

By Senator Rodriguez

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1 A bill to be entitled
2 An act relating to residential associations; amending
3 ss. 718.112, 719.106, and 720.3033, F.S.; revising
4 certification and education requirements for board
5 directors of residential condominium associations,
6 cooperative associations, and homeowners'
7 associations, respectively; conforming provisions to
8 changes made by the act; providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:
11

12 Section 1. Paragraph (d) of subsection (2) of section
13 718.112, Florida Statutes, is amended to read:

14 718.112 Bylaws.—

15 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
16 following and, if they do not do so, shall be deemed to include
17 the following:

18 (d) *Unit owner meetings*.—

19 1. An annual meeting of the unit owners must be held at the
20 location provided in the association bylaws and, if the bylaws
21 are silent as to the location, the meeting must be held within
22 45 miles of the condominium property. However, such distance
23 requirement does not apply to an association governing a
24 timeshare condominium.

25 2. Unless the bylaws provide otherwise, a vacancy on the
26 board caused by the expiration of a director's term must be
27 filled by electing a new board member, and the election must be
28 by secret ballot. An election is not required if the number of
29 vacancies equals or exceeds the number of candidates. For

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30 purposes of this paragraph, the term "candidate" means an
31 eligible person who has timely submitted the written notice, as
32 described in sub-subparagraph 4.a., of his or her intention to
33 become a candidate. Except in a timeshare or nonresidential
34 condominium, or if the staggered term of a board member does not
35 expire until a later annual meeting, or if all members' terms
36 would otherwise expire but there are no candidates, the terms of
37 all board members expire at the annual meeting, and such members
38 may stand for reelection unless prohibited by the bylaws. Board
39 members may serve terms longer than 1 year if permitted by the
40 bylaws or articles of incorporation. A board member may not
41 serve more than 8 consecutive years unless approved by an
42 affirmative vote of unit owners representing two-thirds of all
43 votes cast in the election or unless there are not enough
44 eligible candidates to fill the vacancies on the board at the
45 time of the vacancy. Only board service that occurs on or after
46 July 1, 2018, may be used when calculating a board member's term
47 limit. If the number of board members whose terms expire at the
48 annual meeting equals or exceeds the number of candidates, the
49 candidates become members of the board effective upon the
50 adjournment of the annual meeting. Unless the bylaws provide
51 otherwise, any remaining vacancies shall be filled by the
52 affirmative vote of the majority of the directors making up the
53 newly constituted board even if the directors constitute less
54 than a quorum or there is only one director. In a residential
55 condominium association of more than 10 units or in a
56 residential condominium association that does not include
57 timeshare units or timeshare interests, co-owners of a unit may
58 not serve as members of the board of directors at the same time

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59 unless they own more than one unit or unless there are not
60 enough eligible candidates to fill the vacancies on the board at
61 the time of the vacancy. A unit owner in a residential
62 condominium desiring to be a candidate for board membership must
63 comply with sub-subparagraph 4.a. and must be eligible to be a
64 candidate to serve on the board of directors at the time of the
65 deadline for submitting a notice of intent to run in order to
66 have his or her name listed as a proper candidate on the ballot
67 or to serve on the board. A person who has been suspended or
68 removed by the division under this chapter, or who is delinquent
69 in the payment of any assessment due to the association, is not
70 eligible to be a candidate for board membership and may not be
71 listed on the ballot. For purposes of this paragraph, a person
72 is delinquent if a payment is not made by the due date as
73 specifically identified in the declaration of condominium,
74 bylaws, or articles of incorporation. If a due date is not
75 specifically identified in the declaration of condominium,
76 bylaws, or articles of incorporation, the due date is the first
77 day of the assessment period. A person who has been convicted of
78 any felony in this state or in a United States District or
79 Territorial Court, or who has been convicted of any offense in
80 another jurisdiction which would be considered a felony if
81 committed in this state, is not eligible for board membership
82 unless such felon's civil rights have been restored for at least
83 5 years as of the date such person seeks election to the board.
84 The validity of an action by the board is not affected if it is
85 later determined that a board member is ineligible for board
86 membership due to having been convicted of a felony. This
87 subparagraph does not limit the term of a member of the board of

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88 a nonresidential or timeshare condominium.

