

## NOTICE OF PROPOSED RULEMAKING

### DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

#### Division of Professions

RULE NO.:           RULE TITLE:

61E14-2.001       Standards of Professional Conduct

PURPOSE AND EFFECT: To update language, remove unnecessary or unauthorized language, and to clarify the standards of professional conduct for community association managers.

SUMMARY: The proposed rule amends the standards of professional conduct for community association managers to reflect recent court decisions, remove unnecessary and unauthorized language, and clarify terms in the statute and in the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency. The agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: the economic review conducted by the agency. Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 468.4315(2) FS.

LAW IMPLEMENTED: 468.433, 468.436 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: R. Kathleen Brown-Blake, Assistant General Counsel, Office of the General Counsel, 1940 North Monroe Street, Suite 42, Tallahassee, Florida 32399, (850)717-1244

THE FULL TEXT OF THE PROPOSED RULE IS:

61E14-2.001 Standards of Professional Conduct.

Licenseses shall adhere to the following provisions, standards of professional conduct, and such provisions and standards shall be deemed automatically incorporated, as duties of all licensees, into any written or oral agreement for the rendition of community association management services, ~~the violation of which shall constitute gross misconduct or gross negligence.~~

(1) Definitions. As used in this rule, the following definitions apply:

~~(a) The word "control" means the authority to direct or prevent the actions of another person or entity pursuant to law, contract, subcontract or employment relationship, but shall specifically exclude a licensee's relationship with a community association, its board of directors, any committee thereof or any member of any board or committee.~~

~~(a)(b)~~ "Licensee" means a person licensed pursuant to Sections 468.432(3)(4) and (4)(2), F.S.

~~(b)(e)~~ "Community Association Management services" means performing any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill:

1. Controlling or disbursing funds of a community association;
2. Preparing budgets or other financial documents for a community association;
3. Assisting in the noticing or conduct of community association meetings;
4. Coordinating maintenance for the residential development; and
5. Other day-to-day services involved with the operation of a community association.

~~(c) The word "Funds" as used in this rule includes money and negotiable instruments including checks, notes and securities.~~

(d) "Due Professional care" means the ethical duty of a community association manager or community association management firm to exercise the level of care, diligence, and skill as prescribed in Sections 468.432 (3) and (4), F.S., in the manner as other licensees would exercise in the same or similar circumstances.

(e) "Professional competence" means the capability to perform community association management services with skill of an acceptable quality as other licensees.

(2) Honesty. During the performance of management services, a licensee shall not ~~do the following knowingly make an untrue statement of a material fact or knowingly fail to state a material fact;~~

(a) Make misleading, deceptive, or fraudulent representations in or related to the practice of community association management; or

(b) Make deceptive, untrue, or fraudulent representations in or related to the practice of community association management, or employ a trick or scheme in or related to the practice of community association management.

(3) Professional Competence. A licensee shall undertake to perform only those community association management services which ~~he or it~~ can reasonably be expect to completed with professional competence.

(4) Due Professional Care.

(a) A licensee shall show exercise due professional care in the performance of community association management services by doing the following:

1.(b) A licensee shall not knowingly fail to Complying with the requirements of the association's governing documents or by-laws by which the association is created or operated so long as such documents comply with the requirements of law;

~~(5) Control of Others. A licensee shall not permit others under his or the management firm's control to commit on his or the firm's behalf, acts or omissions which, if made by either licensee, would place that licensee in violation of Chapter 455, 468, Part VIII, F.S., or Chapter 61-20, F.A.C. or other applicable statutes or rules. A licensee shall be deemed responsible by the department for the actions of all persons who perform community association management related functions under his or its supervision or control.~~

~~(5) (6) Records~~Gross Misconduct.

(a) It shall be considered gross misconduct, as provided by Section 468.436(2), F.S., for a licensee to violate the following provisions of this subsection:

1.(a) A licensee shall not withholding possession of any original books, records, accounts, funds, or other property of a community association when requested by the community association to deliver the same to the association upon reasonable notice. Reasonable notice shall extend no later than 10 business days after termination of any management or employment agreement and receipt of a written request from the association. The manager may retain those records necessary for up to 20 days to complete an ending financial statement or report. Failure of the association to provide access or retention of accounting records to prepare the statement or report shall relieve the manager of any further responsibility or liability for preparation of the statement or report. The provisions of this rule apply regardless of any contractual or other dispute between the licensee and the community association. ~~It shall be considered gross misconduct, as provided by Section 468.436(2), F.S., for a licensee to violate the provisions of this subsection.;~~

2.(b) A licensee shall not denying access to association records, for the purpose of inspecting or photocopying the same, to a person entitled to such by law, to the extent and under the procedures set forth in the applicable law.

3. (e) A licensee shall not create Creating false records or alter records of a community association or of the licensee except in such cases where an alteration is permitted by law (e.g., the correction of minutes per direction given at a meeting at which the minutes are submitted for approval).

4.(d) A licensee shall not, to the extent charged with the responsibility of maintaining records, fail Failing to maintain ~~his or its records, the records of a community association manager or management firm or and~~ the records of any applicable community association, in accordance with the laws and documents requiring or governing the records.

5. Using funds received by the community association manager or management firm for any purpose other than for the specific purpose or purposes for which the funds were remitted.

~~(7) Financial Matters. A licensee shall use funds received by him or it on the account of any community association or its members only for the specific purpose or purposes for which the funds were remitted.~~

~~(6)(8) Other Licenses.~~

(a) A licensee shall not commit acts of gross negligence or gross misconduct in the pursuit of community association management or any other profession for which a state or federal license is required or permitted. It shall be presumed that gross negligence or gross misconduct has been committed where a licensee's other professional license has been suspended or revoked for reasons other than non-payment of fees or noncompliance with applicable continuing education requirements.

(b) A licensee shall not perform, agree to perform or hold himself or itself out as being qualified to perform any services which, under the laws of the State of Florida or of the United States, are to be performed only by a person or entity holding the requisite license for same, unless the licensee also holds such license or registration; provided, however, that no violation hereof shall be deemed to have occurred unless and until the authority administering the license or registration in question makes a final determination that the licensee or registrant has failed to obtain a license or registration in violation of the law requiring same.

(c) A licensee shall reveal all other licenses or registrations held by him or it under the laws of the State of Florida or the United States, if, as a result of such license or registration, a licensee receives any payment for services or goods from the community association or its board.

(d) Violation of any provision of Section 455.227(1), F.S., or of any part of this rule shall subject the licensee to disciplinary measures as set out in Section 468.436, F.S.

*Rulemaking Authority 468.4315(2) FS. Law Implemented 468.433, 468.436 FS. History—New 5-5-88, Amended 2-5-91, Formerly 7D-55.007, 61B-55.007, Amended 1-8-98, 5-31-99, Formerly 61-20.503, Amended 4-21-10,\_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Regulatory Council of Community Association Managers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Regulatory Council of Community Association Managers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 31, 2013

DATE THE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 18, 2013