CHECKLIST · HAMILTON MIKES, P.A.

Condominium Election Checklist

Running a Chapter 718 Election From the 60-Day Notice to the Records Turnover

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Association _____ Completed by _____ Date _____

A condominium election is the most heavily prescribed thing a Florida board does. The dates come from § 718.112(2)(d)5.a., the envelopes and the counting come from a Division rule, and the electronic options come from § 718.128. Miss any one of them and a losing candidate has 60 days to say so. This checklist runs the whole sequence.

This checklist is for a residential condominium running a regular election at the annual meeting. If you are running an election in an HOA or a cooperative, or you manage a mixed portfolio, start from the cross-chapter association election checklist instead.

Two things to know before you start. First, the dates are statutory floors and ceilings, not suggestions; there is no substantial-compliance forgiveness written into the section. Second, the inner and outer envelope machinery everyone calls "the statute" is not in Chapter 718 at all. It is in Fla. Admin. Code R. 61B-23.0021, which is where a manager should read the operative language.

1 Sixty days out: the first notice

- [ ] Fix the annual meeting date. The regular election must occur on the date of the annual meeting.
  § 718.112(2)(d)5.a.
- [ ] Count back 60 days and mail, deliver or electronically transmit the first notice of the date of the election to each unit owner entitled to vote.
  It may go by separate association mailing or be included in another mailing, delivery or transmission, including a regularly published newsletter.
  § 718.112(2)(d)5.a.
- [ ] State in the first notice the deadline and the address for submitting a written notice of intent to be a candidate.
  The statute does not spell out what the first notice must contain beyond the date of the election. Owners cannot meet a 40-day deadline they were not told about, and a first notice that omits it invites a challenge.
- [ ] Send electronic transmission only to owners who have consented to receive notice that way, mail the rest, and keep proof of the mailing and the transmission list with the election file from day one.
  § 718.112(2)(d)7.
- [ ] Confirm the number of seats up for election and whether any are staggered terms that do not expire this year.
  § 718.112(2)(d)3.

2 Forty days out: notices of intent to run

- [ ] Close the candidate window at the 40-day mark and date-stamp every written notice of intent as it arrives.
  § 718.112(2)(d)5.a.
- [ ] Screen each candidate for eligibility as of the 40-day deadline, not as of election day, checking delinquency against the due date specifically identified in the declaration, bylaws or articles and otherwise against the first day of the assessment period.
  The statute fixes eligibility at the time of the deadline for submitting the notice of intent. A candidate who pays off a delinquency after that date is still not a proper candidate.
  § 718.112(2)(d)3.
- [ ] Check for a felony conviction in Florida, in a United States District or Territorial Court, or an out-of-state offense that would be a felony here, confirm civil rights have been restored for at least 5 years as of the date the person seeks election, and check whether the candidate has been suspended or removed by the Division under Chapter 718.
  § 718.112(2)(d)3.
- [ ] Check the 8-year consecutive service limit, counting only service on or after July 1, 2018 and noting that two-thirds of all votes cast can override it, and in an association of more than 10 units check whether two co-owners of the same unit are both running.
  § 718.112(2)(d)3.
- [ ] Count candidates against vacancies. If candidates do not exceed vacancies, no election is required and the candidates become board members upon adjournment of the annual meeting.
  Say so in writing to the owners rather than simply cancelling the ballot mailing with no explanation.
  § 718.112(2)(d)3.; § 718.112(2)(d)5.a.
- [ ] Put every disqualification in writing, with the date, the ground and the document relied on, and have counsel review it before it is sent.
  Read alongside our guidance on candidate eligibility and election challenges.

3 Thirty-five days out: information sheets

- [ ] Accept candidate information sheets only if the candidate furnishes them at least 35 days before the election.
  § 718.112(2)(d)5.a.
- [ ] Confirm each sheet is no larger than 8 1/2 by 11 inches, and include it with the ballot mailing on request of the candidate.
  The association bears the mailing, delivery, transmission and copying costs and is not liable for the contents. It may print or duplicate the sheets on both sides to reduce cost.
  § 718.112(2)(d)5.a.
- [ ] Do not edit, summarize, reformat or refuse a sheet because the board disagrees with it.
  The association's protection is that it is not liable for the contents. Editing them forfeits that position.

