

Let us begin by apologizing for the long length of this eBlast. These communications normally come from either the board or the property manager to pass on timely and important information. In this eBlast, the board is responding to another email that has been circling in the community. You may or may not have received the latest email that is circulating, so it is being pasted at the end of page 2 of this eBlast.

Why are we using the eBlast to respond? We have responded to similar emails in open board meetings. The downside of the open meeting response format is only about 20-30 people attend and the majority of homeowners are left out of the loop. How do we reach that majority? Some of the answers appear in the numerous reports that come from the board every month. We hope that more people are reading them now that the reports are attached with the meeting agenda. They have been attached to the minutes and posted on the website since the beginning of the year. Still, are we reaching everyone? That is why this eBlast is being used for this communication.

The board members are not politicians, but are owners who volunteer their time and do the best that we can. We rely on the property manager, and past board members for their experience and expertise. When needed, we search out legal advice. Input from employees is always welcome, even if they are not at the meeting. A new year brought a new property manager. That changed the complexion of the board meeting. The meetings were moved to a business day rather than Saturday and the property manager does attend the meeting in person. The Zoom meeting now seems to be standard business practice. The management has also asked that we try to keep the length of the board meeting to one hour. As such, the meeting is devoted to agenda items that need a board response. The caretaker report is still being submitted, but is posted on the association website where it can be viewed by the membership.

Granted, those that have regular jobs may not be available to join us in the meeting time slot. However, we have implemented several initiatives to keep you informed. The committee reports are submitted in writing. As of June, the various reports are being attached to the eBlast with the agenda so all have the opportunity to review them prior to the meeting. Members are asked to email their thoughts on a topic prior to the meeting, but time is still taken for owner comments on agenda items only before the board discussion takes place. Eblasts are also being used to get your opinions prior to the business meeting. A board Facebook page was created so that you have an outlet for questions. You can submit an email to the property manager on any other issue. The board can add it to an upcoming meeting agenda if warranted.

Many questions have been asked about the roles in conducting our business. The board gets its responsibility from the documents with the exception of certain responsibilities that the documents reserves for the members. In addition, items not covered in the documents should go back to the members who have the means to vote a change to the documents. The board carries out its responsibility with the guidance of the licensed property manager's expertise and experience. We also appreciate the input from prior board members who have been through this before. The duties of the caretaker are set by the board.

In the May board meeting it was made publicly known by an owner attending the Zoom meeting that our caretaker is unhappy and complaining to anyone who would listen. Please note, at no time did the caretaker speak to the current board or property manager. The same thing was happening last year. More than one board member and the property manager reached out to him at various times prior to that May meeting to let him know the proper way of handling his concerns. Moving forward, we would appreciate if you would refer any employee that complains to you to the property manager.

They will handle the matter or refer it onto the board. Any other method of handling complaints is counterproductive. Also, hearing just one side of the story is counterproductive. Not only are you not getting complete facts, but it is causing a division within the community.

So why does the board handle employee matters in a closed session? Those of you who read the June President's report know that this is mandated by Florida State Statute. For your convenience, that report is being attached to this eBlast (see page 3). Executive sessions are nothing new. They started when Sunstate Management came onboard, so that the board would be in compliance with the law.

It has been frustrating having compliance to the law repeatedly raised as an objection. So much so that the board reached out to the association attorney and the employment law attorney who advised that personal employee matters not be discussed in open meetings. Any employee complaint of a personal nature that the property manager or the board receives stays between the complaining owner, the board, the property manager, and the employee.

Let's expand on the role of the caretaker. The Hideaway Bay Caretaker's general responsibility is to ensure a safe, well-maintained HBBC environment. He works at the direction of the property manager who in turn work at the direction of the board. Management should have a true partnership with the caretaker. In order to foster teamwork or partnership, it is important the caretaker report to the property manager and if needed the property manager will seek guidance from the board.

