

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 7119	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Business & Professional Regulation Subcommittee; La Rosa and others	113 Y's	5 N's
COMPANION BILLS:	(CS/CS/CS/SB 580)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 7119 passed the House on April 25, 2013, and subsequently passed the Senate on April 25, 2013. The bill amends requirements for homeowners' associations. To assess the number and variety of homeowners' associations throughout the state, the bill requires community association managers, or associations in their absence, to report information about the associations they manage to the Department of Business and Professional Regulation (DBPR) on a website established by the DBPR. This is a one-time requirement. The DBPR will submit an annual report of the data to the Governor and Legislature.

The bill provides that the DBPR may take administrative action against a community association manager's license for violations of state laws relating to condominium, cooperative and homeowners' associations that are committed during the course of performing contractual community management services.

As to official records, the bill:

- Requires records be maintained for 7 years within 45 miles of the community or within the same county;
- Allows the association to maintain records electronically;
- Requires associations to allow members to photograph records at no charge;
- Limits the amount an association may charge for copies to 25 cents per page; and
- Limits charges for personnel costs to only requests for 25 pages or more and taking more than a half hour to fill and limits the amount that may be charged on such requests to \$20 per hour.

As to directors and officers, the bill:

- Requires newly elected directors to certify that they have read and will uphold the governing documents or have taken a DBPR-approved education course;
- Provides a process for associations to follow when entering a contract with an entity in which a director has a financial interest, which includes the ability for members to cancel the contract;
- Prohibits officers, directors and managers from soliciting or accepting anything of value from those providing or offering to provide goods or services to the association, with exceptions;
- Provides that officers or directors charged with felony theft or embezzlement of association funds are removed from office; and
- Requires associations maintain fidelity bonding. This requirement may be waived annually.

As to developer-controlled associations, the bill gives homeowners the right to elect a member to the board once half the parcels are sold; and provides additional scenarios to trigger transition of control of the board to nondeveloper parcel owners, including the developer's abandonment, bankruptcy, foreclosure or receivership.

The bill is not expected to have a fiscal impact on state funds.

The bill was approved by the Governor on June 14, 2013, ch. 2013-218, L.O.F., and will become effective on July 1, 2013.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7119z1.BPRS

DATE: June 25, 2013

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Oversight of Homeowners' Associations

Current Situation

Unlike condominiums and cooperatives, no state agency has direct oversight of homeowners' associations. Florida law provides procedures and minimum requirements for operating homeowners' associations and provides for a mandatory binding arbitration program for certain election disputes, administered by Division of Condominiums, Timeshares, and Mobile Homes (Division) within the Department of Business and Professional Regulation (DBPR).¹

A "homeowners' association" is defined by statute as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."²

Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.³

Homeowners' associations are administered by a board of directors whose members are elected. The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents. The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.⁴

Effect of Changes

While the bill does not create any direct regulatory responsibilities for DBPR, it requires community association managers, who are licensed by the DBPR, to report specified information about the homeowners' associations they manage to the DBPR. In the absence of a community association manager, this duty is placed on the association.

The required information includes the association's legal name, federal employer identification number, mailing and physical addresses, the total number of parcels, and the total amount of revenues and expenses from the association's annual budget. For associations in which control of the association has not been transitioned to nondeveloper members, the developer's legal name and mailing address and the total number of parcels he or she owns must also be included.

The reporting requirement is a one-time requirement and must be complied with by November 22, 2013. The DBPR is directed to create a web-based form for the reporting requirement and to submit an annual report of the data collected to the Governor and Legislature.

The reporting requirement expires on July 1, 2016, unless reenacted by the Legislature.

¹ Section 720.311(1), F.S.

² Section 720.301(9), F.S.

³ Section 720.302(5), F.S.

⁴ Section 720.303, F.S.

Official Records Access

Current Situation

Current law requires homeowners' associations to maintain the official records of the association. These records are open to inspection by any association member or authorized representative at any time. The right to inspection includes the right to copies at the reasonable expense of the member. Certain records must be kept for 7 years and be available for inspection at reasonable times and places. Associations may charge fees to cover the costs of providing copies, including the costs of copying. Copies may cost up to 50 cents per page. For copies exceeding 25 pages, the association may use an outside vendor community association management company and charge any reasonable costs involving personnel fees and charges.⁵

Effect of Changes

The bill amends s. 720.303, F.S., to conform official records requirements for homeowners' associations to those requirements for condominium associations, including:

- Requiring records be maintained for 7 years;
- Requiring records be maintained within 45 miles of the community or within the same county; and
- Allowing the association to maintain records electronically.

