

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1405 Community Associations

**SPONSOR(S):** Regulatory Affairs Committee; Business & Professions Subcommittee; Bracy; La Rosa and others

**TIED BILLS:**                   **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Brown-Blake	Anstead
2) Government Operations Appropriations Subcommittee	9 Y, 0 N	White	Topp
3) Regulatory Affairs Committee	15 Y, 0 N, As CS	Brown-Blake	Hamon

### SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), housed under the Department of Business and Professional Regulation (Department), has limited regulatory authority over condominium associations, cooperative associations, and homeowners' associations (limited only to arbitration of election and recall disputes). A condominium is a form of real property ownership created pursuant to ch. 718, F.S. A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S.

The bill amends current law relating to condominiums and homeowners' associations. Specifically, the bill:

- Provides that if an association fails to comply with a members request for a copy of the associations' financial report, the Division, at the rest of the member, shall obtain the report from the association;
- Removes current law that permits an association operating fewer than 50 units, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures in lieu of financial statements;
- Revises records retention provisions to require that condominium associations and homeowners' associations maintain the same official records;
- Requires a condominium association with 500 or more units and a homeowners' association with 7,500 or more parcels to provide a secure website for association members to view specified official records and meeting notices;
- Requires an outgoing or recalled board member to turn over the administrative rights or controls of the condominium association's website to the incoming board; and
- Provides requirements when amending governing documents of a homeowners' association.

There is an insignificant negative fiscal impact on the state and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **General**

The Division provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).<sup>1</sup>

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities.<sup>2</sup> A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.<sup>3</sup> A declaration governs the relationships among condominium unit owners and the condominium association.

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association,<sup>4</sup> and individual units are leased to the residents, who own shares in the cooperative association.<sup>5</sup> The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical.

A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute. The Department currently only provides arbitration for election and recall disputes for homeowners' associations but does not regulate homeowners' associations. However, the Department does regulate the community association managers which often manage homeowners' associations.

##### **Providing a Financial Report**

###### **Background**

In accordance with ss. 718.111(13), 719.104(4), and 720.303(7), F.S., within 90 days after the end of the fiscal year or calendar year, or annually on a date provided in the bylaws, the association is required to prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or calendar year, or other date as provided in the bylaws, the association must provide each member<sup>6</sup>

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<sup>1</sup> *Id.*

<sup>2</sup> s. 718.103(11), F.S.

<sup>3</sup> s. 718.104(2), F.S.

<sup>4</sup> s. 719.103(2), F.S.

<sup>5</sup> s. 719.103(26), F.S.

<sup>6</sup> Section 718.111(13), F.S., requires that the condominium association "mail a copy of the financial report to each unit owner at the last address furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice

a copy of the financial report or a notice that a copy of the financial report is available upon request without charge, upon receipt of a written request from the member or unit owner.

### Effect of the Bill

Under the financial reporting requirements for condominiums associations, cooperative associations, and homeowners' associations, the bill provides that a member or unit owner may contact the Division to report an association's failure to provide a copy of the financial report within the required time. Upon notification, the Division is required to contact the association to request the association comply with the requirement to provide a copy of the financial report to the unit owner or member. If the association fails to comply further, the association is then required to provide a copy of the financial report for the current fiscal year and the two subsequent fiscal years to the Division. The Division shall maintain the records and provide a copy to a member of the public upon request.

## **Preparing a Financial Report**

### Background

Condominium associations, cooperative associations, and homeowners' associations are required to comply with financial reporting requirements enumerated in ss. 718.111, 719.104, and 720.303, F.S. Those associations whose total annual revenues meet the following criteria shall prepare a complete set of financial statements according to the generally accepted accounting principles. The associations shall prepare the financial statements as follows:

- An association with total annual revenues between \$150,000 and \$299,999 shall prepare a compiled financial statement;
- An association with total annual revenues between \$300,000 and \$499,999 shall prepare a reviewed financial statement; and
- An association with total annual revenues of \$500,000 or more shall prepare an audited financial statement.

Some associations are exempt from the preceding requirements if they do not meet the total annual revenue requirements or are of a certain size. Such associations must comply with the following requirements:

- An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.<sup>7</sup>
- An association in a community of fewer than 50 units, regardless of the association's annual revenues, **shall** prepare a report of cash receipts and expenditures in lieu of the financial statements.<sup>8</sup>

### Effect of the Bill

Under the financial reporting requirements for condominium associations, cooperative associations, and homeowners' associations, the bill removes the provisions that an association operating fewer than 50 units or parcels, regardless of the association's annual revenues, shall ["may" for homeowners'

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that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner."

<sup>7</sup> A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association. For condominium associations, "reserves" could include reserves accumulated and expended for capital expenditures, deferred maintenance and any other category for which the association maintains reserves.