A Florida licensed Community Association Manager (CAM) is required when managing a community association of more than ten units and/or an annual budget of over \$100,000 per year. The CAM must pass an exam and attend continuing education classes on a regular basis. HBBC has two licensed CAMs with Grande Property Services. We are not looking to take away responsibilities from properly licensed professionals and turn it over to an unlicensed employee. That includes services like accounting, banking, and communicating with the members. The property manager has professional and contractual responsibility to make sure that the everyone is staying in their lane. Ultimately, there are enough duties for our staff without reassigning to him the responsibilities of the management group.

The board at different times has been accused of being self-serving and acting in their own best interest. The board does have a fiduciary responsibility to all the members. That is a tough order to fill since HBBC has always dealt with the divisions that exist in our community. There is a divide between the owners that rent and the owners who don't rent. There is the divide between the owners that have homes on LGI outside of HBBC and the owners that don't and don't feel that they should subsidize the dual owners for their access and cargo needs while in residence in their island homes. There are the people that are in residence for the majority of the year and those that are here for much shorter periods. There are the young people who want to have fun and the elderly that want quiet. There are the dog owners and those who don't like pets. There are the people that use the boat docks and people that don't. We are a diverse group. Running this association is no small task and no one is entitled to more than the rest. Keep in mind that board duties are done on a voluntary basis. At the very least, the board and its committees are entitled to civility. The board does not "target" individuals for speaking their mind. Not everyone is going to get everything they want in this diverse community.

Here is the email that prompted this response:

Hello!

I have been tasked with gathering like-minded owners who support other owners who asked questions of OUR hoa board. After much confusion, I found that only ONE owner needed to send

a certified letter. However, out of fear, many people have not done this. While not in initial meeting, I am taking charge to get some signatures to send on this list of questions for OUR board. Please review.

If you would like to sign or have your signature recorded electronically, please say so. Every signature helps get the simple questions answered and move our community forward. If you know of other neighbors that would like to sign, please let me know.

Thank you,

Jennifer, G6

The questions that were posed appear below and will be answered to the best of our ability.

1. Why are there so many closed Board meetings happening this year?
Please read the comments above and in the attached June President's Report (page 3)
2. How many complaints against the caretaker/captains have been submitted this year by owners?
Personnel matters are not open for public discussion per Florida Statute and per the advise of the association attorneys.
3. How many complaints were by letter/email & how many were verbal?
Personnel matters are not open for public discussion per Florida Statute and per the advise of the association attorneys.
4. Have these complaints been verified (both accuser and the accused talked with) by the property management team prior to action by the Board?
The property manager does take the lead securing incident reports.
5. Why has the role of the Caretaker & Property Manager been diminished this year?
The role of the caretaker and property manager has not been diminished this year. If this answer is not satisfactory, then please be more specific. Also, please be sure to include the source of your information. The matter of the caretaker not attending board meetings has already been addressed.
6. Is the property management company scheduling regular visits to the island?
The property manager schedules time with the employees as they see fit. Grande Property Services began their service to HBBC on January 1, 2022. They have been observing the operation and will make adjustments as they see fit or as they are instructed by the board.
7. Is the property management company available to talk with homeowners during site visits?
The property manager provides phone numbers and email addresses on the association website. The manager is free to handle situations in the best manner that they see fit.
8. Why is the caretaker no longer present to answer questions at the Board meetings?
That answer was already provided above.
9. Why are owners being encouraged to interact with HBBC vendors, when that is the duty of the caretakers? (for example - owner being voted to talk with the Lake Doctor vs the Caretaker performing his duty)
Committees carry out many duties for the association on a volunteer basis, and with direction and approval from the board. Lake Doctors was consulted specifically about the clam problem in the bay side pond. The caretaker did reach out to the Lake Doctor. Below is the what he wrote in the 1/7/2022 Weekly Report:
I spoke to the Lake Doctor about the clams in the fountains. There is nothing they can do. They suggested that with the current system, it will always be a problem. They can install a floating system for approximately \$4000.00. I found floating systems on Amazon for under \$2000.00.

Any floating system will sink when enough clams attach. The problem persisted and further discussion was needed. The recent contact with the Lake Doctor resulted in a copper-based solution being added to the pond. The results were positive.

