

Fiscal Responsibility Common Interest Communities

33-1215. Contents of declaration

A. The declaration shall contain:

1. The name of the condominium, which shall include the word "condominium" or be followed by the words "a condominium", and the name of the association.

2. The name of every county in which any portion of the condominium is located.

3. A legal description of the real estate included in the condominium.

4. A description of the boundaries of each unit created by the declaration, including each unit's identifying number.

5. A description of any limited common elements, other than those specified in section 33-1212, paragraphs 2 and 4, but the declaration shall contain a description of any porches, balconies, patios and entryways, if any, as provided in section 33-1219, subsection B, paragraph 11.

6. A description of any development rights and other special declarant rights, together with a legal description of the real estate to which each of those rights applies, any time limit within which each of those rights must be exercised and any other conditions or limitations under which the rights described in this paragraph may be exercised or will lapse.

7. An allocation to each unit of the allocated interests in the manner described in section 33-1217.

8. Any restrictions on use, occupancy and alienation of the units.

9. All matters required by sections 33-1216, 33-1217, 33-1218, 33-1219 and 33-1226 and section 33-1243, subsection ~~E~~ G.

10. A statement that the assessment obligation of the unit owner under section 33-1255 is secured by a lien on the owner's unit in favor of the association pursuant to section 33-1256.

11. If the condominium is a conversion from multifamily rental to condominiums, a statement containing all of the following:

(a) A statement that the property is a conversion from multifamily rental to condominiums.

(b) The date original construction was completed.

(c) The name and address of the original owner, builder, developer and general contractor as shown on the applicable city, town or county building permit.

(d) The name and address of each subsequent owner as determined by a search of the county recorder's records in the county in which the property is located.

(e) The subdivider's agreement to provide the following information on request:

(i) The name and address of any builder, developer, general contractor, subcontractor, architect and engineer who designed or made improvements to the property immediately before the first condominium was sold.

(ii) A specific description of all improvements made.

B. If a city, town or county is unable to produce a building permit as required in subsection A, paragraph 11, subdivision (c) of this section, the subdivider shall submit a letter from the applicable city, town or county stating that the information required by subsection A, paragraph 11, subdivision (c) of this section is not available.

C. The declaration may contain any other matters the declarant deems appropriate.

Fiscal Responsibility Common Interest Communities

1 33-1243. Board of directors and officers; conflict; powers;
2 FISCAL RESPONSIBILITY; limitations; removal; annual
3 audit; applicability

4 A. Except as provided in the declaration, the bylaws, subsection B
5 of this section or other provisions of this chapter, the board of directors
6 may act in all instances on behalf of the association.

7 B. The board of directors shall not act on behalf of the association
8 to amend the declaration, terminate the condominium, elect members of the
9 board of directors or determine the qualifications, powers and duties or
10 terms of office of board of directors' members. Except as provided in
11 subsection H J of this section the board of directors may fill vacancies in
12 its membership for the unexpired portion of any term.

13 C. If any contract, decision or other action for compensation taken
14 by or on behalf of the board of directors would benefit any member of the
15 board of directors or any person who is a parent, grandparent, spouse, child
16 or sibling of a member of the board of directors or a parent or spouse of
17 any of those persons, that member of the board of directors shall declare a
18 conflict of interest for that issue. The member shall declare the conflict
19 in an open meeting of the board before the board discusses or takes action
20 on that issue and that member may then vote on that issue. Any contract
21 entered into in violation of this subsection is void and unenforceable.

22 D. ~~Except as provided in the declaration, within thirty days after~~
23 ~~adoption of any proposed budget for the condominium, the board of directors~~
24 ~~shall provide a summary of the budget to all the unit owners. Unless the~~
25 ~~board of directors is expressly authorized in the declaration to adopt and~~
26 ~~amend budgets from time to time, Any budget or amendment shall be ratified~~
27 ~~by the unit owners in accordance with the procedures set forth in this~~
28 ~~subsection. If ratification is require, The board of directors shall set a~~
29 ~~date for a meeting of the unit owners to consider ratification of the budget~~
30 ~~not fewer than fourteen or more than thirty days after mailing of the~~
31 ~~summary. Unless at that meeting a majority of all the unit owners or any~~
32 ~~larger vote specified in the declaration rejects the budget, the budget is~~
33 ~~ratified whether or not a quorum is present. If the proposed budget is~~
34 ~~rejected, the periodic budget last ratified by the unit owners shall be~~
35 ~~continued until such time as the unit owners ratify a subsequent budget~~
36 ~~proposed by the board of directors.~~ AFTER TERMINATION OF THE PERIOD OF
37 DECLARANT CONTROL, THE ASSOCIATION'S BOARD OF DIRECTORS HAS A DUTY TO
38 DEVELOP, OR HAVE DEVELOPED, AN ANNUAL OPERATING BUDGET FOR THE FISCAL YEAR
39 BASED ON A REASONABLY PRUDENT AND GOOD FAITH ESTIMATE OF THE COMMON EXPENSES
40 NECESSARY TO SATISFY THEIR OBLIGATIONS TO THE UNIT OWNERS TO MANAGE COST,
41 TO PROVIDE FOR THE ANNUAL MAINTENANCE AND OPERATION OF AND INSURANCE ON THE
42 COMMON ELEMENTS, ANY SERVICES REQUIRED BY THE DECLARATION, THE REASONABLE
43 AND PRUDENT ADMINISTRATIVE AND OPERATING EXPENSES OF THE ASSOCIATION, AND
44 TO PROVIDE FOR APPROPRIATE ALLOCATIONS TO RESERVE ACCOUNTS. A COPY OF ANY
45 PROPOSED BUDGET AND THE CURRENT FISCAL YEAR'S BUDGET, OR BUDGET COMPARISON
46 REPORT, IF AVAILABLE, SHALL BE EITHER POSTED ON A COMMUNITY WEBSITE, IF
47 AVAILABLE, OR MADE OTHERWISE REASONABLY AVAILABLE FOR UNIT OWNER ACCESS AND
48 REVIEW, WITHOUT CHARGE, AT LEAST FORTY-EIGHT HOURS BEFORE THE BOARD MEETING,
49 AT WHICH THE BOARD WILL CONSIDER THE APPROVAL OF THAT BUDGET.

