

# “Attention to Detail,” FCAP Managers Report

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Attention to detail. A simple phrase that’s not always so simple to comply with, especially in a community association context.

There are several technical provisions in the statutes governing community associations that must be complied with. Chapters 607, 617, 718, 719, and 720, Florida Statutes have numerous requirements that associations must adhere to. A few examples include meeting notice requirements, board member eligibility requirements, record inspections, and others. Associations must be cognizant of changes to the statutes regarding such requirements, some of which pertain to regular or recurring events.

As associations go through the process of annual and election meeting notices, budget meeting notices, etc., one cannot just blindly use the previous year’s notice as a template for the current year’s notice. Associations must review any changes in the statutes to ensure this year’s notices are still in compliance. Having your association attorney prepare, or at least review, all such notices before they are sent out will help ensure the association is in compliance with the most recently enacted statutes.

For example, Section 718.112(2)(d)(2.), Florida Statutes, previously provided that a person who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. That provision was changed in 2021 to now provide that a person who is delinquent in the payment of any assessment due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A small but significant difference. If your election meeting notice includes any information about candidate eligibility, blindly copying the previous year’s notice would have the association sending out inaccurate information regarding board member eligibility. Attention to detail.

Another example pertains to a condominium unit owner’s suspension of voting rights due to a delinquency. Section 718.303(5), Florida Statutes, previously provided an association may suspend the voting rights of a unit or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than 90-days delinquent. That provision was changed in 2017 and now provides that an association may suspend the voting rights of a unit owner or member because of nonpayment of any fee, fine, or other monetary obligation due to the association which is more than \$1,000 and more than 90-days delinquent. While this change went into effect a few years ago, unfortunately I still

run across associations attempting to suspend voting rights of owners who are more than 90-days delinquent, but such delinquency is not more than \$1,000. Again, attention to detail.

Another area where attention to detail is necessary is the preparation of limited proxies. When voting on a waiver of reserves in a condominium, Section 718.112(2)(f)(4), Florida Statutes, provides that proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than those for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: "WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS." When reviewing limited proxies prepared by associations for such votes, very frequently I notice that while the disclaimer language is in capitalized, bold letters, it is not in a font size larger than any other used on the face of the proxy ballot. Attention to detail.

Posting of meeting notices is required by the statutes. Forty-eight (48) hours' notice for a regular board meeting; fourteen (14) days for some board meetings; 60-days for election meetings, etc. Only mailing, or emailing notices is not sufficient. Some meeting notices require an association to execute a proof of meeting notice (usually an affidavit signed by an association board member or manager). While these notice requirements may seem trivial, especially since the notices are mailed and/or emailed to owners, they are required by statute. Failure to properly post such notices may result in any action taken at said meeting being void. Failure to maintain proof of meeting notices when required may have the same effect, if any action taken at said meeting is challenged. Attention to detail.

In regard to homeowner associations, Section 720.306, Florida Statutes, previously provided that official notices were to be sent to the address on the property appraiser's website. That provision was changed to provide that official notices once again are to be sent to the mailing address in the official records of the association under section 720.303(4), Florida Statutes. Attention to detail.

There have been technical changes in how associations must notify owners of delinquent assessments before the owner can be sent to the attorney for collections. These are technical requirements that should be discussed with your association attorney. Blindly following previous practices in regard to such collection notices and actions will result in delays and owner defenses to association collection actions. Attention to detail.

In regard to budgets, remember that budgets mailed to association members must contain the period of the budget year (for example, Jan 1, 2022 - Dec 31, 2022). I have seen many associations go through the arduous process of preparing and adopting a budget, only to have such budget challenged by a member because it did not contain the actual budget period, even though there was enough information on the budget to know what period it was for. Attention to detail.

While some of the above matters may seem minimal in regard to their impact on the association or its members, the Florida Department of Business and Professional Regulation, Division of Condominiums, Timeshares and Mobile Homes ("Division") has recently changed its approach in regard to association education versus fining. In the past, a first violation of one of the above provisions, or another what would appear to be "minor" violation, was generally resolved by the

issuance of a warning letter from the Division, recounting the violation, the remedial measures, and a warning to the association that future similar violations could result in a fine. Those “warning” days appear to be over, as the Division has adopted a much more stringent enforcement posture, which usually results in a fine to the association, even for a first violation of a seemingly minor provision. Fines range from \$10 to \$30 per unit, with a maximum fine of \$5,000. I have seen recent cases where the Division initially sought to impose the maximum \$5,000 fine for an initial, minor violation (minor in accordance with Rule 61B-21, Florida Administrative Code.)

To read the original FCAP Managers Report article, please [click here](#).

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