89 3. The bylaws must provide the method of calling meetings
90 of unit owners, including annual meetings. Written notice of an
91 annual meeting must include an agenda; be mailed, hand
92 delivered, or electronically transmitted to each unit owner at
93 least 14 days before the annual meeting; and be posted in a
94 conspicuous place on the condominium property or association
95 property at least 14 continuous days before the annual meeting.
96 Written notice of a meeting other than an annual meeting must
97 include an agenda; be mailed, hand delivered, or electronically
98 transmitted to each unit owner; and be posted in a conspicuous
99 place on the condominium property or association property within
100 the timeframe specified in the bylaws. If the bylaws do not
101 specify a timeframe for written notice of a meeting other than
102 an annual meeting, notice must be provided at least 14
103 continuous days before the meeting. Upon notice to the unit
104 owners, the board shall, by duly adopted rule, designate a
105 specific location on the condominium property or association
106 property where all notices of unit owner meetings must be
107 posted. This requirement does not apply if there is no
108 condominium property for posting notices. In lieu of, or in
109 addition to, the physical posting of meeting notices, the
110 association may, by reasonable rule, adopt a procedure for
111 conspicuously posting and repeatedly broadcasting the notice and
112 the agenda on a closed-circuit cable television system serving
113 the condominium association. However, if broadcast notice is
114 used in lieu of a notice posted physically on the condominium
115 property, the notice and agenda must be broadcast at least four
116 times every broadcast hour of each day that a posted notice is

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117 otherwise required under this section. If broadcast notice is
118 provided, the notice and agenda must be broadcast in a manner
119 and for a sufficient continuous length of time so as to allow an
120 average reader to observe the notice and read and comprehend the
121 entire content of the notice and the agenda. In addition to any
122 of the authorized means of providing notice of a meeting of the
123 board, the association may, by rule, adopt a procedure for
124 conspicuously posting the meeting notice and the agenda on a
125 website serving the condominium association for at least the
126 minimum period of time for which a notice of a meeting is also
127 required to be physically posted on the condominium property.
128 Any rule adopted shall, in addition to other matters, include a
129 requirement that the association send an electronic notice in
130 the same manner as a notice for a meeting of the members, which
131 must include a hyperlink to the website where the notice is
132 posted, to unit owners whose e-mail addresses are included in
133 the association's official records. Unless a unit owner waives
134 in writing the right to receive notice of the annual meeting,
135 such notice must be hand delivered, mailed, or electronically
136 transmitted to each unit owner. Notice for meetings and notice
137 for all other purposes must be mailed to each unit owner at the
138 address last furnished to the association by the unit owner, or
139 hand delivered to each unit owner. However, if a unit is owned
140 by more than one person, the association must provide notice to
141 the address that the developer identifies for that purpose and
142 thereafter as one or more of the owners of the unit advise the
143 association in writing, or if no address is given or the owners
144 of the unit do not agree, to the address provided on the deed of
145 record. An officer of the association, or the manager or other

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146 person providing notice of the association meeting, must provide
147 an affidavit or United States Postal Service certificate of
148 mailing, to be included in the official records of the
149 association affirming that the notice was mailed or hand
150 delivered in accordance with this provision.

151 4. The members of the board of a residential condominium
152 shall be elected by written ballot or voting machine. Proxies
153 may not be used in electing the board in general elections or
154 elections to fill vacancies caused by recall, resignation, or
155 otherwise, unless otherwise provided in this chapter. This
156 subparagraph does not apply to an association governing a
157 timeshare condominium.

158 a. At least 60 days before a scheduled election, the
159 association shall mail, deliver, or electronically transmit, by
160 separate association mailing or included in another association
161 mailing, delivery, or transmission, including regularly
162 published newsletters, to each unit owner entitled to a vote, a
163 first notice of the date of the election. A unit owner or other
164 eligible person desiring to be a candidate for the board must
165 give written notice of his or her intent to be a candidate to
166 the association at least 40 days before a scheduled election.
167 Together with the written notice and agenda as set forth in
168 subparagraph 3., the association shall mail, deliver, or
169 electronically transmit a second notice of the election to all
170 unit owners entitled to vote, together with a ballot that lists
171 all candidates not less than 14 days or more than 34 days before
172 the date of the election. Upon request of a candidate, an
173 information sheet, no larger than 8 1/2 inches by 11 inches,
174 which must be furnished by the candidate at least 35 days before