10. Shouldn't the caretaker be giving an update on the Septic System status, not the Board President?

The caretaker should be knowledgeable in the operation of the sewer system to provide the backup needed by NES, the sewer plant operator. He is free to include such matter in his report. The board does not influence or edit his reports. The board is responsible for financing, long range planning, hiring of the sewer operator, and permitting of the sewer system. Ultimately, the board has a fiduciary liability in all things. They are not relieved of that liability because an employee was assigned a responsibility.

11. Why did we spend the money to put cameras on the property if the caretaker/ captains are not allowed to monitor them?

The camera policy was written by the association attorney. It is not monitored on an ongoing basis. The employees, just like any owner, can request footage to be reviewed by the property manager. Please note that a copy of the camera policy has already been sent out as an eBlast for owner comment and will be officially mailed out before the final draft is adopted by the board. The captains will have access to the camera on the mainland side by the gazebo. That camera was placed there at the request of the caretaker. He stated it would be beneficial in helping captains see if carts were needed or during slow time of the year to see if the last run was needed.

12. How is a Board member who is not on the island full time supposed to be able to identify persons on the video feed without knowledge of who is on the island?

The camera policy drafted by the association attorney will direct how any video feed is accessed. See the answer to question 11 above.

13. Why are the committee reports not being sent out along with the meeting agenda?

The June committee reports were sent with the meeting agenda by the property manager.

14. Why can't homeowners ask a question or comment on agenda items prior to a vote?

Owners are encouraged to submit an email prior to the board meeting. Also, owner comment is taken on agenda items only prior to the business discussion.

15. Why wasn't the financial information available for the last Board meeting?

Do you mean the month end or the year end? The month end reports are compiled by the property manager and are discussed in the Treasurer report only after they are received from Grande Property Services. The 2021 year end is being audited by a CPA firm. The audit was received in early July and will be acted on by the board in the July meeting.

16. Is HBBC operating at a deficit currently?

The association is not insolvent. It is likely that there will be a deficit at the end of 2022.

17. What is the total cost of the new insurance premiums?

Insurance policies do not have one common expiration date. Also, terms are being renegotiated to improve the coverage and pricing challenges resulting from the current insurance crisis. Please visit the association website and review the President's Report attached to the minutes for more details on insurance matters.

18. What is the difference between the budgeted costs and the increased costs?

The month end financial on the association website showed the actual and budgeted expense for each operating category.

19. How are we going to pay for the increased premiums?

The association hasn't pre-paid the premium one lump payment since about 2016. We are financing the premium and incurring interest charges. The matter of insurance premiums will be reviewed once any renegotiation is completed.

20. Will there be an assessment?

Please review to the information provided in the June President's Report (page 4).

21. Why wasn't this discussed prior to the vote?

What is the source of your information? There has been no formal discussion on an assessment let alone a vote. The owners will receive a written notice of any board meeting that discusses an assessment. We will follow the same process as we have for the past assessments.

22. What liability does HBBC assume for the uninsured buildings?

Any damage not covered or excluded by the insurance policy is the responsibility of the membership collectively. The building reserves will be used for immediate repairs. A reserve study is being undertaken this year. It is being done by Global Solutions. Reserves and maintenance schedules will be review when the study is complete.

23. Has the HBBC lawyer been contacted about this issue?

About uninsured buildings? The association attorney's role would be to draft the assessment documents. There is no formal discussion of an assessment at this time, so the attorney has not been contacted.

24. Should owners in the uninsured buildings be allowed to rent out their units if their condo building does not have insurance?

The ability of an owner to rent their own unit is described in the association documents. Any change to the documents must be approved by the membership. Please note that Florida State Statute provides for a grandfathered status for current owners unless they give up their right by approving the change. The question is if such a change to the documents be pass if the owners that currently rent vote no and preserve their grandfather status? This is something that we need to consider before hiring an attorney to write the documents needed for the vote. A copy of the statute is attached to the eBlast. It should be noted that the reason for the uninsured buildings has been resolved and an amendment to add coverage for these buildings are being processed.

