

President's Letter Addendum Rationale for Revision of the By-Laws

I was able to be elected President because of a conflict between our *Declaration of Restrictions of Real Estate*, our *By-Laws*, and Florida statute. This conflict, and many such others, has been corrected herein. Our By-Laws could simply make a blanket statement that the association will comply with Florida statutes, and only include those unique rules the association cares to adopt. But, only very few would care to take the time to read and digest Chapter 720 statutes. Thus, the BOD has taken the most relevant sections of the 720 statutes and included them herein.

I will attempt to explain the changes to the By-Laws proposed by your Board – in order of the proposed changes.

The new *Rules and Regulations* document is intended to be a one stop shop for owner and tenant use. It incorporates the applicable rules of property use and maintenance requirements from the *Deed of Restrictions of Real Estate*, the *Articles of Incorporation*, and our *By-Laws* so that members and tenants can refer to a single document.

Article 2, Section 1

- Our By-Laws do not need to state what action the Board will take post expiration of the current “Basic Cable TV” contract.
- Clarified the purposes for the different insurances covered. General liability insurance is required for Association property loss or damage. Director and Officer (D&O) insurance is required for our volunteer Directors for protection from personal liability for errors and omissions (this does not include protection from criminal acts like embezzlement or voter fraud). A Fidelity Bond is required to protect the Association from fraudulent or dishonest acts of the Directors, Officers, Association employees, and Association contractors (this is typically purchased to cover losses of Association reserves, plus 3 months of maintenance fees).

Article 2, Section 2

- The wording of our By-Laws could be construed to prevent the Board from including non-recurring costs in the estimated annual budget. This has been corrected.

Article 2, Section 3

- The By-Laws referenced an old county recording of our *Declaration of Restrictions of Real Estate*. This has been fixed.
- Added references to all three Governing Documents and stated the hierarchy of the three.

Article 3

- Simple word addition to the title to more accurately reflect the content.

- Added self-explanatory Section 2.

Article 5

- This article underwent a major re-write as required material was missing.
- The changes provide greater detail on the responsibilities of each officer.
- The term “Building Director” has been changed to “Compliance Director.” This is the common term in corporations for their job assignments and duties.
- Florida statute requires all Directors and Officers be educated via DBPR guidelines, and that Directors and Officers submit a declaration to the Secretary that they have read the governing documents and any associated rules and regulations. Statute requires both acts, not either/or.
- Added requirement for Directors to comply with the federal Financial Crimes Enforcement Network (FinCEN).
- Added obligation for the Board to fill its vacancies.
- Deleted existing Section 3, as it was non-compliant with the *Declaration of Restrictions of Real Estate*.

Section 3

- Added Florida statute 720.3055 requirements regarding projects greater than 10% of operating budget and the competitive bid process.
- Our Association should not require a minimum of three bids on every project above \$1500. Such has resulted in negative consequences within the Titusville community. It costs contractors time and money to prepare bids, and they will stop responding if we continually reject proposals. Under state statute, every Board member has a fiduciary responsibility to the Association. There are sufficient checks and balances in the Association to ensure the BOD does not enter into contracts, which are overpriced or may result in delivery of poor goods and services. The Board has a well-established history with local service providers and can calculate inflationary cost escalation. Neither should our By-Laws restrict the contracting of goods and services to a membership meeting vote. This puts an undue constraint upon the Association to accomplish work in a timely manner. Such a member vote is contrary to how the Board prepares the annual operating budget. If the Board can be trusted to prepare the annual operating budget without a membership vote, the Board should not be restricted, such that authorities granted to Association Directors and Officers under state statute are negated. If an Association member believes a Director or Officer has not acted in accordance with their fiduciary responsibilities, Association members can petition the Board to remove Directors by majority BOD vote and always have the right to file a lawsuit to recover any damages.
- Documenting the rationale for entering into Association contracts will provide evidence of due diligence by the Board to meet their fiduciary responsibilities, plus it is a statutory requirement.

Article 6

- Significantly re-wrote the entire section with regard to meetings.
- The existing By-Laws referenced a “General Meeting” term, which should be identified as an “Annual Meeting.”

- Added the various statutory requirements for the different meeting types and the noticing requirements for each.
- The Board has a statutory obligation to annually review documentation with regard to the Marketable Record Title Act (MRTA) at the first meeting after the Annual Meeting.
- There are four basic types of meetings: 1) Membership meetings, which require membership voter approval on agenda items, 2) Board Meetings, which require only the presence of the Board members to conduct business, 3) Special Meetings, called by the President, where only published agenda items may be discussed, and 4) Committee Meetings. Such meetings were inadequately differentiated in our By-Laws.
- A section on the Budget Adoption Meeting was included due to its importance to the association. This meeting is a specific occurrence of a Board Meeting.
- A section on a Special Assessment Meeting was included due to its importance to any association. This meeting is a specific occurrence of a Membership Meeting and the BOD hopes to never execute one of these meetings.
- The By-Laws inadequately explained the definition of a quorum relative to membership and Board meetings. Plus, it did not agree with the *Articles of Incorporation*.
- The By-Laws inadequately explained proxies and provisional ballots.

Article 7

- General rules and regulations of an Association are not required to be published in the *By-Laws*. Such maintenance is time consuming and costly for our Association. Therefore, the majority of Article 6 material was moved into a *Rules and Regulations* document, which will be maintained by the Board.
- Specific requirements for rental units were left in the By-Laws to maintain the Association authority within the governing document.
- Added a section on financial reporting rules to ensure all future BOD members understand these reporting requirements.

Article 8

- From 2004 to 2024, the Secretary and Treasurer were allowed waivers of their maintenance fees and stipends in compensation for the level of work required. The night I was elected, the BOD was prepared to approve a contract with a property management company at a cost of \$41,700 per year. This would have resulted in another \$25 cost on everyone's monthly maintenance fees and additional costs throughout the year to cover unbounded expenses. For whatever reason, these waivers and stipends were removed from the By-Laws in the 2024 revision. Compensation for our Treasurer and Secretary is more than appropriate and is allowed by state statute.

Article 9

- Florida statute requires every HOA with 100+ members to establish and maintain a website.

- This website development was already in work prior to discovery of the requirement.

Article 8

- Re-numbered Article 7 to 8. Reflects minor changes to the use of *Roberts Rules of Order* during the conduct of Association meetings.

Article 9

- Re-numbered Article 8 to 9.
- Reflects Florida statute, which first requires BOD approval of amendments to Association By-Laws prior to submission to the membership for approval.
- Reflects the urgency to record amendments to the By-Laws with the Brevard Clerk of Court.

Article 10

- Added article on penalties to document association authorities relative to fines, liens, and suspensions. Please note that a Fining Committee must be established before any fine can be imposed on an association member. The BOD recommends the imposition of fines, and a 3 or more person fining committee (consisting of no Directors, Officers, association employees, or their relatives) have the authority to accept or reject the recommendation – which is final.

Article 11

- Self-explanatory changes to Roberts Rules of Order.

Article 12

- Self-explanatory changes to By-Law amendment requirements.