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175 the election, must be included with the mailing, delivery, or
176 transmission of the ballot, with the costs of mailing, delivery,
177 or electronic transmission and copying to be borne by the
178 association. The association is not liable for the contents of
179 the information sheets prepared by the candidates. In order to
180 reduce costs, the association may print or duplicate the
181 information sheets on both sides of the paper. The division
182 shall by rule establish voting procedures consistent with this
183 sub-subparagraph, including rules establishing procedures for
184 giving notice by electronic transmission and rules providing for
185 the secrecy of ballots. Elections shall be decided by a
186 plurality of ballots cast. There is no quorum requirement;
187 however, at least 20 percent of the eligible voters must cast a
188 ballot in order to have a valid election. A unit owner may not
189 authorize any other person to vote his or her ballot, and any
190 ballots improperly cast are invalid. A unit owner who violates
191 this provision may be fined by the association in accordance
192 with s. 718.303. A unit owner who needs assistance in casting
193 the ballot for the reasons stated in s. 101.051 may obtain such
194 assistance. The regular election must occur on the date of the
195 annual meeting. Notwithstanding this sub-subparagraph, an
196 election is not required unless more candidates file notices of
197 intent to run or are nominated than board vacancies exist.

198 b. Within 90 days after being elected or appointed to the
199 board of an association of a residential condominium, each newly
200 elected or appointed director shall do both of the following:

201 (I) Certify by affidavit ~~in writing~~ to the secretary of the
202 association that he or she has read the association's
203 declaration of condominium, articles of incorporation, bylaws,

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204 and current written policies; that he or she will work to uphold
205 such documents and policies to the best of his or her ability;
206 and that he or she will faithfully discharge his or her
207 fiduciary responsibility to the association's members. ~~In lieu~~
208 ~~of this written certification, within 90 days after being~~
209 ~~elected or appointed to the board, the newly elected or~~
210 ~~appointed director may~~

211 (II) Submit a certificate of having satisfactorily
212 completed the educational curriculum administered by a division-
213 approved condominium education provider within 1 year before or
214 90 days after the date of election or appointment. The affidavit
215 and ~~written certification or~~ educational certificate is valid
216 and does not have to be resubmitted as long as the director
217 serves on the board without interruption.

218
219 A director of an association of a residential condominium who
220 fails to timely file the affidavit and ~~written certification or~~
221 educational certificate is suspended from service on the board
222 until he or she complies with this sub-subparagraph. The board
223 may temporarily fill the vacancy during the period of
224 suspension. The secretary shall require ~~cause~~ the association to
225 retain a director's affidavit and ~~written certification or~~
226 educational certificate for inspection by the members for 5
227 years after a director's election or the duration of the
228 director's uninterrupted tenure, whichever is longer. Failure to
229 have such affidavit and ~~written certification or~~ educational
230 certificate on file does not affect the validity of any board
231 action.

232 c. Any challenge to the election process must be commenced

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233 within 60 days after the election results are announced.

234 5. Any approval by unit owners called for by this chapter
235 or the applicable declaration or bylaws, including, but not
236 limited to, the approval requirement in s. 718.111(8), must be
237 made at a duly noticed meeting of unit owners and is subject to
238 all requirements of this chapter or the applicable condominium
239 documents relating to unit owner decisionmaking, except that
240 unit owners may take action by written agreement, without
241 meetings, on matters for which action by written agreement
242 without meetings is expressly allowed by the applicable bylaws
243 or declaration or any law that provides for such action.

244 6. Unit owners may waive notice of specific meetings if
245 allowed by the applicable bylaws or declaration or any law.
246 Notice of meetings of the board of administration, unit owner
247 meetings, except unit owner meetings called to recall board
248 members under paragraph (j), and committee meetings may be given
249 by electronic transmission to unit owners who consent to receive
250 notice by electronic transmission. A unit owner who consents to
251 receiving notices by electronic transmission is solely
252 responsible for removing or bypassing filters that block receipt
253 of mass e-mails sent to members on behalf of the association in
254 the course of giving electronic notices.

