

VARIANCES AND WAIVERS

Condominium and cooperative associations are governed by Chapter 718, Florida Statutes, also known as the Condominium Act, and Chapter 719, Florida Statutes, also known as the Cooperative Act. In addition, the Condominium and Cooperative Acts have corresponding administrative rules. For condominiums, these rules are contained in Chapters 61B-15 through 61B-24, Florida Administrative Code. The administrative rules for cooperatives are found in Chapters 61B-75 through 61B-79, Florida Administrative Code.

These administrative rules were promulgated by the Division of Florida Condominiums, Timeshares, and Mobile Homes to interpret, enforce, and implement the Condominium and Cooperative Acts. Pursuant to section 120.542, Florida Statutes, and Rules 28-104.001 through 28-104.006, Florida Administrative Code, a person can request and receive a waiver or variance of an administrative rule if he or she can successfully demonstrate the following:

- The essential underlying purpose of the law has been or will be satisfied through some other means, and
- The application of the administrative rule would create a “*substantial hardship*” or would violate “*principles of fairness*.”
- “*Substantial hardship*” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the waiver or variance.
- Violating “*principles of fairness*” is defined as a circumstance where a person is affected by the rule in a manner significantly different from others who are subject to the same rule.
- A “**variance**” is “a decision by an agency to grant a modification to all or part of the literal requirements of an agency to a person who is subject to the rule.”
- A “**waiver**” is “a decision by an agency not to apply all or part of a rule to a person who is subject to the rule.”

A variance or waiver can only be granted for administrative rules. Statutory requirements cannot be waived or modified. To request a variance or waiver of a Division rule, you must file a petition with the Department’s agency clerk. Instructions for submitting a petition are attached.

Instructions for Requesting a Variance or Waiver

Petitions for variances or waivers should be printed or typed on one side of each page in number paragraphs using the format of the attached EXHIBIT.

The body of the petition must contain the following information:

1. The name, address, telephone number, and facsimile number of the petitioner;
2. The name, address, telephone number, and facsimile number of the attorney or qualified representative (if any);
3. The rule cite from which variance or waiver is requested, including the text of the applicable portion of the rule;
4. The citation of the statute the rule is carrying out;
5. The type of action the petition is requesting from the agency;
6. The facts that demonstrate a substantial hardship or violation of principles of fairness the would justify a variance or waiver;
7. The reason the variance or waiver serves the purpose of the underlying statute;
8. Whether the variance or waiver is permanent or temporary. If temporary, the petition should state the dates showing the length of time of the requested variance or waiver.

The Department must answer petitions for variance or waiver within ninety (90) days of receipt. However, petitions can be withdrawn at any time by the applicant prior to final agency action. If a petition is denied, you may request a hearing pursuant to sections 120.569 and 120.57, Florida Statutes.

If a situation requires immediate action, you may file a petition for an emergency variance or waiver. In addition to the items listed above, a petition for emergency variance or waiver must be identified as an emergency petition in the heading. It must specify what facts make the situation an emergency and what harm will occur if the variance or waiver is not issued sooner than the time frames normally provided. Emergency petitions must be granted or denied within thirty (30) days of receipt. When a situation requires an answer in less than thirty (30) days, your petition should state how soon you need an answer and why. If it is determined that no emergency exists, your petition will be considered on a non-emergency basis, and the normal deadlines will apply.

For more information regarding variances and waivers, please refer to the Administrative Procedures Act, Chapter 120, Florida Statutes, and the Uniform Rules of Procedure, Chapter 28-104, Florida Administrative Code. Pertinent portions of each are attached. Petitions for variance or waiver should be sent to:

Department of Business and Professional Regulation
Attn: Agency Clerk
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-2217

(Revised 11/03)

EXHIBIT

Petition Format for Variance or Waiver

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES, and MOBILE HOMES

Date:

In re:

Petition for Variance (or Waiver)

RE: (rule citation, please include
text of rule)

Name of Petitioner

PETITION FOR [VARIANCE FROM] OR [WAIVER OF] RULE (INCLUDE CITE)

(Substance of Petition)

Signature of Petitioner
Name, Address, Telephone and Fax Numbers
of Petitioner

Signature of Attorney or
Qualified Representative (If Any)
Name, Address, Telephone and Fax Numbers
of Petitioner