50 1. NOTWITHSTANDING ANY PROVISION OF THE CONDOMINIUM DOCUMENTS TO THE
51 CONTRARY, FOR ANY CONDOMINIUM OF FIFTY UNITS OR MORE, THE ASSOCIATION SHALL
52 NOT IMPOSE AN ASSESSMENT, EXCLUDING ANY INSTALLMENT PAYMENTS FOR FINANCING
53 PREVIOUSLY APPROVED PURSUANT TO SUBSECTION E OF THIS SECTION, OF FIVE PERCENT
54 OR GREATER, OVER THE PRIOR YEAR'S INITIAL ANNUAL ASSESSMENT, WITHOUT PRIOR
55 RATIFICATION BY THE UNIT OWNERS.

Fiscal Responsibility Common Interest Communities

1 (a) IF NECESSARY, UNIT OWNER RATIFICATION SHALL BE ESTABLISHED BY THE
2 AFFIRMATIVE VOTE OF A SIMPLE MAJORITY OF THE UNIT OWNERS VOTING ON THE
3 BALLOT INITIATIVE, WITHOUT THE APPLICATION OF QUORUM REQUIREMENT, CALLED
4 FOR THAT PURPOSE, PURSUANT TO SECTION 33-1250. THE BALLOT QUESTION MAY BE
5 INCLUDED ON THE BALLOT FOR ANY ANNUAL OR SPECIAL MEETING OF THE UNIT OWNERS,
6 OR PROCESSED SEPARATELY.

7 (b) IF UNIT OWNER RATIFICATION FAILS, THE ASSOCIATION MAY APPROVE AND
8 ASSESS A FISCALLY PRUDENT BUDGET THAT DOES NOT REQUIRE UNIT OWNER
9 RATIFICATION.

10 2. THE ASSOCIATION BOARD OF DIRECTORS SHALL MANAGE THE ASSOCIATION'S
11 EXPENSES WITHIN THE OVERALL APPROVED BUDGET FOR THE FISCAL YEAR.

12 (a) IF UNANTICIPATED AND UNBUDGETED ASSOCIATION EXPENSES BECOME
13 NECESSARY, THAT CANNOT BE ACCOMMODATED WITHIN THE CURRENT APPROVED BUDGET,
14 THE ASSOCIATION MAY DEVELOP AND APPROVE AN AMENDMENT TO THE ANNUAL BUDGET
15 AND RESULTANT SUPPLEMENTAL ASSESSMENT, AS APPROPRIATE. SUCH AMENDMENT AND
16 SUPPLEMENTAL ASSESSMENTS SHALL BE RATIFIED BY THE UNIT OWNERS PURSUANT TO
17 THIS SUBSECTION, PRIOR TO INCURRING THE EXPENSES OR APPLYING THE ASSESSMENT.
18 THE ASSOCIATION'S BUDGETED ALLOCATION TO RESERVE ACCOUNTS SHALL BE
19 CONSIDERED COMMITTED EXPENSES, AND SHALL NOT BE REDUCED TO ADDRESS
20 UNBUDGETED EXPENSES WITHOUT THE PRIOR APPROVAL OF THE UNIT OWNERS.

21 3. IT IS THE DUTY OF THE BOARD OF DIRECTORS TO ACT IN THE BEST INTEREST
22 OF THE UNIT OWNERS AS A WHOLE, AND TO ENSURE THAT REASONABLE PRUDENCY IS
23 APPLIED TO THE COMMITMENT OF, PROTECTION, AND EXPENDITURE OF ASSOCIATION
24 FUNDS. TO THAT END, THE ASSOCIATION'S BOARD OF DIRECTORS SHALL:

25 (a) CONSIDER THIS DUTY IN THE SOLICITATION AND REVIEW OF COMPETITIVE
26 BID PROPOSALS, AND THE NEGOTIATION AND AWARD OF ANY CONTRACT FOR GOODS OR
27 SERVICES.

