

CHAPTER 61B-33
MOBILE HOME RULES FOR RECALLS IN HOMEOWNERS' ASSOCIATIONS

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61B-33.001 Class Voting.

When the governing documents provide that a specific class of members of a homeowners' association created pursuant to Section 723.075, F.S., is entitled to elect a director or directors to the board, the class of homeowners electing such director or directors to the board shall constitute all the voting interests that may recall or remove such director or directors.

Rulemaking Authority 723.1255 FS. Law Implemented 723.078(2)(i) FS. History—New 2-24-16.

61B-33.0015 Absentee Ballot.

"Absentee ballot," as provided by Section 723.078(2)(b)2., F.S., means a ballot completed and delivered in advance of a member meeting, in accordance with the homeowners' association's bylaws, by a member who is not present at the time the vote is taken.

Rulemaking Authority 723.078(2)(b)2. FS. Law Implemented 723.078(2)(b)2. FS. History—New 4-24-17.

61B-33.002 Recall of One or More Directors of a Board of Administration at a Member Meeting; Board Certification; Filling Vacancies.

(1) Calling a Recall Meeting. Ten percent of the voting interests of a homeowners' association created pursuant to Section 723.075, F.S., may call a meeting of the members to recall one or more directors of the association's board by giving notice as specified in subsection (2) below.

(2) Noticing a Recall Meeting.

(a) Signature List. Prior to noticing a members' meeting to recall one or more directors of the board, a list shall be circulated for the purpose of obtaining signatures of not less than 10 percent of the voting interests. The signature list shall:

1. State that the purpose for obtaining signatures is to call a meeting of the members to recall one or more directors of the board;
2. State that replacement directors shall be elected at the meeting, if a majority or more of the existing directors are successfully recalled at the meeting; and,
3. Contain lines for the voting interest to fill in his or her mobile home lot number, signature and date of signature.

(b) Recall Meeting Notice. The recall meeting notice shall:

1. State that the purpose of the members' meeting is to recall one or more directors of the board and, if a majority or more of the board is subject to recall, the notice shall also state that an election to replace recalled directors will be conducted at the meeting;
2. List by name each director sought to be recalled at the meeting, even if all directors are sought to be recalled;
3. Specify a person, other than a director subject to recall at the meeting, who shall determine whether a quorum is present, call the meeting to order, preside, and proceed as provided in paragraph (3)(b) of this rule;
4. List at least as many eligible persons who are willing to be candidates for replacement directors as there are directors sought to be recalled, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement directors shall not be listed when a minority of the board is sought to be recalled, as the remaining directors may appoint replacements. In addition, the notice must state that nominations for replacement directors may be taken from the floor at the meeting;
5. Have attached to it a copy of the signature list referred to in paragraph (2)(a) above;
6. Be mailed or delivered to all members as required in the governing documents for a meeting of the members; and,
7. Be delivered to the board at least 10 days prior to the recall meeting. The notice shall become an official record of the association upon actual receipt by the board.

(3) Recall Meeting; Electing Replacements.

(a) Date for Recall Meeting. A recall meeting shall be held not less than 10 days nor more than 20 days from the date when the notice of the recall meeting is mailed or delivered.

(b) Conducting the Recall Meeting. After determining that a quorum exists (proxies may be used to establish a quorum) and the meeting is called to order, the voting interests shall proceed as follows:

1. A representative to receive pleadings (e.g., copies of a petition for recall arbitration, motions), notices, or other papers on behalf of the recalling members shall be elected or designated by the presiding officer in the event the board disputes the recall.

2. A person to record the minutes of the recall meeting, who shall not be a board director subject to recall at that meeting, shall be elected or designated by the presiding officer.

3. The requirements of this subsection do not prohibit the voting interests from electing one person to perform one or more of these functions.