<sup>8</sup> Sections 719.104(4) and 720.303(7), F.S., provides that this exemption from the requirement to prepare a financial report applies unless the declaration or other recorded governing documents provide otherwise.

associations] prepare a report of cash receipts and expenditures in lieu of financial statements; thereby the type of year-end financial reports required to be completed by the association would be based solely on the level of annual revenues.

Finally, the bill permits condominium and homeowners' associations to waive the financial reporting requirements for more than 3 consecutive years.

## **Condominium and Homeowners' Association Official Records**

### **Background**

Condominium and homeowners' associations are currently required to maintain official records, which include:

- A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
- Meeting minutes;
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- Accounting records for the association;
- All contracts for work to be performed; and
- All other written records which are related to the operation of the association.<sup>9</sup>

### **Effect of the Bill**

The bill makes the following changes to the official records that a condominium association is required to maintain:

- The association must retain plans, permits, and warranties related to improvements to the common areas or other property that the association is obligated to maintain, repair, or replace;
- The association must remove from its official records the e-mail address and fax number of a unit owner who revokes his or her consent to receive notice by electronic transmission;
- The association must retain bids for materials, equipment, or services for a period of one year;
- Financial records, tax returns, and any records that identify, measure, record, or communicate financial information must be retained; and
- Physical copies of the association's official records must be open to inspection by a member or his or her authorized representative.

The bill makes the following changes to the official records that a homeowners' association is required to maintain:

- The association must retain the documents and items provided by the developer when control of the association transfers to members of the association;<sup>10</sup>
- The association must retain a certified copy of its articles of incorporation as well as audits and reviews;
- Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by members, must be maintained for one year after the date of the election, vote, or meeting.

## **Condominium and Homeowners' Association Access to Records**

### **Background**

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<sup>9</sup> ss. 718.111(12)(a), and 720.303(4), F.S.

<sup>10</sup> See s. 720.307(4), F.S.

The condominium association shall provide access to the official records for inspection by any association member or the authorized representative of the member at reasonable times.<sup>11</sup> The right to inspect includes the right to make or obtain copies at the expense of the member. Currently, law does not require a condominium or homeowners' association to maintain a website.

Current law requires an outgoing board member of a condominium association to turn over all official records and property of the association in his or her possession or control to the incoming board within five days after the election.<sup>12</sup>

### Effect of the Bill

The bill requires a condominium association with 500 more units which does not manage timeshare units and a homeowners' association with 7,500 or more parcels to provide certain specified documents on the association's website. The website must:

- Be independently owned and operated by the association or operated by a third-party provider with whom the association has the right to operate a web page dedicated to the association's activities, notices and records; and
- Contain a protected location that is accessible only to the unit owners and employees of the association.

The association must provide each member access to the protected sections of the association's website that contain any required notices, records, or documents.

The following documents must be placed on both condominium and homeowners' associations' websites:

- A copy of the bylaws of the association and of each amendment to the bylaws.
- A certified copy of the articles of incorporation of the association and of each amendment.
- A copy of the current rules of the association.
- The annual budget and any proposed budget to be considered at the annual meeting.
- The financial report and any proposed financial report to be considered at a meeting.
- The certification of each director.
- Any fidelity bond entered into by the association.
- Notice of any board meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., F.S., no later than 14 days before the meeting, along with any documents to be considered during the meeting or listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered, unless otherwise stated, including the following documents:
  - The proposed annual budget;
  - The proposed financial report; and
  - A list of persons seeking to be elected to the board.

Notices must be posted in plain view on the front page, or on a separate subpage labeled "Notices" which is conspicuously visible and linked from the front page of the association's website.

A condominium association's website must also contain:

- A copy of the plans, specifications, permits, and warranties related to improvements to the common elements or other property that the association is obligated to maintain, repair, or replace, and other items provided by the developer pursuant to s. 718.301(4), F.S.
- A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.
- All current insurance policies of the association and condominiums operated by the association.
- A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

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<sup>11</sup> s. 718.111(12)(c), F.S.

<sup>12</sup> s. 718.111(12)(f), F.S.

- Bills of sale or transfer for all property owned by the association.
- A list of all contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.
- Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2) and 718.3026(3), F.S.

A homeowners' association website must also contain:

- A copy of the declaration of covenants and a copy of each amendment.
- A map of the association, including association boundaries.
- The following additional documents must be included with the notice of any board meeting and the agenda for the meeting:
  - A copy of contracts or transactions listed;
  - Any competitive bids for materials, equipment, or services; and
  - Any proposed contracts or proposed transactional documents related to any possible conflict of interest.
- The following statement and a notice including the e-mail address of the person to contact for a copy of the documents.