28 (b) ANY PROVISION IN A CONTRACT BETWEEN THE ASSOCIATION AND A VENDOR
29 THAT REQUIRES ANY OF THE FOLLOWING IS UNCONSCIONABLE AND WOULD CONSTITUTE A
30 BREACH OF DUTY BY THE BOARD OF DIRECTORS OF THEIR OBLIGATIONS TO THE UNIT
31 OWNERS:

32 (i) REQUIRES THE ASSOCIATION TO INDEMNIFY OR PROVIDE FOR THE LEGAL
33 DEFENSE FOR THE VENDOR FOR THE ACTIONS OF THE VENDOR OR ITS EMPLOYEES IN
34 PERFORMANCE OF THE CONTRACT, WITHOUT THE EXPLICIT PRIOR AUTHORIZATION BY
35 THE BOARD OF DIRECTORS FOR THOSE ACTIONS.

36 (ii) OTHER THAN IN FINANCING CONTRACTS WITH FINANCIAL INSTITUTIONS,
37 REQUIRES THE ASSOCIATION TO LIST THE VENDOR AS A PAYEE ON THE ASSOCIATION'S
38 INSURANCE POLICIES.

39 (iii) REQUIRES THE ASSOCIATION TO PAY FOR GOODS OR SERVICES NOT
40 PERFORMED OR SUPPLIED BY THE VENDOR, OR TO PAY THE VENDOR IRRESPECTIVE OF
41 THE PERFORMANCE EXPECTATION OR REQUIREMENTS OF THE CONTRACT.

42 (iv) THAT PREVENTS THE ASSOCIATION FROM TERMINATING THE CONTRACT FOR
43 CAUSE, OR REQUIRES TERMINATION PENALTY PAYMENTS THAT ARE EXCESSIVE OR
44 UNREASONABLE TO THE INTERESTS OF THE UNIT OWNERS.

45 (v) REQUIRES ANY OTHER SIMILAR PROVISION THAT IS UNCONSCIONABLE TO
46 THE INTERESTS OF THE UNIT OWNERS, OR VIOLATES A PROVISION OF THIS CHAPTER.

47 (c) THE ASSOCIATION SHALL AT THE NEXT CONTRACT RENEWAL OR WITHIN SIX
48 MONTHS OF THE EFFECTIVE DATE OF THIS ACT, WHICHEVER OCCURS FIRST,
49 RENEGOTIATE ANY CONTRACT INCONSISTENT WITH THE EXPECTATIONS OF THIS
50 SUBSECTION TO REFLECT THE DUTY REQUIRED BY THE BOARD OF DIRECTORS. IF THE
51 VENDOR REFUSES TO RENEGOTIATE THE CONTRACT IN GOOD FAITH, THE ASSOCIATION
52 SHALL TERMINATE THAT CONTRACT WITHOUT PENALTY AS A MATTER OF LAW.

53 (d) THE BOARD OF DIRECTORS SHALL PROVIDE OVERSIGHT OVER EVERY
54 CONTRACTOR PROVIDING SERVICES TO THE ASSOCIATION, AND SHALL ENSURE THAT THE
55 SERVICES OF THE CONTRACTOR COMPLY WITH THIS CHAPTER, MEET THE EXPECTATIONS

Fiscal Responsibility Common Interest Communities

1 OF THE ASSOCIATION DEFINED IN THE CONTRACT, AND PROVIDE VALUE TO THE UNIT
2 OWNERS COMMENSURATE WITH THE COST OF SERVICES.

3 (e) NO INDIVIDUAL BOARD MEMBER SHALL AUTHORIZE THE EXPENDITURE OF
4 ASSOCIATION FUNDS WITHOUT THE PRIOR ASSIGNMENT OF THAT AUTHORITY BY THE
5 BOARD OF DIRECTORS AS A WHOLE.

6 (f) THE ASSOCIATION'S BOARD OF DIRECTORS SHALL PROVIDE FOR AN
7 INDEPENDENT DETAILED REVIEW OF ANY FINANCIAL REPORTS PROVIDED BY THE
8 ASSOCIATION'S MANAGING AGENT, CERTIFIED PUBLIC ACCOUNTANT, OR FINANCIAL
9 INSTITUTIONS, TO VALIDATE THAT ONLY AUTHORIZED AND APPROPRIATE EXPENDITURES
10 HAVE BEEN WITHDRAWN FROM ASSOCIATION ACCOUNTS. ANY DISCREPANCIES OR CONCERNS
11 IDENTIFIED SHALL BE INVESTIGATED AND RESOLVED BEFORE THE APPROVAL OF THE
12 FINANCIAL REPORTS BY THE BOARD OF DIRECTORS.

13 (g) ALL ASSOCIATION'S FUNDS SHALL BE DEPOSITED IN ACCOUNTS ESTABLISHED
14 IN THE ASSOCIATION'S NAME. THE ASSOCIATION SHALL RETAIN CONTROL OVER ALL
15 ASSOCIATION ACCOUNTS, AND AT LEAST TWO CURRENT BOARD MEMBERS SHALL HAVE
16 SIGNATURE AUTHORITY OVER THOSE ACCOUNTS. THE ASSOCIATION MAY ASSIGN DEPOSIT
17 AND WITHDRAWAL AUTHORITY TO A DESIGNATED MANAGING AGENT OR CERTIFIED PUBLIC
18 ACCOUNTANT SUBJECT TO THE OVERSIGHT OF THE ASSOCIATION'S BOARD OF DIRECTORS.