(c) Recall Meeting Minutes. The minutes of the recall meeting shall:

1. Record the date and time the recall meeting was called to order and adjourned;

2. Record the name or names of the person or persons chosen as the presiding officer, the recorder of the official minutes, and the member representative's name and address;

3. Record the vote count taken on each director of the board sought to be recalled;

4. State whether the recall was effective as to each director sought to be recalled;

5. Record the vote count taken on each candidate to replace the directors subject to recall and, if applicable, the specific seat each replacement director was elected to, in those cases where a majority or more of the existing board was subject to recall; and,

6. Be delivered to the board, and upon such delivery to the board become an official record of the association.

(d) Separate Recall Vote. The voting interests shall vote to recall each director separately.

(e) Filling Vacancies. When the voting interests have recalled one or more directors at a members' meeting, the following provisions apply regarding the filling of vacancies on the board:

1. If less than a majority of the existing board is recalled at the meeting, no election of replacement directors shall be conducted at the members' meeting as the existing board may, in its discretion, fill these vacancies, subject to the provisions of Section 723.078(2)(i), F.S., by the affirmative vote of the remaining directors. In the alternative, if less than a majority of the existing board is recalled at the members meeting, the board may call and conduct an election to fill a vacancy or vacancies;

2. If a majority or more of the existing board is recalled at the meeting, an election shall be conducted at the recall meeting to fill vacancies on the board occurring as a result of recall. The voting interests may vote to elect replacement directors in an amount equal to the number of recalled directors.

(f) Taking Office. When a majority or more of the board is recalled at a members' meeting, replacement directors shall take office:

1. Upon the expiration of five full business days after adjournment of the members' recall meeting, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days of the adjournment of the members' recall meeting; or

2. Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration; or

3. Upon certification of the recall by the board; or

4. Upon certification of the recall by the arbitrator, in accordance with subparagraph (5)(b)4. of this rule, if the board files a petition for recall arbitration.

(g) After adjournment of the meeting to recall one or more members of the board of administration:

1. Any rescission of an individual member's vote or any additional votes received in regard to the recall shall be ineffective.

2. Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(4) Substantial compliance with the provisions of subsections (1), (2) and (3) of this rule shall be required for the effective recall of one or more directors of the board.

(5) Board Meeting Concerning a Recall at a Meeting of the Members; Filling Vacancies. The board shall properly notice the board meeting at which it will determine whether to certify (i.e., to validate or accept) the recall of one or more directors at a members' meeting. It shall be presumed that recall of one or more directors at a members' meeting shall not, in and of itself,

constitute grounds for an emergency meeting of the board, if the board has been provided notice of the recall meeting as provided in subparagraph (2)(b)7. of this rule.

(a) Certified Recall. If the recall of one or more directors by vote at a members' meeting is certified by the board, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled director shall return to the board all association records in his or her possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 723.078(2)(i), F.S., regardless of whether the authority to fill vacancies in this manner is provided in the governing documents. No recalled director shall be appointed by the board to fill any vacancy on the board. A director appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining directors or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement director, if a quorum is not obtained, or otherwise), the board may, in its discretion, call and hold an election in the manner provided by Section 723.078(2)(d), F.S., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement directors elected at the recall meeting shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A director who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes for any reason not to certify the recall of one or more directors at a meeting of the members, the following provisions apply:

1. The board shall, subject to the provisions of these rules, file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the recall of one or more directors.

2. Any director sought to be recalled shall, unless he or she resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining directors may fill the vacancy or vacancies as provided in subparagraph (5)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement directors elected at the recall meeting shall become effective upon mailing of the final order of arbitration. The term of office of replacement directors elected at the recall meeting shall expire in accordance with the provisions of subparagraph (5)(a)3. of this rule.

(6) Failure to Duly Notice and Hold a Board Meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of the adjournment of the members' recall meeting, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of five full business days after adjournment of the members' recall meeting.

(b) If a majority of the board is recalled, replacement directors elected at the members' meeting shall take office immediately upon expiration of the last day of five full business days after adjournment of the members' recall meeting, in the manner specified in this rule.

Rulemaking Authority 723.1255., 723.006(7), 723.078(2)(i) FS. Law Implemented 723.078(2)(i) FS. History--New 2-24-16.

61B-33.003 Recall by Written Agreement of the Voting Interests; Board Certification; Filling Vacancies.