255 7. Unit owners have the right to participate in meetings of
256 unit owners with reference to all designated agenda items.
257 However, the association may adopt reasonable rules governing
258 the frequency, duration, and manner of unit owner participation.

259 8. A unit owner may tape record or videotape a meeting of
260 the unit owners subject to reasonable rules adopted by the
261 division.

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262 9. Unless otherwise provided in the bylaws, any vacancy
263 occurring on the board before the expiration of a term may be
264 filled by the affirmative vote of the majority of the remaining
265 directors, even if the remaining directors constitute less than
266 a quorum, or by the sole remaining director. In the alternative,
267 a board may hold an election to fill the vacancy, in which case
268 the election procedures must conform to sub-subparagraph 4.a.
269 unless the association governs 10 units or fewer and has opted
270 out of the statutory election process, in which case the bylaws
271 of the association control. Unless otherwise provided in the
272 bylaws, a board member appointed or elected under this section
273 shall fill the vacancy for the unexpired term of the seat being
274 filled. Filling vacancies created by recall is governed by
275 paragraph (j) and rules adopted by the division.

276 10. This chapter does not limit the use of general or
277 limited proxies, require the use of general or limited proxies,
278 or require the use of a written ballot or voting machine for any
279 agenda item or election at any meeting of a timeshare
280 condominium association or nonresidential condominium
281 association.

282
283 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
284 association of 10 or fewer units may, by affirmative vote of a
285 majority of the total voting interests, provide for different
286 voting and election procedures in its bylaws, which may be by a
287 proxy specifically delineating the different voting and election
288 procedures. The different voting and election procedures may
289 provide for elections to be conducted by limited or general
290 proxy.

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291 Section 2. Paragraph (d) of subsection (1) of section
292 719.106, Florida Statutes, is amended to read:

293 719.106 Bylaws; cooperative ownership.—

294 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
295 documents shall provide for the following, and if they do not,
296 they shall be deemed to include the following:

297 (d) *Shareholder meetings*.—There shall be an annual meeting
298 of the shareholders. All members of the board of administration
299 shall be elected at the annual meeting unless the bylaws provide
300 for staggered election terms or for their election at another
301 meeting. Any unit owner desiring to be a candidate for board
302 membership must comply with subparagraph 1. The bylaws must
303 provide the method for calling meetings, including annual
304 meetings. Written notice, which must incorporate an
305 identification of agenda items, shall be given to each unit
306 owner at least 14 days before the annual meeting and posted in a
307 conspicuous place on the cooperative property at least 14
308 continuous days preceding the annual meeting. Upon notice to the
309 unit owners, the board must by duly adopted rule designate a
310 specific location on the cooperative property upon which all
311 notice of unit owner meetings are posted. In lieu of or in
312 addition to the physical posting of the meeting notice, the
313 association may, by reasonable rule, adopt a procedure for
314 conspicuously posting and repeatedly broadcasting the notice and
315 the agenda on a closed-circuit cable television system serving
316 the cooperative association. However, if broadcast notice is
317 used in lieu of a posted notice, the notice and agenda must be
318 broadcast at least four times every broadcast hour of each day
319 that a posted notice is otherwise required under this section.

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320 If broadcast notice is provided, the notice and agenda must be
321 broadcast in a manner and for a sufficient continuous length of
322 time to allow an average reader to observe the notice and read
323 and comprehend the entire content of the notice and the agenda.
324 In addition to any of the authorized means of providing notice
325 of a meeting of the shareholders, the association may, by rule,
326 adopt a procedure for conspicuously posting the meeting notice
327 and the agenda on a website serving the cooperative association
328 for at least the minimum period of time for which a notice of a
329 meeting is also required to be physically posted on the
330 cooperative property. Any rule adopted shall, in addition to
331 other matters, include a requirement that the association send
332 an electronic notice in the same manner as a notice for a
333 meeting of the members, which must include a hyperlink to the
334 website where the notice is posted, to unit owners whose e-mail
335 addresses are included in the association's official records.
336 Unless a unit owner waives in writing the right to receive
337 notice of the annual meeting, the notice of the annual meeting
338 must be sent by mail, hand delivered, or electronically
339 transmitted to each unit owner. An officer of the association
340 must provide an affidavit or United States Postal Service
341 certificate of mailing, to be included in the official records
342 of the association, affirming that notices of the association
343 meeting were mailed, hand delivered, or electronically
344 transmitted, in accordance with this provision, to each unit
345 owner at the address last furnished to the association.