19 4. IF AUTHORIZED IN THE DECLARATION, THE ASSOCIATION MAY ESTABLISH
20 AND FUND THE SPECIFIED RESERVE ACCOUNTS, HOWEVER DENOMINATED, NECESSARY TO
21 ADDRESS LONG-TERM CAPITAL IMPROVEMENTS OR MAJOR MAINTENANCE OF THE COMMON
22 ELEMENTS OR FOR ANY OTHER PURPOSE SPECIFIED.

23 (a) ANY EXPENDITURES OR WITHDRAWALS FROM DECLARATION AUTHORIZED
24 RESERVE ACCOUNTS SHALL BE REASONABLY RELATED TO, AND LIMITED TO, THE
25 DECLARATION'S AUTHORIZED PURPOSE FOR THAT ACCOUNT, AND THE UNIT OWNERS'
26 REASONABLE EXPECTATIONS, FOR THE USE OF THOSE FUNDS.

27 E. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS TO THE
28 CONTRARY, IF THE BOARD OF DIRECTORS VOTES TO APPROVE A SPECIAL ASSESSMENT
29 HOWEVER DENOMINATED OR TO SECURE FINANCING FOR ANY REASON THAT ASSIGNS
30 FUTURE REVENUES OR CREATES A SECURITY INTEREST IN THE COMMON ELEMENTS, THAT
31 SPECIAL ASSESSMENT OR FINANCING SHALL BE FIRST RATIFIED BY THE AFFIRMATIVE
32 VOTE OF FIFTY-FIVE PERCENT OF ALL ALLOCATED VOTES IN THE CONDOMINIUM, PRIOR
33 TO THE APPLICATION OF THE ASSESSMENT OR COMMITMENT TO THE FINANCING.

34 F. ANY ASSESSMENT APPLIED, IN VIOLATION OF SUBSECTIONS D OR E OF THIS
35 SECTION, IS INVALID AND UNENFORCEABLE AS A MATTER OF LAW. ADDITIONALLY, ANY
36 VIOLATION OF THE REQUIREMENTS OF SUBSECTIONS D AND E OF THIS SECTION MAY
37 CONSTITUTE A BREACH OF DUTY BY THE BOARD OF DIRECTORS.

38 **E G.** The declaration may provide for a period of declarant control
39 of the association, during which period a declarant or persons designated
40 by the declarant may appoint and remove the officers and members of the
41 board of directors. Regardless of the period provided in the declaration,
42 a period of declarant control terminates not later than the earlier of:

43 1. Ninety days after conveyance of seventy-five percent of the units
44 that may be created to unit owners other than a declarant.

45 2. Four years after all declarants have ceased to offer units for sale
46 in the ordinary course of business.

47 F. A declarant may voluntarily surrender the right to appoint and
48 remove officers and members of the board of directors before termination of
49 the period prescribed in subsection E of this section, but in that event
50 the declarant may require, for the duration of the period of declarant.
51 control, that specified actions of the association or board of directors,
52 as described in a recorded instrument executed by the declarant, be approved
53 by the declarant before they become effective.

54 **G I.** Not later than the termination of any period of declarant control
55 the unit owners shall elect a board of directors of at least three members,
56 at least a majority of whom must be unit owners. The board of directors

Fiscal Responsibility Common Interest Communities

1 shall elect the officers. The board members and officers shall take office
2 on election.

3 **H J.** Notwithstanding any provision of the declaration or bylaws to
4 the contrary, all of the following apply to a meeting at which a member of
5 the board of directors, other than a member appointed by the declarant, is
6 proposed to be removed from the board of directors:

7 1. The unit owners who are eligible to vote at the time of the meeting
8 may remove any member of the board of directors, other than a member
9 appointed by the declarant, by a majority vote of those voting on the matter
10 at a meeting of the unit owners.

11 2. The meeting of the unit owners shall be called pursuant to this
12 section and action may be taken only if a quorum is present.

13 3. The unit owners may remove any member of the board of directors
14 with or without cause, other than a member appointed by the declarant.

15 4. For purposes of calling for removal of a member of the board of
16 directors, other than a member appointed by the declarant, the following
17 apply:

18 (a) In an association with one thousand or fewer members, on receipt
19 of a petition that calls for removal of a member of the board of directors
20 and that is signed by the number of persons who are eligible to vote in the
21 association at the time the person signs the petition equal to at least
22 twenty-five percent of the votes in the association or by the number of
23 persons who are eligible to vote in the association at the time the person
24 signs the petition equal to at least one hundred votes in the association,
25 whichever is less, the board shall call and provide written notice of a
26 special meeting of the association as prescribed by section 33-1248,
27 subsection B.

28 (b) Notwithstanding section 33-1248, subsection B, in an association
29 with more than one thousand members, on receipt of a petition that calls
30 for removal of a member of the board of directors and that is signed by the
31 number of persons who are eligible to vote in the association at the time
32 the person signs the petition equal to at least ten percent of the votes in
33 the association or by the number of persons who are eligible to vote in the
34 association at the time the person signs the petition equal to at least one
35 thousand votes in the association, whichever is less, the board shall call
36 and provide written notice of a special meeting of the association. The
37 board shall provide written notice of a special meeting as prescribed by
38 section 33-1248, subsection B.