The following documents are available at the request of any association member:

1. Minutes of all meetings of the board of directors and of the members.
2. A current roster of all members and their mailing addresses and parcel identifications.
3. All of the association's insurance policies or a copy.
4. A current copy of all contracts to which the association is a party.
5. The financial and accounting records of the association, kept according to good accounting practices.
6. All tax returns, audits, review, financial statements, and financial reports of the association.
7. A copy of the disclosure summary described in s. 720.401(1), F.S.
8. Any other records that identify, measure, record, or communicate financial information.
9. Any document created by the association or a board member relating to the recall of a director, pursuant to s. 720.303(11), F.S., or any document created for or filed by the association in an arbitration proceeding conducted by the division regarding the recall of a director.
10. A copy of the information submitted to the division to comply with the reporting requirements of s. 720.303(14), F.S.
11. Documentation reporting the compensation of directors, officers, or members.
12. A list of all contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated homeowners' association or any other entity in which an association director is also a director or officer and financially interested.
13. Any contract or document regarding a conflict of interest or possible conflict of interest, as provided in s. 468.436(2) or s. 720.3033, F.S.

A condominium or homeowners' association must ensure that information and records that members are not permitted to access are not placed on its website. If protected information is included in documents that are required to be placed on the website, the association must redact such information before placing the documents online.

A condominium association with 500 or more units or a homeowners' association with 7,500 or more parcels located within the physical boundaries of an affiliated condominium association with 500 or more units or homeowners' association with 7,500 or more parcels must provide digital copies of the specified documents on the larger affiliated association's website. An condominium association with fewer than 500 units or a homeowners' association with fewer than 7,500 parcels located within the

physical boundaries of a condominium association with 500 or more units or homeowners' association with 7,500 or more parcels, but that is not affiliated with the larger association, may provide digital copies of certain documents on its website if the association so chooses.

The bill requires an outgoing board member of a condominium association, including a member who has been recalled, to turn over the administrative rights or controls of an association's website or other digital or electronic asset to the incoming board.

## **Condominium Termination**

### **Background**

Section 718.117, F.S., governs the process for terminating a condominium in cases of economic waste or impossibility<sup>13</sup> and in cases where the association uses its discretion to terminate.<sup>14</sup> In cases of optional termination, unless the condominium declaration provides for a lower percentage, the condominium may be terminated if the termination is approved by at least 80 percent of the total voting interests of the condominium and no more than 10 percent of the total voting interests of the condominium reject the termination.<sup>15</sup> If 10 percent or more of the total voting interests of the condominium reject a plan of termination, a termination may not proceed and another optional plan of termination may not be considered for 18 months.<sup>16</sup>

### ***Optional Terminations Involving Bulk Owners***

For condominiums in which at least 80 percent of the total voting interests are owned by a bulk owner,<sup>17</sup> all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. For original purchasers from the developer who rejected the plan of termination and whose unit was granted a homestead exemption by the county appraiser, or who was an owner-occupied operating business, and who is current on all assessments to the association and any mortgage encumbering the unit, the fair market value is at least the purchase price paid for the unit. Additionally, the plan of termination must provide for payment of the first mortgage on each unit sufficient to satisfy the lien. However, the payment may not exceed the unit's share of the proceeds of termination under the plan. If the unit owner is current in payment of all assessments and obligations to the association and any mortgage encumbering the unit, payment of the unit's share of the proceeds of termination under the plan or the outstanding balance of the mortgage, whichever is less, is deemed to have satisfied the first mortgage in full.

### **Effect of the Bill**

The bill removes the requirement that original purchasers from the developer who rejected the plan of termination have a unit that was granted a homestead exemption by the county appraiser in order to get at least the purchase price paid for the unit as the fair market value when being paid for the unit in an optional termination involving a bulk owner.

## **Homeowners' Association Meeting Quorum and Amendments**

### **Background**

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<sup>13</sup> Section 718.117(2), F.S., provides that a condominium may be terminated for "economic waste" if the total cost of construction or repairs necessary to construct the improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium. A condominium may be terminated for "impossibility" if "it becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations." *Id.* at (2)(a)2.

<sup>14</sup> *Id.* at (3)

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at (3)

<sup>17</sup> A "bulk owner" is defined in the bill as "the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider . . . holding such voting interests."

The governing documents of a homeowners' association include:

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits;
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments.<sup>18</sup>

The declaration of covenants are defined as “a recorded written instrument or instruments in the nature of covenants running with the land which subject the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members.”<sup>19</sup>

Currently, unless otherwise provided in the governing documents or required by law, a homeowners' association's governing documents may be amended by a two-thirds vote of the voting interests of the association.<sup>20</sup> The amendment must be recorded. The failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.<sup>21</sup>

An amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment.<sup>22</sup>

### Effect of the Bill

The bill provides that a proposal to amend the declaration of covenants must contain the full text of the provisions to be amended and not be amended by reference to the declaration title or number. The words being added to the amendment must be underlined, and the words to be deleted must be stricken through. If the proposed change is extensive, the proposal may provide the new language with a notation immediately preceding the proposed language which states “Substantial rewording of declaration. See current provision for present text.”