25. Is something happening to kill palm trees & other vegetation in the dunes? Besides being illegal, it is the only line of defense in a hurricane.

There is a disease that have taken many of our palms. Unfortunately, the disease is spread when the affected trees are not removed immediately.

President's Report

June 22, 2022

Proposed public sewer utility

- On June 7th, the Public Service Commission announced it **will not** be issuing the certificate of operation to Environmental Utilities LLC. Reasoning for the denial included the lack of need for the service, no requests for the service, overwhelming opposition from owners, and conflict with the Charlotte County Community Plan. Environmental Utilities has 30 days to appeal.

Insurance- We have made some progress on correcting the inadequacies of the 2022 insurance plan.

- Three H building units were removed from the list of units that were exceeding Citizens rental threshold. As such, Citizens added coverage for H building to the windstorm policy on 5/24/2022. The additional premium is \$29,787. There is still no windstorm coverage for buildings D, E, J, & K. It doesn't appear that there will be any options to secure wind coverage for them until the roof replacements are completed. The projected annual premium when all buildings are on the windstorm policy will be about \$323,300. Our annual budget for all of our insurance policies is \$310,541. I already have a plan working to try to find an insurance company to replace the Citizen's policy. This is an ongoing process, so all I can say is stay tuned...
- Time Insurance Agency secured a property (excluding windstorm) policy offer from Trisura Insurance Company. It covers all buildings except E, D, J & K. These buildings won't be added to that policy until the roofs are replaced. Coverage for those buildings will remain on the Landmark Insurance policy until it can be moved to Trisura. The rest of the buildings were moved to Trisura on 5/27/2022. The coverage is **tremendously improved** and we realized a substantial premium savings. Trisura's premium is \$33,609.25. It should be about \$52,000 when all the buildings are on it. Landmark was \$79,541.50. That is a savings of over \$27,000!
- We are still trying to replace the watercraft policy with something else that provides wind coverage. It has been submitted to three companies. Two have already declined and one is still pending a response. If that market doesn't offer coverage we need to go to plan C.
- The board chose not to renew the 5/31/2022 pollution liability policy offered by Atlas Insurance Agency because it did not cover the sewer plant. An application was submitted to secure pollution liability from other carriers. To date, terms are still being negotiated. It appears that HBBC has not had a pollution policy covering the sewer plant since 2018.
- The 6/10/2022 pollution liability renewal for the mainland fuel storage tank has been ordered from the insurance company. The premium is \$402.46.
- The association's crime coverage is being increased to \$1,000,000 instead of \$500,000. The additional premium is \$347.31. The board decided to raise the limit since the reserve account balance alone was over \$500,000 in April. The coverage protects both the operating and reserve account.

Insurance Claims

- We have not been contacted by FIGA on the outstanding claim against our Avatar Insurance Company policy. This is not surprising since their website shows that it may take years for the liquidation to be complete. I have had no success getting through on their phone lines. Please refer back to the May 2022 President's Report for more details.