39 (c) The special meeting shall be called, noticed and held within
40 thirty days after receipt of the petition.

41 (d) If all of the requirements of this section for calling a special
42 meeting are met and the board of directors fails to call, notice, and hold
43 a special meeting within thirty days after receipt of the petition, the
44 members of the board of directors are deemed removed from office effective
45 at midnight of the thirty-first day.

46 (e) For purposes of a special meeting called pursuant to this
47 subsection, a quorum is present if the number of owners who are eligible to
48 vote in the association at the time the person attends the meeting equal to
49 at least twenty percent of the votes of the association or the number of
50 persons who are eligible to vote in the association at the time the person
51 attends the meeting equal to at least one thousand votes, whichever is less,
52 is present at the meeting in person or as otherwise allowed by law.

53 (f) If a civil action is filed regarding the removal of a board member,
54 the prevailing party in the civil action shall be awarded its reasonable
55 attorney fees and costs.

Fiscal Responsibility Common Interest Communities

(g) The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors and any election or other action taken for that director's replacement for at least one year after the date of the special meeting and shall allow members to inspect those documents and records pursuant to section 33-1258.

(h) A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.

5. On removal of at least one but fewer than a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, the vacancies shall be filled as provided in the condominium documents.

6. On removal of a majority of the members of the board of directors at a special meeting of the membership called pursuant to this subsection, or if the condominium documents do not provide a method for filling board vacancies, the association shall hold an election for the replacement of the removed directors at a separate meeting of the members of the association that is held not later than thirty days after the meeting at which the members of the board of directors were removed.

7. A member of the board of directors who is removed pursuant to this subsection is not eligible to serve on the board of directors again until after the expiration of the removed board member's term of office, unless the condominium documents specifically provide for a longer period of ineligibility.

K. For an association in which board members are elected from separately designated voting districts, a member of the board of directors, other than a member appointed by the declarant, may be removed only by a vote of the members from that voting district, and only the members from that voting district are eligible to vote on the matter or be counted for purposes of determining a quorum.

L. Unless any provision in the condominium documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association's fiscal year and shall be made available on request to the unit owners within thirty days after its completion.

M. This section does not apply to timeshare plans or associations, or the period of declarant control under timeshare instruments, that are subject to chapter 20 of this title.

33-1254. Surplus monies

~~Unless otherwise provided in the declaration~~ NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS TO THE CONTRARY, any surplus monies of the ~~association~~ ASSOCIATION'S OPERATING ACCOUNT remaining after payment of or provision for common expenses and any prepayment of reserves shall be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments. THE ASSOCIATION MAY ASK THE UNIT OWNERS TO WAIVE THIS SURPLUS FUNDS PROVISION, AND INSTEAD, APPLY ANY SURPLUS FUNDS TO THE ASSOCIATION'S RESERVE ACCOUNTS, WITH A BALLOT MEASURE TO THAT EFFECT, TO BE APPROVED BY A SIMPLE MAJORITY OF THE OWNERS VOTING ON THE MEASURE ANNUALLY.

Fiscal Responsibility Common Interest Communities

33-1803. ~~Assessment limitation~~ FISCAL RESPONSIBILITY;
~~penalties; notice to member of violation~~

A. AFTER TERMINATION OF THE PERIOD OF DECLARANT CONTROL, THE ASSOCIATION'S BOARD OF DIRECTORS HAS A DUTY TO DEVELOP, OR HAVE DEVELOPED, AN ANNUAL OPERATING BUDGET FOR THE FISCAL YEAR BASED ON A REASONABLY PRUDENT AND GOOD FAITH ESTIMATE OF THE COMMON EXPENSES NECESSARY TO SATISFY THEIR OBLIGATIONS TO THE MEMBERS TO MANAGE COST, TO PROVIDE FOR THE ANNUAL MAINTENANCE AND OPERATION OF, AND INSURANCE ON THE COMMON PROPERTY, THE MAINTENANCE OF PROPERTY OR SERVICES REQUIRED BY THE DECLARATION, THE REASONABLE, AND PRUDENT ADMINISTRATIVE AND OPERATING EXPENSES OF THE ASSOCIATION, AND TO PROVIDE FOR APPROPRIATE ALLOCATIONS TO RESERVE ACCOUNTS. A COPY OF ANY PROPOSED BUDGET AND CURRENT FISCAL YEAR'S BUDGET, OR BUDGET COMPARISON REPORT, IF AVAILABLE, SHALL BE EITHER POSTED ON A COMMUNITY WEBSITE OR MADE OTHERWISE REASONABLY AVAILABLE FOR MEMBER ACCESS AND REVIEW, WITHOUT CHARGE, AT LEAST FOURTY-EIGHT HOURS BEFORE THE BOARD MEETING, AT WHICH THE BOARD WILL CONSIDER THE APPROVAL OF THAT BUDGET.

~~A 1. Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty percent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association.~~ NOTWITHSTANDING ANY PROVISION OF THE COMMUNITY DOCUMENTS TO THE CONTRARY, FOR PLANNED COMMUNITIES OF FIFTY LOTS OR GREATER. THE ASSOCIATION SHALL NOT IMPOSE AN ASSESSMENT, EXCLUDING ANY INSTALLMENT PAYMENTS FOR FINANCING APPROVED PURSUANT TO SUBSECTION B OF THIS SECTION, OF FIVE PERCENT OR GREATER OVER THE PRIOR YEAR'S INITIAL ANNUAL ASSESSMENT, WITHOUT THE PRIOR RATIFICATION BY THE MEMBERS.