4 Fourteen to thirty-four days out: the second notice and ballot package

- [ ] Send the second notice of the election not less than 14 days and not more than 34 days before the date of the election, together with the written notice of the annual meeting and the agenda required by subparagraph 4.
  Both ends are hard limits. A package sent on day 35 is as defective as one sent on day 13.
  § 718.112(2)(d)4.; § 718.112(2)(d)5.a.
- [ ] Include a ballot listing all candidates, with no identifying marks on it.
  § 718.112(2)(d)5.a.
- [ ] Include the inner envelope and the outer envelope, with the outer envelope printed to show the voter's name, the unit or units being voted, and a signature space.
  Fla. Admin. Code R. 61B-23.0021
- [ ] Include every timely candidate information sheet.
  § 718.112(2)(d)5.a.
- [ ] Post the annual meeting notice conspicuously on the condominium property for at least 14 continuous days.
  § 718.112(2)(d)4.
- [ ] Execute the affidavit or obtain the USPS certificate of mailing and file it in the official records.
  § 718.112(2)(d)4.
- [ ] Include written instructions telling owners that no one else may vote their ballot and that a ballot cast by anyone other than the owner is invalid.
  § 718.112(2)(d)5.a.

5 Electronic voting and the e-mail ballot option

- [ ] Confirm the board adopted a resolution authorizing online voting and establishing the consent and opt-out procedures before any electronic ballot is offered.
  § 718.128(4)
- [ ] Confirm each participating owner consented, that the association verified the owner's device could communicate with the online voting system at least 14 days before the vote, and that the consent stands for later elections until the owner opts out under the board's procedure.
  § 718.128(1), (5)
- [ ] Confirm the system authenticates identity, transmits a receipt, and permanently separates identifying information from the board election ballot.
  Ballot secrecy in an electronic election is a system requirement, not a matter of the association's good intentions.
  § 718.128(1)-(2)
- [ ] Count electronic votes toward the quorum at the meeting.
  § 718.128(3)
- [ ] If 25 percent of the voting interests petition for online voting, hold a board meeting within 21 days after receipt of the petition to consider adopting the resolution.
  § 718.128(6)
- [ ] If your association accepts an e-mailed ballot, confirm it goes to the address the association designated and that it includes the unit number, the typed name serving as the signature, and this statement in capital letters: WAIVING THE SECRECY OF YOUR BALLOT IS YOUR CHOICE.
  This option exists only in Chapter 718. Neither § 719.129 nor § 720.317 contains it.
  § 718.128(7)

6 Receiving and storing envelopes

- [ ] Log each outer envelope on arrival by date and by unit in one register kept with the election file, and keep the unopened envelopes locked and in the association's control, away from candidates, candidates' spouses and sitting directors.
- [ ] Do not open an outer envelope before the meeting, for any reason, including to see how the vote is going.
- [ ] If a listed candidate becomes ineligible or withdraws after the ballots have gone out, issue an amended notice and a revised ballot.
  Fla. Admin. Code R. 61B-23.0021