346 1. The board of administration shall be elected by written
347 ballot or voting machine. A proxy may not be used in electing
348 the board of administration in general elections or elections to

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349 fill vacancies caused by recall, resignation, or otherwise
350 unless otherwise provided in this chapter.

351 a. At least 60 days before a scheduled election, the
352 association shall mail, deliver, or transmit, whether by
353 separate association mailing, delivery, or electronic
354 transmission or included in another association mailing,
355 delivery, or electronic transmission, including regularly
356 published newsletters, to each unit owner entitled to vote, a
357 first notice of the date of the election. Any unit owner or
358 other eligible person desiring to be a candidate for the board
359 of administration must give written notice to the association at
360 least 40 days before a scheduled election. Together with the
361 written notice and agenda as set forth in this section, the
362 association shall mail, deliver, or electronically transmit a
363 second notice of election to all unit owners entitled to vote,
364 together with a ballot that lists all candidates. Upon request
365 of a candidate, the association shall include an information
366 sheet, no larger than 8 1/2 inches by 11 inches, which must be
367 furnished by the candidate at least 35 days before the election,
368 to be included with the mailing, delivery, or electronic
369 transmission of the ballot, with the costs of mailing, delivery,
370 or transmission and copying to be borne by the association. The
371 association is not liable for the contents of the information
372 sheets provided by the candidates. In order to reduce costs, the
373 association may print or duplicate the information sheets on
374 both sides of the paper. The division shall by rule establish
375 voting procedures consistent with this subparagraph, including
376 rules establishing procedures for giving notice by electronic
377 transmission and rules providing for the secrecy of ballots.

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378 Elections shall be decided by a plurality of those ballots cast.
379 There is no quorum requirement. However, at least 20 percent of
380 the eligible voters must cast a ballot in order to have a valid
381 election. A unit owner may not permit any other person to vote
382 his or her ballot, and any such ballots improperly cast are
383 invalid. A unit owner who needs assistance in casting the ballot
384 for the reasons stated in s. 101.051 may obtain assistance in
385 casting the ballot. Any unit owner violating this provision may
386 be fined by the association in accordance with s. 719.303. The
387 regular election must occur on the date of the annual meeting.
388 This subparagraph does not apply to timeshare cooperatives.
389 Notwithstanding this subparagraph, an election and balloting are
390 not required unless more candidates file a notice of intent to
391 run or are nominated than vacancies exist on the board. Any
392 challenge to the election process must be commenced within 60
393 days after the election results are announced.

394 b. Within 90 days after being elected or appointed to the
395 board, each new director shall do both of the following:

396 (I) Certify by affidavit ~~in writing~~ to the secretary of the
397 association that he or she has read the association's bylaws,
398 articles of incorporation, proprietary lease, and current
399 written policies; that he or she will work to uphold such
400 documents and policies to the best of his or her ability; and
401 that he or she will faithfully discharge his or her fiduciary
402 responsibility to the association's members. ~~Within 90 days~~
403 ~~after being elected or appointed to the board, in lieu of this~~
404 ~~written certification, the newly elected or appointed director~~
405 ~~may~~

406 (II) Submit a certificate of having satisfactorily

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407 completed the educational curriculum administered by an
408 education provider as approved by the division pursuant to the
409 requirements established in chapter 718 within 1 year before or
410 90 days after the date of election or appointment. The
411 educational certificate is valid and does not have to be
412 resubmitted as long as the director serves on the board without
413 interruption.

414

415 A director who fails to timely file the affidavit and ~~written~~
416 ~~certification~~ or educational certificate is suspended from
417 service on the board until he or she complies with this sub-
418 subparagraph. The board may temporarily fill the vacancy during
419 the period of suspension. The secretary of the association shall
420 require ~~cause~~ the association to retain a director's affidavit
421 and ~~written certification~~ or educational certificate for
422 inspection by the members for 5 years after a director's
423 election or the duration of the director's uninterrupted tenure,
424 whichever is longer. Failure to have such affidavit and ~~written~~
425 ~~certification~~ or educational certificate on file does not affect
426 the validity of any board action.