(a) IF NECESSARY, MEMBER RADIFICATION SHALL BE ESTABLISHED BY THE AFFIRMATIVE VOTE OF A SIMPLE MAJORITY OF THE MEMBERS VOTING ON THE BALLOT INITIATIVE, WITHOUT THE APPLICATION OF QUORUM REQUIREMENTS, CALLED FOR THAT PURPOSE, PURSUANT TO SECTION 33-1812. THE BALLOT QUESTION MAY BE INCLUDED ON THE BALLOT FOR ANY OTHER ANNUAL OR SPECIAL MEETING OF THE MEMBERS, OR PROCESSED SEPARATELY.

(b) IF MEMBER RATIFICATION FAILS, THE ASSOCIATION MAY APPROVE AND ASSESS A FISCALLY PRUDENT BUDGET THAT DOES NOT REQUIRE MEMBER RATIFICATION.

2. THE ASSOCIATION BOARD OF DIRECTORS SHALL MANAGE THE ASSOCIATION'S EXPENSES WITHIN THE OVERALL APPROVED BUDGET FOR THE FISCAL YEAR.

(a) IF UNANTICIPATED AND UNBUDGETED ASSOCIATION EXPENSES BECOME NECESSARY, THAT CANNOT BE ACCOMMODATED WITHIN THE CURRENT APPROVED BUDGET, THE ASSOCIATION MAY DEVELOP AND APPROVE AN AMENDMENT TO THE ANNUAL BUDGET AND RESULTANT SUPPLEMENTAL ASSESSMENT, AS APPROPRIATE. SUCH AMENDMENT AND SUPPLEMENTAL ASSESSMENTS SHALL BE RATIFIED BY THE MEMBERS PURSUANT TO THIS SUBSECTION, PRIOR TO INCURRING THE EXPENSES OR APPLYING THE ASSESSMENT. THE ASSOCIATION'S BUDGETED ALLOCATION TO RESERVE ACCOUNTS SHALL BE CONSIDERED COMMITTED EXPENSES, AND SHALL NOT BE REDUCED TO ADDRESS UNBUDGETED EXPENSES WITHOUT THE PRIOR APPROVAL OF THE MEMBERS.

(b) NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS TO THE CONTRARY, ANY SURPLUS MONIES IN THE ASSOCIATION'S OPERATING ACCOUNT REMAINING AFTER PAYMENT OF OR PROVISION FOR COMMON EXPENSES AND ANY PREPAYMENT OF RESERVES SHALL BE PAID TO THE MEMBERS IN PROPORTION TO THEIR COMMON EXPENSE LIABILITIES OR CREDITED TO THEM TO REDUCE THEIR FUTURE COMMON EXPENSE ASSESSMENTS. THE ASSOCIATION MAY ASK THE MEMBERS TO WAIVE THIS SURPLUS FUNDS PROVISION, AND INSTEAD, APPLY ANY SURPLUS FUNDS TO THE ASSOCIATION'S RESERVE ACCOUNTS, WITH A BALLOT MEASURE TO THAT EFFECT, TO BE APPROVED BY A SIMPLE MAJORITY OF THE MEMBERS VOTING ON THE MEASURE ANNUALLY.

Fiscal Responsibility Common Interest Communities

1 3. IT IS THE DUTY OF THE BOARD OF DIRECTORS TO ACT IN THE BEST INTEREST
2 OF THE ASSOCIATION AND THE MEMBERS AS A WHOLE, AND TO ENSURE THAT REASONABLE
3 PRUDENCY IS APPLIED TO THE COMMITMENT OF, PROTECTION, AND EXPENDITURE OF
4 ASSOCIATION FUNDS. TO THAT END, THE ASSOCIATION'S BOARD OF DIRECTORS SHALL:

5 (a) CONSIDER THIS DUTY IN THE SOLICITATION AND REVIEW OF COMPETITIVE
6 BID PROPOSALS, AND THE NEGOTIATION AND AWARD OF ANY CONTRACT FOR GOODS OR
7 SERVICES.

8 (b) ANY PROVISION IN A CONTRACT BETWEEN THE ASSOCIATION AND A VENDOR
9 THAT REQUIRES ANY OF THE FOLLOWING IS UNCONSCIONABLE AND WOULD CONSTITUTE A
10 BREACH OF DUTY BY THE BOARD OF DIRECTORS TO THE ASSOCIATION AND THEIR
11 OBLIGATIONS TO THE MEMBERS:

12 (i) REQUIRES THE ASSOCIATION TO INDEMNIFY OR PROVIDE FOR THE LEGAL
13 DEFENSE FOR THE VENDOR FOR THE ACTIONS OF THE VENDOR OR ITS EMPLOYEES IN
14 PERFORMANCE OF THE CONTRACT, WITHOUT THE EXPLICIT PRIOR AUTHORIZATION BY
15 THE BOARD OF DIRECTORS FOR THOSE ACTIONS.