(1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more directors of a homeowners' association created pursuant to Section 723.075, F.S., shall:

(a) List by name each director sought to be recalled;

(b) Provide spaces by the name of each director sought to be recalled so that the person executing the agreement may indicate whether that individual director should be recalled or retained;

(c) List, in the form of a ballot, at least as many eligible persons who are willing to be candidates for replacement directors as there are directors subject to recall, in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement directors shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements. A space shall be provided by the name of each candidate so that the person executing the agreement may vote for as many replacement candidates as there are directors sought to be recalled. A space shall be provided and designated for write-in

votes. The failure to comply with the requirements of this subsection shall not effect the validity of the recall of a director or directors;

(d) Provide a space for the person signing the written agreement to state his or her name, identify his mobile home lot number, and indicate the date the written agreement is signed;

(e) Provide a signature line for the person executing the written agreement to affirm that he or she is authorized in the manner required by the governing documents to cast the vote for that mobile home lot; and,

(f) Designate a representative who shall open the written agreements, tally the votes, serve copies on the board and, in the event the board does not certify the recall by written agreement and files a petition for arbitration, receive pleadings (e.g., copies of a petition for recall arbitration, motions), notices, or other papers on behalf of the persons executing the written agreement.

(2) The written agreement or a copy shall be served on the board by certified mail or by personal service. Service on the board after 5:00 p.m. on a business day or on a Saturday, Sunday or legal holiday, as prescribed by Section 110.117, F.S., shall be deemed effective as of the next business day that is not a Saturday, Sunday, or legal holiday. Service of the written agreement on an officer, association manager, director, or the association's registered agent will be deemed effective service on the association. Service upon an attorney who has represented the association in other legal matters will not be effective on the association unless that attorney is a director, the association's registered agent, or has otherwise been retained by the association to represent it in the recall proceeding. Personal service shall be effected in the manner authorized in Chapter 48, F.S., and the Florida Rules of Civil Procedure.

(3) Substantial compliance with the provisions of subsections (1) through (2) of this rule shall be required for an effective recall of a director or directors.

(4) Written recall ballots in a recall by written agreement may be reused in one subsequent recall effort. A written recall ballot expires 120 days after it is signed by a member. Written recall ballots become void with respect to the director sought to be recalled where that director is elected during a regularly scheduled election.

(5) Written recall ballots may be executed by an individual holding a power of attorney or limited or general proxy given by the member(s) of record.

(6) Any rescission or revocation of a member's written recall ballot or agreement must be done in writing and must be delivered to the board prior to the board being served the written recall agreements.

(7) Board Meeting Concerning a Recall by Written Agreement; Filling Vacancies. The board shall hold a duly noticed meeting of the board to determine whether to certify (i.e., to validate or accept) the recall by written agreement within five full business days after service of the written agreement upon the board. It shall be presumed that service of a written agreement to recall one or more directors shall not, in and of itself, constitute grounds for an emergency meeting of the board to determine whether to certify the recall.

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be effective upon certification, and the following provisions apply:

1. Each recalled director shall return to the board all association records in his or her possession within five full business days after adjournment of the board meeting at which the recall was certified.

2. If less than a majority of the existing board is recalled in a certified recall, a vacancy or vacancies on the board may be filled by the affirmative vote of a majority of the remaining directors, subject to the provisions of Section 723.078(2)(i), F.S., regardless of whether the authority to fill vacancies in this manner is provided in the governing documents. No recalled director shall be appointed by the board to fill any vacancy on the board. A director appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. If the board determines not to fill vacancies by vote of the remaining directors or if it is unable to fill vacancies in this manner (e.g., if there is a tie vote on the proposed replacement director, if a quorum is not obtained, or otherwise) the board may, in its discretion, call and hold an election in the manner provided by Section 723.078(2)(d), F.S., in which case any person elected shall fill the entire remaining term.

3. If a majority or more of the board is recalled in a certified recall, those replacement directors elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it was determined to certify the recall. A director who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

(b) Non-certification of Recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply:

1. The board shall, consistent with the provisions of Chapter 61B-50, F.A.C., file a petition for arbitration with the division (i.e., be received by the division) within five full business days after adjournment of the board meeting at which the board determined not to certify the written agreement to recall.

