

Not All Notices Can Be Sent By E-mail

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By: Joseph E. Adams



Q: What legal notices does my association have to send to me, if any by U.S. mail. I signed an electronic notice authorization but keep getting a lot of association paperwork in the mail? (A.K., via e-mail)

A: Associations are generally required to send notices for membership meetings, committee meetings that require notice under the statute, budget meetings, board

meetings to set the insurance deductible, board meetings to authorize electronic voting, and board meetings at which assessments or rules regarding parcel or unit use will be considered. However, Florida community associations are not required to send these types of notices by mail (or hand delivery, which is also usually a legally permissible method of delivery) when the owner has given written consent to receive notices by “electronic transmission,” which is usually e-mail, but could also be a fax number.

However, there are a few types of notices that cannot be sent by electronic transmission, even if the owner has consented to receive official notices by e-mail. These include certain notices related to recall meetings, notices given in connection with the collection of delinquent assessments, certain demand notices regarding violations of covenants and restrictions, notices pertaining to termination of a condominium, notices involving conversions under the “Roth Act” provision of the Florida Condominium Act, and notices under the Florida Homeowners’ Association Act demanding participating in mandatory pre-suit mediation.

Associations are still required to also post most types of legally required notice at a conspicuous location on the common areas (for homeowners’ associations) and a conspicuous location on the condominium property (for condominiums), both as designated by the board. The law was amended in 2018 to prohibit condominium associations from satisfying legal notice requirements by posting on association property.

Consent from an owner to receive electronic notice must specifically authorize, in writing, association to transmit notices electronically. Such consent must be made revocable at will by the owner. The consent forms must be retained as an official record of the association. Similarly, although owner e-mail addresses are generally protected from access by other owners, owners who agree to accept official notices by e-mail also consent to their e-mail addresses becoming part of the official records of the association.

The fact that an association has permission to use electronic notice does not mean that the association is obligated to do so. I have been told by several management companies that they do not like to use e-mail notices because they still have to do runs of the packages for owners who receive their notices by mail, and it is just as easy to run a mail package for the whole community as it is to separate out those which get e-mails. Managers have also expressed concern about having a meeting notice challenged when an owner who gets e-mail notices changes their e-mail address, and questions arise as to whom they told, and when about it.

Q: Is there a minimum dollar amount that is required to be in a condominium association's reserves? (G.C., via e-mail)

A: The law requires reserves for roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000. Reserve funding obligation is to be determined by a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item.

The statute allows the members to vote to waive or reduce the association's annual reserve funding obligation and also permits votes to authorize use of reserves for a non-scheduled purpose. There is no minimum amount of reserves required by statute if the owners have properly voted to have no reserves. While this is not considered desirable, it is also not uncommon.

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