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Client Alert: Florida Statutes May Require Community Associations to Hold Voting Certificates

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To ensure the validity of its elections, a community association must conduct its elections in full compliance with Florida law and its governing documents, which includes enforcing its voting certificate requirements, if any.

As defined in Section 718.103(31), Florida Statutes (2023), voting certificates are “documents which designate one of the record title owners, or the corporate, partnership, or entity representative, who is authorized to vote on behalf of a condominium unit that is owned by more than one owner or by any entity.”^[1] While there is no statutory requirement that voting certificates be used, an association may choose to include them in its governing documents. If it does so, the association should enforce them pursuant to its procedures, especially when conducting its annual elections; otherwise, an election can be challenged as improper for failing to enforce voting certificates as required by its documents.^[2]

Notwithstanding an improper election for this reason, an association would not be required to hold a new election, absent a showing that there would have been a different outcome had the voting certificate requirements been properly enforced.^[3] Nonetheless, and regardless of its history of enforcement,^[4] an association should be sure to conduct its future elections in accordance with its voting certificate requirements in order to ensure valid elections without such challenges. However, if an association has not consistently enforced its voting certificate requirements in past elections, it cannot begin to enforce them without first providing fair notice to the owners that it plans to do so.^[5]

Although there is no set standard for what constitutes “fair notice,” the owners should be provided with enough notice so that they can comply with the association’s governing documents and submit their certificates as required before the election.^[6]

[1] Chapter 719, the Cooperative Act, includes the same definition. See Section 719.103(28), Florida Statutes (2023). Although the Homeowners’ Association Act in Chapter 720 does not include a specific definition for voting certificates, the same definition would seem to apply in that context as well, given that a homeowners’ association may also require voting certificates by its documents.

[2] *See* In Re: Petition for Arbitration Susan Gladney v. Meadowridge Association, Inc., Arb. Case No. 12-02-0936, Final Order (July 16, 2012) (emphasizing that unlike in the context of recalls, “unit owners have neither waived nor have been estopped from raising an objection to” an association’s failure to enforce voting certificates in an election dispute).

[3] *See*, e.g., John P. Baptiste, et al., v. Star Lakes Ass’n, Inc., Arb. Case No. 18-01-9451, Summary Final Order (Oct. 4, 2018) (holding that although the association improperly conducted its election by failing to enforce its voting certificate requirements, “it [wa]s inappropriate to order a new election” because petitioners did not assert that enforcing the requirements would have changed the outcome); Visyak v. Fairway Cove Homeowners Ass’n, Inc., Arb. Case No. 2010-02- 8255, Summary Final Order (Nov. 16, 2010) (holding that because the association “substantially complied with [its voting procedures]” and because the petitioners did not show that the association’s failure to enforce its requirements resulted in “substantial irregularities that affected the fairness of the election,” it was improper to order a new election); Marott P’ship v. Maracay Ass’n, Inc., Arb. Case No. 00-461, Summary Final Order (June 28, 2000) (denying petitioner’s request for a re-election after finding the association improperly conducted its election because “the petitioner [did] not allege[] that the outcome of the election would have been any different” had the association enforced its voting certificate requirements). *But see* Hanna v. Hallmark of Hollywood Condominium Association, Inc., Arb. Case No. 09-02-0757, Summary Final Order (Sep. 17, 2009) (ordering a new election after an association counted votes for units that were required to have voting certificates on file but did not).

[4] Gladney, *supra* note 3.

[5] In Re: Petition For Arbitration George M. Allman v. Savoy East Ass’n, Inc., Arb. Case No. 15-03-4612, Summary

Final Order (Jan. 19, 2016) (“By not consistently enforcing the voting certificate provision of the declaration, the Association has established a pattern of allowing irregularities in the use of the certificates. This, in the context of recall ballots prohibits the enforcement of such a provision without fair notice to the membership that its policy of non-enforcement is about to end. It is applied also to elections concerning other Association business.”); *see also* Ledvina v. Orange Blossom Ranch Condominium Ass’n, Arb. Case No. 93-0292, Final Order (February 4, 1994) (reasoning that where an association has not consistently enforced its voting certificate requirements, it “would have to provide notice to the unit owners of this change of policy prior to an election, rather than by effecting the policy change by the act of disenfranchisement after the election.”).

[6] *See* In Re: Petition For Arbitration Daniel Kaufman, v. Le Lac Property Owners’ Ass’n, Inc., Arb. Case No. 15-01-6745, Summary Final Order (Dec. 16, 2015).