The bill states that a nonmaterial error or omission in the amendment process does not invalidate an otherwise properly adopted amendment. Furthermore, the bill explicitly requires an amendment to a recorded governing document be properly recorded in the public records of a county in order to be effective.

Finally, the bill provides that an amendment prohibiting parcel owners from renting their homes, altering the duration of rental terms, or specifying or limiting the number of times a parcel owner is entitled to rent the home during a specified period only applies to parcel owners who acquire title to the home after the effective date of the amendment or to parcel owners who consent to the amendment.

## B. SECTION DIRECTORY:

**Section 1** amends s. 718.111, F.S., relating to maintaining and providing access to condominium association records and preparing and providing financial reports.

**Section 2** amends s. 718.117, F.S., relating to optional termination of a condominium related to a bulk owner.

**Section 3** amends s. 719.104, F.S., relating to preparing and providing cooperative associations' financial reports.

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<sup>18</sup> s. 720.301(4), F.S.

<sup>19</sup> s. 720.301(8), F.S.

<sup>20</sup> s. 720.306(1)(b), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at (1)(c)

**Section 4** amends s. 720.303, F.S., relating to maintaining and providing access to homeowners' association records and preparing and providing financial reports.

**Section 5** amends s. 720.306, F.S., relating to amendments to homeowners' association documents.

**Section 6** provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None.

2. Expenditures:  
There is an indeterminate but likely insignificant negative fiscal impact to the state. As currently drafted, maintaining associations' financial reports would have a minimal impact that could be addressed by current staffing.

If the language were amended to require the Division to review financial statements to ensure associations are compliant, this would require additional staff. However, this cost may be avoided if the financial reports were required to be submitted electronically.<sup>23</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.

2. Expenditures:  
None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain associations operating fewer than 50 units or parcels are currently able to prepare a report of cash receipts and expenditures in lieu of a financial statement. The bill would remove this exemption from the financial statements requirement, thus requiring the associations to prepare financial statements according to generally accepted accounting principles. Some of these associations may choose to hire accountants or community association managers to have the financial statements prepared. Associations operating with fewer than 50 units that were previously allowed to prepare a cash receipts and expenditures report in lieu of the financial reporting requirements set under ss. 718.111, 719.104, and 720.303, F.S., would now incur costs ranging from \$1,000-\$5,000 based on their annual revenues. This amount could exceed \$5,000 based on annual revenues, size, amenities and complexity of accounting systems of the associations.<sup>24</sup>

The number of associations that would be affected is unknown.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

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<sup>23</sup> Department of Business and Professional Regulation Bill, Agency Analysis on CS/HB 1405 (February 4, 2016).

<sup>24</sup> Email from Justin A.Thames, Director of Government Affairs, Florida Institute of CPAs, Re: HB1405, Cost of Financial Reports, January 25, 2016, (on file with the Business and Professions Subcommittee).

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 26, 2016, the Business & Professions Subcommittee considered and adopted a strike-all amendment and two amendments to the strike-all amendment and reported the bill favorably as a committee substitute. The amendments:

- Provide that an association unit owner or member may contact the Division if the association fails to provide a copy of the financial report within the required time and after the unit owner/member has submitted a written request.
- Require the Division to contact the association within five business days of the unit owner's or members initial contact, to request the association comply.
- Require the association to submit a copy of the financial report to the Division within seven business days if the association continues to not provide the copy to the unit owner or member.
- Require the association to provide a copy of the financial report to the Division for the two subsequent fiscal years within 21 days after the final financial report is completed or received by the association.
- Prohibit the association that fails to provide a copy of the financial report to a unit owner or member from waiving the financial reporting requirement
- Require the Division to maintain the records and provide a copy to members of the public upon request.
- Amend the official records maintained by condominium associations to mirror the official records maintained by homeowners' associations.
- Require condominium associations with more than 500 parcels and homeowners' associations with more than 7500 parcels to provide members with access to a protected website that contains specific records and documents.
- Permit condominium associations with less than 500 parcels and homeowners' associations with less than 7500 parcels to provide the documents on a website.
- Require outgoing board members to turn over administrative rights or controls of a website or other digital or electronic assets to the incoming board.

On February 25, 2016, the Regulatory Affairs Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarify documents that must be placed on specific condominium and homeowners' association websites.
- Require the placement on specific condominium and homeowners' association websites of a notice indicating that certain documents are available upon request and providing a contact number.
- Provide that original purchasers of a condominium unit that reject a plan of condominium termination may recover fair market value, even if the unit is not homesteaded.
- Clarify the manner in which governing documents may be amended.

- Permit condominium and homeowners' associations to waive the financial reporting requirements for more than 3 consecutive years.

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.