7 The election committee and the count

- [ ] Appoint the impartial committee by board action, name its members in the minutes, and exclude current board members, officers, candidates for the board and the spouses of any of them.
  Chapter 718 does not create an election committee. The impartial committee comes from the Division rule, and using the label "election committee" in your documents does not change what the rule requires of it.
  Fla. Admin. Code R. 61B-23.0021
- [ ] If the committee will pre-verify the information on the outer envelopes, notice that session as an open board meeting on election day and let owners attend.
  Fla. Admin. Code R. 61B-23.0021
- [ ] Close the polls the moment the opening of outer envelopes begins or electronic votes are first accessed, whichever comes first, and announce the closing.
  Fla. Admin. Code R. 61B-23.0021
- [ ] Verify each outer envelope against the eligibility list, and mark any envelope not signed by the eligible voter "Disregarded" without opening it.
  Fla. Admin. Code R. 61B-23.0021
- [ ] Remove every inner envelope from its outer envelope and place all of them in a receptacle before any is opened, then open them and count the ballots in the presence of the unit owners.
  This is the step that severs the ballot from the voter. Doing it envelope by envelope destroys ballot secrecy and is the defect most often raised after a close election.
  Fla. Admin. Code R. 61B-23.0021
- [ ] Mark any inner envelope containing more than one ballot "Disregarded" and count none of them.
  Fla. Admin. Code R. 61B-23.0021
- [ ] Confirm at least 20 percent of the eligible voters cast a ballot before declaring a valid election, and decide the election by a plurality of the ballots cast. There is no quorum requirement for the election itself.
  § 718.112(2)(d)5.a.

- [ ] On a tie, mail notice of the run-off within 7 days and hold it not less than 21 nor more than 30 days after the original election.
  Fla. Admin. Code R. 61B-23.0021
- [ ] Announce the results at the meeting and record each candidate's vote total in the minutes.

8 After the election

- [ ] Seat the new board and hold the organizational meeting.
- [ ] Send each outgoing director and committee member a written reminder that all official records and association property in his or her possession or control must go to the incoming board within 5 days after the election.
  Five calendar days, not five business days, and it reaches committee members as well as directors. This is a different deadline from the 10 full business days a recalled director gets under § 718.112(2)(l).
  § 718.111(12)(f)
- [ ] Collect each new director's written certification and the 4-hour course certificate within 90 days after election, or confirm one dated within 1 year before it.
  A director who does not file on time is suspended from the board until he or she complies, and the board may temporarily fill the vacancy. The certificate is valid 7 years, with 1 hour of continuing education annually after the first year.
  § 718.112(2)(d)5.b.
- [ ] Retain all envelopes and ballots, disregarded or not, with the official records for 1 year from the date of the election, along with the sign-in sheets, proxies and all other papers and electronic records relating to voting.
  Fla. Admin. Code R. 61B-23.0021; § 718.111(12)(a)12.
- [ ] Calendar the 60-day challenge window from the date the results were announced.
  § 718.112(2)(d)5.c.
- [ ] Post the results and the approved minutes to the association website or app if the association has 25 or more units.
  § 718.111(12)(g)

> The two defects that decide most condominium election challenges are the second notice that went out on day 35 and the committee that opened inner envelopes one at a time. Neither has anything to do with who won. Both are visible on the face of the file, which is why they are the first things a challenger asks for.

Statutes and authorities referenced

- § 718.112(2)(d)3. , Fla. Stat. (candidate eligibility, term limits, co-owners, vacancies)
- § 718.112(2)(d)4. , Fla. Stat. (annual meeting notice, posting and the mailing affidavit)
- § 718.112(2)(d)5. , Fla. Stat. (written ballot or voting machine; no proxy in board elections)
- § 718.112(2)(d)5.a. , Fla. Stat. (60, 40, 35 and 14-to-34 day sequence; 20 percent threshold; plurality)
- § 718.112(2)(d)5.b. , Fla. Stat. (director certification and education)
- § 718.112(2)(d)5.c. , Fla. Stat. (60-day election challenge window)
- § 718.112(2)(d)7. , Fla. Stat. (electronic notice by consent)
- § 718.128 , Fla. Stat. (electronic voting, the 25 percent petition and the e-mailed ballot)
- § 718.111(12)(a)12. , § 718.111(12)(f), § 718.111(12)(g), Fla. Stat. (voting records, outgoing director turnover, website posting)
- Fla. Admin. Code R. 61B-23.0021 (regular elections: inner and outer envelopes, impartial committee, counting, ties, retention)

Talk to association counsel

When the checklist turns up a question about what a statute or your documents require, ask association counsel before the board acts. **Hamilton Mikes, P.A.** represents condominium, HOA and cooperative associations, clubs and marinas throughout Southwest Florida. **239-594-7227 · HamiltonMikes.com**

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