Construction Update

- Painting update
 - Building G work is still in progress and should be finishing up any time now.
 - The caretaker complex will be the next building to be painted. It is part of the same contract as was building A, F, & G.
- Roofs D, E, J & K
 - Galloway Roofing reports that the shingles have arrived. The barge is reserved for 6/20. The work could begin as early as the next day. Please note that workers will be present on those roofs. Please close your blinds should you want privacy.
- Wifi- Joe Holme reports:
 - After one season there are 45 antennas online. The system, overall, is providing good coverage to over 550 simultaneous connections. Joe has 2 more booster antennas left for any dead spots. Anyone needing one should contact the Joe Holme.
 - He discovered some metal clips that are quickly corroding on our dish antennas and will be replacing them with UV protected plastic clips as he encounters them.
 - He has had major problems with G building. It keeps dropping and is causing him to come out repeatedly. He said that he is just going to replace all equipment at his expense. It may be faulty because of electricity and nearby interference.
 - Mesh booster antennas are \$115 if an owner wants to purchase and boost their interior coverage. Wireless installation is free. If they want it wired directly into their unit then there will be labor charge.
 - He is going to increase the speed to the island using dishes HBBC already owns. This will be done this summer. It will help accommodate more simultaneous users especially during winter by increasing capacity.
 - Ring cameras are appearing on the system. There are currently 14 in use.
- Cameras- Joe Holme reports that:
 - The 2 parking lot cameras and the 2 dock cameras are installed and recording.
 - Dock Cameras 3 and 4 are back ordered until June 16 and will be install upon arrival. The electrician did a good wiring job, so Joe can add the extra 2 cameras very quickly once they are received.
- Mainland dock header repair work should get started shortly. The dock will be closed for a few days during construction.
- Sewer Plant- On 6/5/2022, NES completed patching the tank leaks that the Department of Environmental Protection identified on it onsite inspection. This is only the minimal repairs needed to keep the September 2022 sewer plant permit renewal application on track. The engineer responded to DEP on the other deficiencies on 5/31/2022 inspection. Once the permit has been renewed we will have to deal with the actual repairs. We may get by with as little as \$30,000-\$60,000 in repairs for 2022, but we can expect to have other expensive repair to come in following years. We just have to wait for the DEP's reaction to the responses filed by the sewer plant operator and the engineer working with them before we have a better projection on the cost of the needed repairs.
- Scheduled Building Maintenance- At this time, no new projects are slated. The board has approved a reserve study to be conducted. Part of that study will identify what maintenance needs to be done and in what order. Grande Property Services is currently filling in the survey needed to begin the reserve study.

Other News:

- The County implemented burn ban was lifted on May 10, 2022. Remember, no open fires are allowed as per the HBBC Rules and Regulations.
- A comment was made by a homeowner at the last board meeting that Mike Barter is unhappy and is complaining to homeowners. The board and the property manager had NOT been approached by Mike. The board and management team has reached out to him. The property manager will set up a schedule of regular meetings to assist in proper communications and resolution of anything that needs attention.
- Another comment was received at the last board meeting about committees creating a liability risk for the association. Risk is ever present in any situation. It can only be managed. Toward that end, please know that the association liability insurance policies cover “volunteers” acting on the authority and on behalf of the association. The same goes for the workers compensation policy. Here is the wording from that policy.

An election has been made by or on behalf of each person named in the schedule to be subject to workers compensation law of the state named in the schedule.....Current board members and current members of the association while in the course of a volunteer activity directly benefiting the business of the named insured, and who were authorized by the current board members or the association's property management company.

The board thanks all of our committee members for their selfless work and contributions to our community!

- 2022 Annual Owner's Meeting—I just wanted to give you all a heads up that the December 2022 annual owner's meeting will be scheduled on a weekday. Our property management company does not schedule meetings on the weekend.
- Our board meetings are limited to agenda items only. The board has already provided ways for owner to get questions answered. We have established a Facebook group with the goal of giving immediate responses. It is harder to manage emailed questions. The problem with individual responses is that it doesn't communicate to a whole group. We will be considering ways to share the responses to those emails with all owners. Stay tuned. By the way, I hope that you find this monthly report informative! Here are a few answers to questions received recently:

What is an executive session of the board of directors?

An executive session held by the HBBC board of directors is **NOT** a “secret meeting”. It is held in accordance with the condominium law found in the Florida State Statutes. Some people might call this the sunshine law, but that law only applies to any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision. (Section 286.011, Florida Statutes).

Instead, the rule related to condominiums comes under Florida Condominium Act Section 718.112 (2) (c). It allows the board to hold a closed board meeting (where unit owners are not permitted to attend) in two situations. The first situation is a discussion regarding personnel matters. The second situation is a discussion of proposed or pending litigation.

Executive sessions are not new practice established by the current board. Past boards have regularly conducted executive sessions. It does not indicate any adverse partaking of the board. It could be something as simple as discussing raises or responding to employment related questions from an employee.

Will the HBBC Board be considering a special assessment some time in 2022?