16 (ii) OTHER THAN FOR FINANCING CONTRACTS WITH FINANCIAL INSTITUTIONS,
17 REQUIRES THE ASSOCIATION TO LIST THE VENDOR AS A PAYEE ON THE ASSOCIATION'S
18 INSURANCE POLICIES.

19 (iii) REQUIRES THE ASSOCIATION TO PAY FOR GOODS OR SERVICES NOT
20 PERFORMED OR SUPPLIED BY THE VENDOR, OR TO PAY THE VENDOR IRRESPECTIVE OF
21 THE PERFORMANCE EXPECTATION OR REQUIREMENTS OF THE CONTRACT.

22 (iv) THAT PREVENTS THE ASSOCIATION FROM TERMINATING THE CONTRACT FOR
23 CAUSE, OR REQUIRES TERMINATION PENALTY PAYMENTS THAT ARE EXCESSIVE OR
24 UNREASONABLE TO THE INTEREST OF THE ASSOCIATION OR ITS MEMBERS AS A WHOLE.

25 (v) REQUIRES ANY OTHER SIMILAR PROVISION THAT IS UNCONSCIONABLE TO
26 THE INTERESTS OF THE ASSOCIATION AND THE MEMBERS AS A WHOLE, OR VIOLATES A
27 PROVISION OF THIS CHAPTER.

28 (c) THE ASSOCIATION SHALL AT THE NEXT CONTRACT RENEWAL OR WITHIN SIX
29 MONTHS OF THE EFFECTIVE DATE OF THIS ACT, WHICHEVER OCCURS FIRST, RENEGOTIATE
30 ANY CONTRACT INCONSISTENT WITH THE EXPECTATIONS OF THIS SUBSECTION TO
31 REFLECT THE DUTY REQUIRED BY THE BOARD OF DIRECTORS. IF THE VENDOR REFUSES
32 TO RENEGOTIATE THE CONTRACT IN GOOD FAITH, THE ASSOCIATION SHALL TERMINATE
33 THAT CONTRACT WITHOUT PENALTY AS A MATTER OF LAW.

34 (d) THE BOARD OF DIRECTORS SHALL PROVIDE OVERSIGHT OVER EVERY
35 CONTRACTOR PROVIDING SERVICES TO THE ASSOCIATION, AND SHALL ENSURE THAT THE
36 SERVICES OF THE CONTRACTOR COMPLY WITH THIS CHAPTER, MEET THE EXPECTATIONS
37 OF THE ASSOCIATION, AND PROVIDE VALUE TO THE ASSOCIATION AND MEMBERS,
38 COMMENSURATE WITH THE COST OF SERVICES.

39 (e) NO INDIVIDUAL BOARD MEMBER SHALL AUTHORIZE THE EXPENDITURE OF
40 ASSOCIATION FUNDS WITHOUT THE PRIOR ASSIGNMENT OF THAT AUTHORITY BY THE
41 BOARD OF DIRECTORS AS A WHOLE.

42 (f) THE ASSOCIATION'S BOARD OF DIRECTORS SHALL PROVIDE FOR AN
43 INDEPENDENT DETAILED REVIEW OF ANY FINANCIAL REPORTS PROVIDED BY THE
44 ASSOCIATION'S MANAGING AGENT, CERTIFIED PUBLIC ACCOUNTANT, OR FINANCIAL
45 INSTITUTIONS, TO VALIDATE THAT ONLY AUTHORIZED AND APPROPRIATE EXPENDITURES
46 HAVE BEEN WITHDRAWN FROM ASSOCIATION ACCOUNTS. ANY DISCREPANCIES OR CONCERNS
47 IDENTIFIED SHALL BE INVESTIGATED AND RESOLVED BEFORE THE APPROVAL OF THE
48 FINANCIAL REPORTS BY THE BOARD OF DIRECTORS.

49 (g) ALL ASSOCIATION'S FUNDS SHALL BE DEPOSITED IN ACCOUNTS ESTABLISHED
50 IN THE ASSOCIATION'S NAME. THE ASSOCIATION SHALL RETAIN CONTROL OVER ALL
51 ASSOCIATION ACCOUNTS, AND AT LEAST TWO CURRENT BOARD MEMBERS SHALL HAVE
52 SIGNATURE AUTHORITY OVER THOSE ACCOUNTS. THE ASSOCIATION MAY ASSIGN DEPOSIT
53 AND WITHDRAWAL AUTHORITY TO A DESIGNATED MANAGING AGENT OR CERTIFIED PUBLIC
54 ACCOUNTANT, SUBJECT TO THE OVERSIGHT OF THE ASSOCIATION'S BOARD OF
55 DIRECTORS.

Fiscal Responsibility Common Interest Communities

4. IF AUTHORIZED IN THE DECLARATION, THE ASSOCIATION MAY ESTABLISH AND FUND THE SPECIFIED RESERVE ACCOUNTS, HOWEVER DENOMINATED, NECESSARY TO ADDRESS LONG-TERM CAPITAL IMPROVEMENTS OR MAJOR MAINTENANCE OF THE COMMON PROPERTY OR FOR ANY OTHER PURPOSE SPECIFIED.