427 2. Any approval by unit owners called for by this chapter,
428 or the applicable cooperative documents, must be made at a duly
429 noticed meeting of unit owners and is subject to this chapter or
430 the applicable cooperative documents relating to unit owner
431 decisionmaking, except that unit owners may take action by
432 written agreement, without meetings, on matters for which action
433 by written agreement without meetings is expressly allowed by
434 the applicable cooperative documents or law which provides for
435 the unit owner action.

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436 3. Unit owners may waive notice of specific meetings if
437 allowed by the applicable cooperative documents or law. Notice
438 of meetings of the board of administration, shareholder
439 meetings, except shareholder meetings called to recall board
440 members under paragraph (f), and committee meetings may be given
441 by electronic transmission to unit owners who consent to receive
442 notice by electronic transmission. A unit owner who consents to
443 receiving notices by electronic transmission is solely
444 responsible for removing or bypassing filters that may block
445 receipt of mass emails sent to members on behalf of the
446 association in the course of giving electronic notices.

447 4. Unit owners have the right to participate in meetings of
448 unit owners with reference to all designated agenda items.
449 However, the association may adopt reasonable rules governing
450 the frequency, duration, and manner of unit owner participation.

451 5. Any unit owner may tape record or videotape meetings of
452 the unit owners subject to reasonable rules adopted by the
453 division.

454 6. Unless otherwise provided in the bylaws, a vacancy
455 occurring on the board before the expiration of a term may be
456 filled by the affirmative vote of the majority of the remaining
457 directors, even if the remaining directors constitute less than
458 a quorum, or by the sole remaining director. In the alternative,
459 a board may hold an election to fill the vacancy, in which case
460 the election procedures must conform to the requirements of
461 subparagraph 1. unless the association has opted out of the
462 statutory election process, in which case the bylaws of the
463 association control. Unless otherwise provided in the bylaws, a
464 board member appointed or elected under this subparagraph shall

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465 fill the vacancy for the unexpired term of the seat being
466 filled. Filling vacancies created by recall is governed by
467 paragraph (f) and rules adopted by the division.

468
469 Notwithstanding subparagraphs (b)2. and (d)1., an association
470 may, by the affirmative vote of a majority of the total voting
471 interests, provide for a different voting and election procedure
472 in its bylaws, which vote may be by a proxy specifically
473 delineating the different voting and election procedures. The
474 different voting and election procedures may provide for
475 elections to be conducted by limited or general proxy.

476 Section 3. Subsection (1) of section 720.3033, Florida
477 Statutes, is amended to read:

478 720.3033 Officers and directors.-

479 (1) (a) Within 90 days after being elected or appointed to
480 the board of a homeowners' association with at least 10 units,
481 each director shall do both of the following:

482 1. Certify by affidavit ~~in writing~~ to the secretary of the
483 association that he or she has read the association's
484 declaration of covenants, articles of incorporation, bylaws, and
485 current written rules and policies; that he or she will work to
486 uphold such documents and policies to the best of his or her
487 ability; and that he or she will faithfully discharge his or her
488 fiduciary responsibility to the association's members. ~~Within 90~~
489 ~~days after being elected or appointed to the board, in lieu of~~
490 ~~such written certification, the newly elected or appointed~~
491 ~~director may~~

492 2. Submit a certificate of having satisfactorily completed
493 the educational curriculum administered by a division-approved

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494 education provider within 1 year before or 90 days after the
495 date of election or appointment.

496 (b) The affidavit and ~~written certification or~~ educational
497 certificate are ~~is~~ valid for the uninterrupted tenure of the
498 director on the board. A director who does not timely file the
499 affidavit and ~~written certification or~~ educational certificate
500 is ~~shall be~~ suspended from the board until he or she complies
501 with the requirement. The board may temporarily fill the vacancy
502 during the period of suspension.

503 (c) The association shall retain each director's affidavit
504 and ~~written certification or~~ educational certificate for
505 inspection by the members for 5 years after the director's
506 election. However, the failure to have the affidavit and ~~written~~
507 ~~certification or~~ educational certificate on file does not affect
508 the validity of any board action.

509 Section 4. This act shall take effect July 1, 2022.