It is highly likely. No such discussion has taken place so far. The owners that were here when the last assessment was levied will remember that a written notice must be mailed out before the board can discuss an assessment. That is state law and the board will abide by this law, just as we always have.

There is information that is needed before we can responsibly take on the possibility of an assessment.

- The CPA audited financial statement for 2021 is needed before we can responsibly deal with the 2021 deficit. The accountant is asking questions of the management company to finalize the audit.
- The insurance expenses are a fluid issue. Insurance is an ongoing topic in the 2022 President's Reports. They are attached to the minutes and are posted on the association website (www.myhideawaybay.com) in the Owners Only section. Please let us know if you need the password.
- The settlement for the roof damage claim may not be received for years due to the insolvency of our insurance company. Even then, the claim is subject to a very large deductible. Again, please refer to the earlier 2022 President's Report on the website for more information.
- We expect substantial expenses for our sewer plant. We are working hand in hand with our plant operator to not only complete the operating permit renewal, but to get approved from the state authorities for the planned repairs and the timing of the repairs. In 2021, the plant operator advised the board that repairs could be in the area of \$275,000. They also suggested that the work be done over a three-year period. DEP will make that decision for us. Again, please refer to the earlier 2022 President's Reports on the association website.
- What other expenses will be considered under the special assessment? There is one other comes to mind at this point. Those of you who attended the 2021 Annual Owners Meeting will recall discussion of the loan to pay our insurance premiums over the last six years. The annual interest for 2022 will be about \$4,500. We may have a discussion of funding our insurance expense account in the operating budget so that we have what we need to pay the 2023 bill without taking out any more expensive loans. The long-term reoccurring nature of this expense is substantial.

It is preferable to wait to levy one assessment rather than to go through the assessment process several times in a given year. That, of course, depends on our ability to remain above water. We have to work closely with the accounting department at Grande Property Services to monitor our financial health.

We wish there were more answers than questions available for you. As I said before, it is a fluid situation that needs to be managed carefully. For your convenience, I have pasted the provision from our association documents related to special assessments below. You will find it on page 16 of the Declaration of Condominium.

Respectfully Submitted,

Gena Huebner, President

reasonable notice and opportunity for a hearing to the Unit Owner, and if applicable, its licensee or Invitee.

E. Should the Association through its Directors at any time determine that the Assessments made are not sufficient to pay the Common Expenses, or in the event of emergencies, the Board of Directors shall have the authority to levy and collect additional assessments to meet such needs of the Association. The specific purpose or purposes of any special assessment approved in accordance with the Condominium Documents shall be set forth in a written notice of such Assessment sent or delivered to each Unit Owner. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice, or returned to the Unit Owners. However, upon completion of such specific purpose or purposes, any excess funds shall be considered common surplus.

F. The Association shall not charge any fee against a Unit Owner for the use of

The Florida Senate

2017 Florida Statutes

<u>Title XL</u> REAL AND PERSONAL PROPERTY	<u>Chapter 718</u> CONDOMINIUMS <u>Entire Chapter</u>	SECTION 110 Amendment of declaration; correction of error or omission in declaration by circuit court.
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718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.—

(1)(a) If the declaration fails to provide a method of amendment, the declaration may be amended as to all matters except those described in subsection (4) or subsection (8) if the amendment is approved by the owners of not less than two-thirds of the units. Except as to those matters described in subsection (4) or subsection (8), no declaration recorded after April 1, 1992, shall require that amendments be approved by more than four-fifths of the voting interests.

(b) No provision of the declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of declaration. See provision for present text."

(c) Nonmaterial errors or omissions in the amendment process will not invalidate an otherwise properly promulgated amendment.

(2) An amendment, other than amendments made by the developer pursuant to ss. 718.104, 718.403, and 718.504(6), (7), and (9) without a vote of the unit owners and any rights the developer may have in the declaration to amend without consent of the unit owners which shall be limited to matters other than those under subsections (4) and (8), shall be evidenced by a certificate of the association which shall include the recording data identifying the declaration and shall be executed in the form required for the execution of a deed. An amendment by the developer must be evidenced in writing, but a certificate of the association is not required. The developer of a timeshare condominium may reserve specific rights in the declaration to amend the declaration without the consent of the unit owners.

