

61B-75 Cooperatives

61B-75.002 Electronic Transmission of Notices.

(1) Definition. "Electronic transmission" means any form of communication, not directly involving the physical transmission or transfer of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in a comprehensible and legible paper form by the recipient through an automated process, such as a printer or a copy machine. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmission of images, and text that is sent via electronic mail between computers. Electronic transmission does not include oral communication by telephone.

(2) Association Notices.

(a) Associations may opt to deliver meeting notices by electronic transmission by following these rules or by adopting bylaws that are consistent with these requirements.

(b) Associations that decide to stop delivery of notices by electronic transmission shall notify all owners by electronic transmission of the date on which electronic transmission of notices will cease. Associations must mail the notice to those owners whose consent has been revoked or was never given.

(3)(a) Consent and Revocation of Consent. In order to be effective, any consent given by a unit owner to receive notices via electronic transmission, and any revocation of consent, must be in writing and must be signed by the unit owner of record or by a person holding a power of attorney executed by the shareholder of record. Consent or revocation of consent may be delivered to the association by electronic transmission, by hand-delivery, by United States mail, by certified United States mail, or by other commercial delivery service. The unit owner bears the risk of ensuring delivery.

(b) Delivery of Consent or Revocation of Consent. Any consent given by a unit owner to receive notices via electronic transmission must be actually received by a current officer, board member, or manager of the association, or by the association's registered agent. Unless otherwise agreed to by an association in advance of delivery of any consent or revocation of consent, delivery to an attorney who has represented the association in other legal matters will not be effective unless that attorney is also a board member, officer, or registered agent of the association.

(c) Automatic Revocation of Consent. Consent shall be automatically revoked if the association is unsuccessful in providing notice via electronic transmission for two consecutive transmissions to an owner, if and when the association becomes aware of such electronic failures.

(4) Attachments and Other Information. In order to be effective, notice of a meeting delivered via electronic transmission must contain all attachments and information required by law. For example, but not by way of limitation, the second notice of election provided by Section 719.106(1)(d)1., Florida Statutes, must contain a second notice of the election along with the ballot and any valid candidate information sheets that are timely received. As a further example, electronic transmission of the budget meeting shall only be effective if a copy of the proposed annual budget accompanies the notice of budget meeting.

(5) Effect of Sending Electronic Meeting Notice. Notice of a meeting shall be deemed effective when sent by the association, regardless of when the notice is actually received by the owner, if directed to the correct address, location or number, or if posted on a web site or internet location to which the owner has consented. The owner, by consenting to notice via electronic transmission, accepts the risk of not receiving electronic notice, except as provided in paragraph (3)(c) of this rule, so long as the association correctly directed the transmission to the address, number, or location provided by the owner. An affidavit of the secretary or other authorized agent of the association filed among the official records of the association that the notice has been duly provided via electronic transmission is verification that valid electronic transmission of the notice has occurred. An association may elect to provide, but is not required to provide, notice of meetings via non-electronic transmission even if notice has been sent to the same owner or owners via electronic transmission.

(6) Official Records. The association shall maintain among its official records, which shall be accessible to the owners or their duly authorized representatives, all consent forms including electronic numbers, addresses and locations, all affidavits, all fax receipts of notice and related communications, copies of all electronic notices and attachments sent by the association, and any other record created or received by the association related to the electronic transmission of meeting notices, unless removed in accordance with Section 719.104(2)(a)5., Florida Statutes. Electronic records may be maintained in electronic or paper format, but must be available for inspection and copying upon unit owner request.

Specific Authority 719.106(1)(d)1., 719.501(1)(f) FS. Law Implemented 719.104(2)(a)5., 719.106(1)(c), (d)1., 3., (e)1., 719.106(2)(c) FS. History-New 10-12-06.

61B-75.004 Audio or Video Recording of Meetings.

Any unit owner is entitled to tape record or videotape meetings of the board of administration, committee meetings, or unit owner meetings, subject to the following restrictions:

(1) Rules: Associations may adopt rules, which are consistent with this rule, regarding the placement and use of audio and video equipment by unit owners who exercise their rights to tape association meetings. Association rules for this purpose must be adopted in accordance with the procedures for adopting association rules established by the cooperative documents.

(2) Placement: Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting.

(3) Use: Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording.

Specific Authority 719.106(1)(c), (d)5. FS. Law Implemented 719.106(1)(c), (d)5. FS. History-New 8-3-06.

61B-75.005 Regular Elections; Vacancies Caused by Expiration of Term, Resignations, Death.

(1)(a) Unless otherwise provided herein, the provisions of this rule apply to all regular and runoff elections conducted by a cooperative association, regardless of any provision to the contrary contained in the cooperative documents.

(b) Except as otherwise provided by Rules 61B-75.007 and 61B-75.008, Florida Administrative Code, the provisions of this rule do not apply to vacancies created by the recall of a board member or members. The method of removing board members by recall and the procedures for filling such vacancies are set forth in Rules 61B-75.006 through 61B-75.008, Florida Administrative Code.

(c) In order to adopt different voting and election procedures in its bylaws pursuant to Section 719.106(1)(f)5., F.S., an association must obtain the affirmative vote of a majority of the total voting interests even if different amendatory procedures are contained in an association's bylaws. Such vote must be taken on or after June 14, 1995. The phrase "different voting and election procedures" as used in this rule and as used in Section 719.106(1)(f)5., Florida Statutes, refers to procedures used only for the election of board members.

(d) Balloting is not necessary to fill any vacancy unless there are two or more eligible candidates for that vacancy. In such a case, not later than the date of the scheduled election:

1. For a regular election the association shall call and hold a meeting of the membership to announce the names of the new board members, or shall notify the unit owners of the names of the new board members or that one or more board positions remain unfilled, as appropriate under the circumstances. In the alternative, the announcement may be made at the annual meeting.

2. For an election pursuant to subsection (13) of this rule to fill a vacancy, the association shall call and hold a meeting of the membership to announce the names of the new board members or, in the alternative, shall notify the unit owners of the names of the new board members or that one or