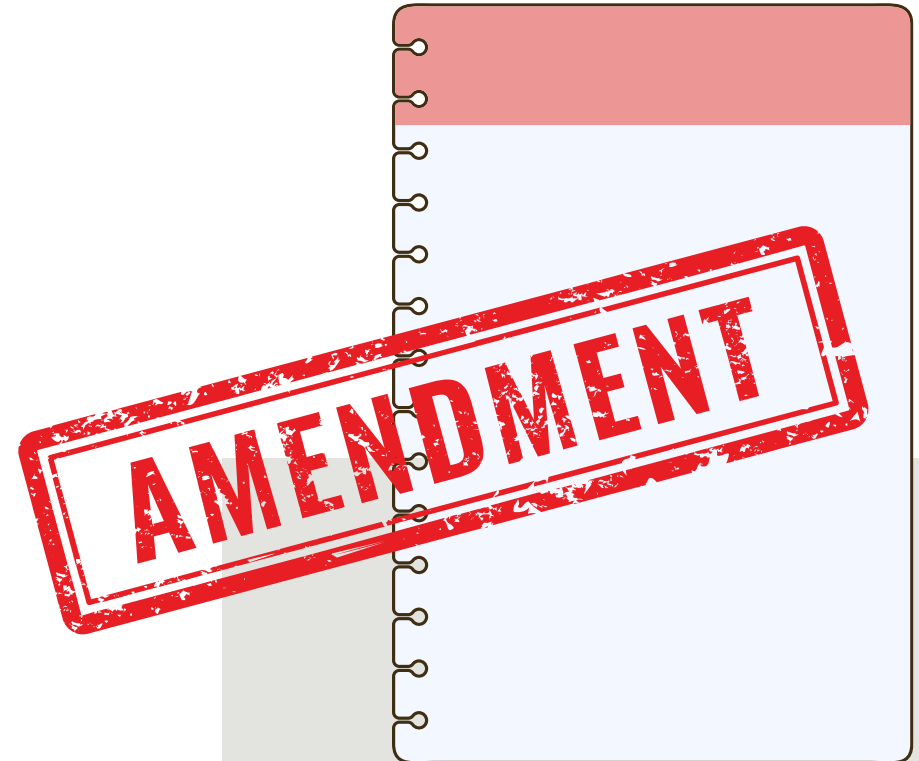


- ▶ Declaration of Covenants and Restrictions (CCRs)
- ▶ Articles of Incorporation
- ▶ Bylaws
- ▶ Rules and Regulations & Architectural Guidelines

# Amendment Process

**Florida case law imposes a five (5) year statute of limitations on challenges to recorded amendments.**

- ▶ Meeting v. Written Approval
- ▶ Proxy Voting
- ▶ Distribution to Members
- ▶ Vote Tally
  
- ▶ “Material” Amendments
- ▶ Termination
- ▶ Leasing/Rentals
- ▶ Suspension of Voting Rights
- ▶ Mortgagee Approval



# Common Misconceptions

**What provisions are:**



**What provisions are holding you back or costing you:**



## **A foreclosing lender is required to pay 1% or 12 months' of delinquent assessments.**

**FALSE**

Your governing documents may contain language providing mortgagees with greater protections than afforded by statute. Typical mortgagee protection clauses relieve mortgagees from owing anything to the association if it acquires title as a result of foreclosure or deed in lieu.

## **Landscaped grass lawns must cover the bulk of the front yards in our HOA.**

**FALSE**

Section 720.3085, Florida Statutes prohibits enforcement of governing documents from preventing a property owner from installing Florida-Friendly landscaping. The law likewise impairs the association's ability to enforce landscaping maintenance standards during water shortages.

## The board has sole decision making power when it comes to filing lawsuits.

**FALSE**

Mostly False...While Section 720.3075(1)(b), F.S. says that a declaration cannot contain a provision prohibiting the association from suing the developer, Section 720.303, F.S. actually prohibits commencing litigation against any party where the amount in controversy is over \$100,000 unless the members vote to authorize that action.

## All new owners go through the screening process in our community.

**FALSE**

Seeing a Pattern? 🤔

1st: Many of the mortgagee protection clauses prohibit the association from screening anyone that buys from the mortgagee.

2nd: Look at the words carefully. Does it say “purchaser” or “buyer”?

3rd: What are your responsibilities with respect to screening?

**Once the law changes, the change is automatically applicable to your community.**

**FALSE**

There are instances where the law will apply, generally if the new law is procedural or remedial in nature. However, the law cannot change fundamental contract rights unless there is a compelling public policy need.

**Residents are prohibited from having clotheslines in your HOA.**

**FALSE**

Section 163.04, F.S. prohibits HOAs from enforcing documents prohibiting energy devices based upon renewable resources (i.e. clotheslines, solar panels, etc.)



**Our community can enforce rules prohibiting minors from using any of the recreational facilities without an adult present.**

**FALSE**

Federal and State Fair Housing Laws prohibit discrimination against families with children. Several appellate court and administrative law cases have imposed fines, penalties and damages against Associations and individual board members for enforcing rules that have a discriminatory effect.

**The Board must obtain a vote of the owners before making any material alterations.**

**FALSE**

The governing documents may contain enabling language.  
Necessary maintenance exception.

HOA: Limitation on expenditures or otherwise

## **Delinquent assessments accrue interest at the rate of 18% and a \$25 late fee applies.**

**FALSE**

The common interest realty statutes (Chapters 718, 719 & 720) all require the authority to charge a late fee in the recorded governing documents. Interest accrues at the rate set forth in the documents.

## **A pipe in a wall serving one unit is a maintenance responsibility of that unit owner.**

**TRUE**

*SOMETIMES*

**FALSE**

The declaration of condominium describes the boundaries of the unit and also allocates the responsibility for maintenance of the condominium property.

# WHAT HAVE WE LEARNED?

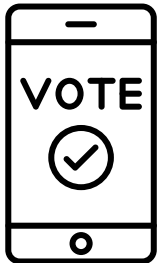
- Safe harbor/mortgagee liability may be limited by old language in documents.
- Architectural guidelines and requirements need to account for renewable resources.
- Powers ostensibly granted by the governing documents may be limited by statute.
- You may be losing money from interest and late fees.
- Rights of first refusal are different than rights of approval.
- New laws may not apply to your association due to limiting language in the governing documents.
- Old language in documents and rules expose the association up to discrimination claims.



# Florida Electronic Voting Statutes

**In Florida, associations are permitted to conduct elections and other unit owner votes through an electronic means if the following requirements are met:**

- **Resolution is passed (14-day notice requirement)**
- **Voting members must consent to electronic voting.**
  - An owner's consent to online voting is valid until the owner opts out.
- **Electronic votes are only limited to the issue specifically identified in the electronic vote.**
- **The Association must comply with requirements outlined in (§718.128 F.S.), (§719.129 F.S.), & (§720.317 F.S.) including:**
  - The association must be able to authenticate the member's identity.
  - The transmission of an electronic ballot must be secure and ensures the secrecy and integrity of each ballot.
  - The association must comply with the 14-day cut off notice requirement.



**DID YOU  
KNOW?**

# HEALTH CARE ALERT

**Owning a Home In An HOA  
May Be Hazardous To Your Health**





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**Thank You for Attending!**