(3) An amendment of a declaration is effective when properly recorded in the public records of the county where the declaration is recorded.

(4) Unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment. The acquisition of property by the association and material alterations or substantial additions to such property or the common elements by the association in accordance with s. 718.111(7) or s. 718.113, and amendments providing for the transfer of use rights in limited common elements pursuant to s. 718.106(2)(b) shall not be deemed to constitute a material alteration or modification of the appurtenances to the units. A declaration recorded after April 1, 1992, may not require the approval of less than a majority of total voting interests of the condominium for amendments under this subsection, unless otherwise required by a governmental entity.

(5) If it appears that through a scrivener's error a unit has not been designated as owning an appropriate undivided share of the common elements or does not bear an appropriate share of the common expenses or that all the common expenses or interest in the common surplus or all of the common elements in the condominium have not been distributed in the declaration, so that the sum total of the shares of common elements which have been distributed or the sum total of the shares of the common expenses or ownership of common surplus fails to equal 100

percent, or if it appears that more than 100 percent of common elements or common expenses or ownership of the common surplus have been distributed, the error may be corrected by filing an amendment to the declaration approved by the board of administration or a majority of the unit owners.

(6) The common elements designated by the declaration may be enlarged by an amendment to the declaration. The amendment must describe the interest in the property and must submit the property to the terms of the declaration. The amendment must be approved and executed as provided in this section. The amendment divests the association of title to the land and vests title in the unit owners as part of the common elements, without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the unit owned by them.

(7) The declarations, bylaws, and common elements of two or more independent condominiums of a single complex may be merged to form a single condominium, upon the approval of such voting interest of each condominium as is required by the declaration for modifying the appurtenances to the units or changing the proportion or percentages by which the owners of the parcel share the common expenses and own the common surplus; upon the approval of all record owners of liens; and upon the recording of new or amended articles of incorporation, declarations, and bylaws.

(8) Unless otherwise provided in the declaration as originally recorded, no amendment to the declaration may permit timeshare estates to be created in any unit of the condominium, unless the record owner of each unit of the condominium and the record owners of liens on each unit of the condominium join in the execution of the amendment.

(9) If there is an omission or error in a declaration, or in any other document required by law to establish the condominium, the association may correct the error or omission by an amendment to the declaration or to the other document required to create a condominium in the manner provided in the declaration to amend the declaration or, if none is provided, by vote of a majority of the voting interests of the condominium. The amendment is effective when passed and approved and a certificate of amendment is executed and recorded as provided in subsections (2) and (3). This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of unit owners, unless the affected unit owners consent in writing. This subsection does not restrict the powers of the association to otherwise amend the declaration, or other documentation, but authorizes a simple process of amendment requiring a lesser vote for the purpose of curing defects, errors, or omissions when the property rights of unit owners are not materially or adversely affected.

(10) If there is an omission or error in a declaration of condominium, or any other document required to establish the condominium, and the omission or error would affect the valid existence of the condominium, the circuit court may entertain a petition of one or more of the unit owners in the condominium, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners, the association, and the mortgagees of a first mortgage of record must be joined as parties to the action. Service of process on unit owners may be by publication, but the plaintiff must furnish every unit owner not personally served with process with a copy of the petition and final decree of the court by certified mail, return receipt requested, at the unit owner's last known residence address. If an action to determine whether the declaration or another condominium document complies with the mandatory requirements for the formation of a condominium is not brought within 3 years 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, the declaration and other documents will effectively create a condominium, as of the date the declaration was recorded, regardless of whether the documents substantially comply with the mandatory requirements of law. However, both before and after the expiration of this 3-year period, the circuit court has jurisdiction to entertain a petition permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.