(a) ANY EXPENDITURES OR WITHDRAWALS FROM DECLARATION AUTHORIZED RESERVE ACCOUNTS SHALL BE REASONABLY RELATED TO, AND LIMITED TO, THE DECLARATION'S AUTHORIZED PURPOSE FOR THAT ACCOUNT, AND THE MEMBERS' REASONABLE EXPECTATIONS, FOR THE USE OF THOSE FUNDS.

B. NOTWITHSTANDING ANY PROVISION OF THE COMMUNITY DOCUMENTS TO THE CONTRARY, IF THE BOARD OF DIRECTORS VOTES TO APPROVE A SPECIAL ASSESSMENT HOWEVER DENOMINATED OR TO SECURE FINANCING FOR ANY REASON, THAT ASSIGNS FUTURE REVENUES OR CREATES A SECURITY INTEREST IN COMMON PROPERTY, THAT SPECIAL ASSESSMENT OR FINANCING SHALL BE FIRST RATIFIED BY THE AFFIRMATIVE VOTE OF FIFTY-FIVE PERCENT OF ALL ALLOCATED VOTES IN THE ASSOCIATION, PRIOR TO THE APPLICATION OF THE ASSESSMENT OR THE COMMITMENT TO THE FINANCING.

C. ANY ASSESSMENT APPLIED, IN VIOLATION OF SUBSECTIONS A OR B OF THIS SECTION, IS INVALID AND UNENFORCEABLE AS A MATTER OF LAW. ADDITIONALLY, ANY VIOLATION OF THE REQUIREMENTS OF SUBSECTIONS D AND E OF THIS SECTION MAY CONSTITUTE A BREACH OF DUTY BY THE BOARD OF DIRECTORS.

D. Unless reserved to the members of the association, the board of directors may impose reasonable charges for the late payment of assessments. A payment by a member is deemed late if it is unpaid fifteen or more days after its due date, unless the community documents provide for a longer period. Charges for the late payment of assessments are limited to the greater of fifteen dollars or ten percent of the amount of the unpaid assessment and may be imposed only after the association has provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date. Any monies paid by the member for an unpaid assessment shall be applied first to the principal amount unpaid and then to the interest accrued.

B E. After notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. Notwithstanding any provision in the community documents, the board of directors shall not impose a charge for a late payment of a penalty that exceeds the greater of fifteen dollars or ten percent of the amount of the unpaid penalty. A payment is deemed late if it is unpaid fifteen or more days after its due date, unless the declaration, bylaws or rules of the association provide for a longer period. Any monies paid by a member for an unpaid penalty shall be applied first to the principal amount unpaid and then to the interest accrued. Notice pursuant to this subsection shall include information pertaining to the manner in which the penalty shall be enforced.

C F. A member who receives a written notice that the condition of the property owned by the member is in violation of the community documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within twenty-one calendar days after the date of the notice. The response shall be sent to the address identified in the notice.

D G. Within ten business days after receipt of the certified mail containing response from the member, the association shall respond to the member with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the community documents that has allegedly been violated.

2. The date of the violation or the date the violation was observed.

Fiscal Responsibility Common Interest Communities

3. The first and last name of the person or persons who observed the violation.

4. The process the member must follow to contest the notice.

E H. Unless the information required in subsection **D G**, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the community documents, including the collection of attorney fees, before or during the time prescribed by subsection **D G** of this section regarding the exchange of information between the association and the member and shall give the member written notice of the member's option to petition for an administrative hearing on the matter in the state real estate department pursuant to section 32-2199.01. At any time before or after completion of the exchange of information pursuant to this section, the member may petition for a hearing pursuant to section 32-2199.01 if the dispute is within the jurisdiction of the state real estate department as prescribed in section 32-2199.01.

Legislative Intent

The Legislature, in this act, establishes a consistent minimum standard for the fiscal responsibility of the association to raise and manage the funds necessary to support its obligations under the declaration, including maintaining the common property and providing for the administrative and operating costs prudently required and essential for the operation of the association. Budget ratification requirements are established to allow associations reasonable latitude to address reasonable cost increases on a year-over-year basis without requiring ratification, while providing for checks and balances over unrestrained assessment increases. The ratification process is the least restrictive approval requirement, and it should not become an obstacle to raising reasonably prudent and rational budgets.

The act protects the reserve accounts or the annual allocations to those reserve accounts from being drained or used for unbudgeted or unrelated expenses, ensuring that when the association needs capital improvements or major maintenance, the funds set aside over the years for those purposes are still available for use.

The act establishes simple, common-sense expectations for the board of directors to fulfill their fiscal responsibility to the association by contracting for goods and services and providing independent oversight of the association's finances.

The act provides for a significant reduction in the typical owner approval for special assessments from the usual values of 67% to 75% of all votes to a simple super majority of 55%. This will make it easier for the associations to address long-term maintenance needs when insufficient reserve funds are available, while ensuring that a supermajority of the owners approve the expenditure.

This act establishes that excess operating funds available at the end of the fiscal year are the homeowners' money, not the association's, and will either be credited to offset future assessments or applied to reserves at the discretion of the homeowners.

The provisions of this act are consistent with the principles of Common law as established in the Restatement of Law Property Servitudes sections 6.4, 6.5, 6.6, and 6.12, and the IRS tax code applicable to these communities, and existing case law.