



## By Vote of Owners, Audit Rule Can Be Waived Down

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**Q:** Please clarify the law regarding condominium association audits. Our association has revenues which exceed \$400,000.00, but we have never had an audit. Can this requirement be waived completely, or can we waive down one level only, and have a review performed? **H.T. (via e-mail)**

**A:** The Florida Condominium Act requires associations with annual revenues exceeding \$400,000.00 to produce a year-end audit within 120 days of the end of the fiscal year. By majority vote of the owners, your association can “waive down” to a lower level report, a review, a compilation, or a cash statement of receipts and expenditures (“cash report”). The owners can vote to “waive down” to the lowest level report (cash report) and there is nothing in the law that says you can only “waive down” one level.

The law has, for many years, excluded associations of less than 50 units from this rule, regardless of the level of annual revenues. These associations are only obligated as a matter of law to prepare a cash report. SB 1196, which has been reported on in previous editions of this column, raised the exemption to condominiums of less than 75 units. Stated otherwise, condominiums between 50 and 74 units are now also subject to the exemption in the law and are only obligated to prepare a cash report, regardless of the level of annual revenue.

The condominium law was amended in 2008 to provide that an association cannot waive required financial reports for more than three years. Accordingly, if your association falls into the audit category (annual revenues of more than \$400,000.00) and is not exempt because the association operates less than 75 units, you will need to have an audit done at least once every four years. Please also keep in mind that your association’s bylaws may impose more stringent financial reporting requirements than those which are set forth in the law.

**Q:** Our homeowners’ association board would like to hold a “workshop” meeting where no votes will be taken. This would be more of a planning meeting, including the development of agendas for future meetings. You have previously stated that such “workshop” meetings are valid as long as the notice is properly posted and the meeting is open to the owners. We would plan to post a notice and invite owners to our workshop. However, I think we will be challenged and would like to know specifically what law permits “workshop” meetings. **K.M. (via e-mail)**

**A:** Chapter 720 of the Florida Statutes, commonly referred to as the Florida Homeowners’ Association Act, defines a “meeting” of the board as any gathering of a

quorum of the board at which HOA business is conducted. Clearly, long-range planning and agenda development is “conducting business”, even if no votes are taken.

Accordingly, if the association wishes to hold such a board meeting and it is properly noticed and open to members, it is permitted by Section 720.303(2) of the statute. The law does not specifically mention “workshop” meetings, but such meetings are “board meetings”, as would be a regular board meeting where voting takes place.

**Q:** I was recently informed that because of the 2010 changes in association laws, boards can no longer send out e-mails to all of our members and “cc” each individual. Is this true? **C.C. (via e-mail)**

**A:** You are presumably referring to the amendments to the “official records” segments of the condominium and homeowners’ association laws which became effective July 1, 2010. These laws state that “e-mail addresses” are “not accessible” to owners in the community. It is not entirely clear why the Florida Legislature saw the need to enact this change. The formal legislative history reports offer little guidance. I have seen some materials that suggest that some associations may have been selling their e-mail lists to outsiders for profit, and that “data mining” was occurring. While perhaps grounded on good intentions, this part of the new law seems universally unpopular with association boards. As the law is only a

month old, there are still many unresolved questions arising under it, and perhaps room for debate on some of the finer points.

As to e-mails that are sent to a significant number of association members, I am assuming that the owners signed up to receive those e-mails, and receive them for informational purposes (upcoming maintenance projects, report of recent criminal activity, event reminders, etc.). SB 1196 does not expressly prohibit e-mail communications from the association to its members. SB 1196 does prohibit making an individual unit owner’s e-mail address “accessible” to others.

Therefore, if an association sends out an e-mail to a voluntary group of owner recipients, it is my interpretation of the law that such is proper provided that any e-mail recipient cannot “reply to all”, nor otherwise determine the e-mail address of other recipients. I am certainly no technology wizard, but I am told that in most computer operating systems, simply sending an e-mail to yourself with a “bcc” to the other recipients will suffice on both accounts (the recipients will not be able to “reply to all” nor ascertain the e-mail addresses of the other recipients).

The new law only applies to the association. If groups of unit owners wish to set up e-mail groups amongst themselves outside of the auspices of the association, they also have that right.

*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners’ associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm’s Naples and Ft. Myers offices.*

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