(11) The Legislature finds that the procurement of mortgagee consent to amendments that do not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the unit owners and that there is a compelling state interest in enabling the members of a condominium association to approve

amendments to the condominium documents through legal means. Accordingly, and notwithstanding any provision to the contrary contained in this section:

(a) As to any mortgage recorded on or after October 1, 2007, any provision in the declaration, articles of incorporation, or bylaws that requires the consent or joinder of some or all mortgagees of units or any other portion of the condominium property to or in amendments to the declaration, articles of incorporation, or bylaws or for any other matter shall be enforceable only as to the following matters:

1. Those matters described in subsections (4) and (8).
2. Amendments to the declaration, articles of incorporation, or bylaws that adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

(b) As to mortgages recorded before October 1, 2007, any existing provisions in the declaration, articles of incorporation, or bylaws requiring mortgagee consent shall be enforceable.

(c) In securing consent or joinder, the association shall be entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book and page on which the original mortgage was recorded. Once the association has identified the recorded mortgages of record, the association shall, in writing, request of each unit owner whose unit is encumbered by a mortgage of record any information the owner has in his or her possession regarding the name and address of the person to whom mortgage payments are currently being made. Notice shall be sent to such person if the address provided in the original recorded mortgage document is different from the name and address of the mortgagee or assignee of the mortgage as shown by the public record. The association shall be deemed to have complied with this requirement by making the written request of the unit owners required under this paragraph. Any notices required to be sent to the mortgagees under this paragraph shall be sent to all available addresses provided to the association.

(d) Any notice to the mortgagees required under paragraph (c) may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the date of mailing shall be deemed to have consented to the amendment.

(e) For those amendments requiring mortgagee consent on or after October 1, 2007, in the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded. Any amendment adopted without the required consent of a mortgagee shall be voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment shall be subject to the statute of limitations beginning 5 years after the date of discovery as to the amendments described in subparagraphs (a)1. and 2. and 5 years after the date of recordation of the certificate of amendment for all other amendments. This provision shall apply to all mortgages, regardless of the date of recordation of the mortgage.

(f) Notwithstanding the provisions of this section, any amendment or amendments to conform a declaration of condominium to the insurance coverage provisions in s. 718.111(11) may be made as provided in that section.

(12)(a) With respect to an existing multicondominium association, any amendment to change the fractional or percentage share of liability for the common expenses of the association and ownership of the common surplus of the association must be approved by at least a majority of the total voting interests of each condominium operated by the association unless the declarations of all condominiums operated by the association uniformly require approval by a greater percentage of the voting interests of each condominium.

(b) Unless approval by a greater percentage of the voting interests of an existing multicondominium association is expressly required in the declaration of an existing condominium, the declaration may be amended upon approval of at least a majority of the total voting interests of each condominium operated by the multicondominium association for the purpose of:

1. Setting forth in the declaration the formula currently utilized, but not previously stated in the declaration, for determining the percentage or fractional shares of liability for the common expenses of the multicondominium association and ownership of the common surplus of the multicondominium association.

2. Providing for the creation or enlargement of a multicondominium association by the merger or consolidation of two or more associations and changing the name of the association, as appropriate.

(13) An amendment prohibiting unit owners from renting their units or altering the duration of the rental term or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.

(14) Except for those portions of the common elements designed and intended to be used by all unit owners, a portion of the common elements serving only one unit or a group of units may be reclassified as a limited common element upon the vote required to amend the declaration as provided therein or as required under paragraph (1)(a), and shall not be considered an amendment pursuant to subsection (4). This is a clarification of existing law.

History.—s. 1, ch. 76-222; s. 8, ch. 77-221; s. 6, ch. 77-222; s. 5, ch. 78-328; s. 2, ch. 78-340; s. 4, ch. 84-368; s. 5, ch. 90-151; s. 3, ch. 91-103; ss. 2, 5, ch. 91-426; s. 51, ch. 2000-302; s. 7, ch. 2002-27; s. 24, ch. 2004-345; s. 1, ch. 2004-353; s. 3, ch. 2007-173; s. 8, ch. 2010-174; s. 3, ch. 2013-122.

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