2. Any director sought to be recalled shall, unless he or she resigns, continue to serve on the board until a final order regarding the validity of the recall is mailed by the arbitrator.

3. If the arbitrator certifies the recall of less than a majority of the board, the remaining directors may fill the vacancy or vacancies as provided in subparagraph (3)(a)2. of this rule.

4. If the arbitrator certifies the recall of a majority or more of the board, the term of office of those replacement board members elected by written agreement of the voting interests shall become effective upon mailing of the final order of arbitration. The term of office of those replacement directors elected by written agreement of the voting interests shall expire in accordance with the provisions of subparagraph (3)(a)3. of this rule.

5. A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a director, regardless of any provision to the contrary in the governing documents.

6. The failure of the association to enforce a voting certificate requirement in past association elections and member votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement.

(8) Board Meeting Minutes. The minutes of the board meeting at which the board determines whether to certify the recall are an official record of the association and shall record the following information:

(a) A majority of the total voting interests entitled to vote in favor of recall is sufficient to recall a director, regardless of any provision to the contrary in the governing documents;

(b) The failure of the association to enforce a voting certificate requirement in past association elections and member votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement;

(c) The date and time the board meeting is called to order and adjourned;

(d) Whether the recall is certified by the board;

(e) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,

(f) If the recall was not certified, the specific reasons it was not certified.

(9) After service of a written agreement on the board:

(a) Any written rescission of an individual member vote or any additional votes received in regard to the recall shall be ineffective.

(b) Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

(10) Taking Office. When a majority or more of the board is recalled by written agreement, replacement directors shall take office:

(a) Upon the expiration of five full business days after service of the written agreement on the board, if the board fails to hold its board meeting to determine whether to certify the recall within five full business days after service of the written agreement;

(b) Upon the expiration of five full business days after adjournment of the board meeting to determine whether to certify the recall, if the board fails to certify the recall and fails to file a petition for arbitration;

(c) Upon certification of the recall by the board; or

(d) Upon certification of the recall by the arbitrator, in accordance with subparagraph (3)(b)4. of this rule, if the board files a petition for recall arbitration.

(11) Failure to Duly Notice and Hold a Board Meeting. If the board fails to duly notice and hold a meeting to determine whether to certify the recall within five full business days of service of the written agreement, the following shall apply:

(a) The recall shall be deemed effective immediately upon expiration of the last day of the five full business days after service of the written agreement on the board.

(b) If a majority of the board is recalled, replacement directors elected by the written agreement shall take office upon expiration of five full business days after service of the written agreement on the board in the manner specified in this rule.

(c) If the entire board is recalled, each recalled director shall immediately return to the replacement board all association records in his or her possession. If less than the entire board is recalled, each recalled director shall immediately return to the board all association records in his or her possession.

(12) The written agreement shall become an official record of the association upon service upon the board.

Rulemaking Authority 723.1255., 723.006(7), 723.078(2)(i) FS. Law Implemented 723.078(2)(i) FS. History—New 2-24-16.

61B-33.004 Operation of the Homeowners' Association.

Excluding meetings between the board of directors or its appointed homeowners' committee and the park owner, any member of the homeowners' association may tape record or videotape meetings of the board of directors of the homeowners' association and its committees, subject to the following:

(1) Mobile home owners are authorized to utilize at any such meeting audio and video equipment and devices which do not produce distracting sound or light emissions.

(2) If adopted in advance by the board or mobile home owners as a written rule, advance notice must be given to the board by any mobile home owner desiring to utilize any audio or video recording equipment at a meeting.

(3) If adopted in advance by the board or mobile home owners as a written rule, audio and video equipment must be assembled and placed in position in advance of the commencement of the meeting.

(4) If adopted in advance by the board or mobile home owners as a written rule, anyone using audio or video recording equipment at a meeting is not permitted to move about the meeting room in order to facilitate the recording.

Rulemaking Authority 723.078(2)(c)4. FS. Law Implemented 723.078(2)(c)4. FS. History—New 7-10-16.