The bill reduces the amount an association may charge for copies from 50 cents per page to 25 cents per page, and limits the association's ability to charge for personnel costs to those requests taking more than a half hour to fill and resulting in the copying of 25 or fewer pages at a rate of no more than \$20 per hour. The association may also use an outside duplicating service and charge the cost of such, as supported by the vendor invoice, to the homeowner. The bill also requires the association to allow members to photograph records using a camera or other electronic device at no charge.

Officers and Directors

Current Situation

As with the officers and directors of condominium associations, the officers and directors of a homeowners' association have a fiduciary relationship to the members who are served by the association. However, unlike the officers and directors of a condominium association, the officers and directors of homeowners' associations are not also subject to the following requirements:

- Directors of condominium associations must certify in writing that they have read the associations' governing documents and written policies, that they will uphold the documents and policies and maintain fiduciary responsibility to the association's members;⁶
- For contracts or transactions between condominium associations and one of its directors or any other entity in which a director has a financial interest, the condominium association must comply with certain statutory conflict of interest procedures, including disclosure and approval requirements and the ability of members to cancel the contract;⁷
- An officer, director or manager may not solicit or accept anything of value from any person providing or proposing to provide goods or services to the association. Knowingly doing so subjects the officer, director or manager to civil penalties;⁸
- Officers and directors of condominium associations who are charged with felony theft or embezzlement involving the association funds or property must be removed from office;⁹ and

⁵ Section 720.303, F.S.

⁶ Section 718.112(2)(d)4.b., F.S.

⁷ Section 718.3026, F.S.

⁸ Section 718.111(1)(a), F.S.

⁹ Section 718.112(2)(o), F.S.

- All condominium associations must maintain insurance or fidelity bonding on anyone who controls or disburses funds of the association.¹⁰

Effect of Changes

The bill conforms requirements of directors of homeowners' associations to that of directors of condominium associations.

The bill creates s. 720.3033, F.S., requiring newly elected directors to certify in writing, within 90 days, that they have read the association's governing documents and policies; that they will work to uphold the documents and policies, and that they will faithfully discharge their fiduciary responsibility to the association's members. In lieu of written certification, the newly elected director may certify that he or she has completed the Division's educational curriculum within one year prior to election or with 90 days after election. A director who fails to comply is suspended from the board until he or she complies. The certification is retained for 5 years after the director's election.

Furthermore, where an association enters into a contract with a director or an entity in which a director has a financial interest, the association must:

- Comply with conflict of interest procedures outlined in s. 617.0832, F.S.;
- Comply with disclosure requirements outlined in s. 617.0832, F.S.;
- Approve the contract or transaction by 2/3 vote of the directors present; and
- Disclose the contract at the next regular or special meeting.

Upon the motion of any member at the next regular or special meeting, the contract will be voted on and may be canceled by a majority vote of the members present. If the contract is canceled, the association is only liable for the reasonable value of goods and services already provided and is not liable for any fee or damages connected to the cancellation.

The bill provides that officers, directors and managers may not solicit or accept anything of value from any person providing or offering to provide goods or services to the association. An officer, director or manager who does so must be removed from office. The bill includes an exception for accepting food to be consumed at a business meeting with a value of less than \$25 per individual or services or items in connection to trade fairs or education programs.

The bill also provides that officers or directors charged with felony theft or embezzlement involving association funds are removed from office. If the charges are resolved without a finding of guilt, the director or officer shall be reinstated for any remainder of his or her term of office.

The bill requires homeowners' associations to maintain insurance or fidelity bonding for anyone who controls or disburses association funds. The members of the association may waive this requirement by majority vote annually.

Turnover of Association Control

Current Situation

Current law provides two scenarios in which parcel owners other than the developer are entitled to elect at least a majority of the members of the board of directors:

- Three months after 90 percent of the parcels that will be operated ultimately by the association have been conveyed to purchasers; or
- When such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the

¹⁰ Section 718.111(11)(h), F.S.

requirements of any governmentally chartered entity with regard to the mortgage financing of parcels.¹¹

This is in contrast to condominium associations, where the law provides the following circumstances requiring transition of control to a condominium association:

- Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;
- When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business;
- When the developer files a petition seeking protection in bankruptcy;
- When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members; or
- Seven years after recordation of the declaration of condominium with some conditions.¹²

Effect of Changes

The bill amends s. 720.307, F.S., to add the following scenarios triggering transition of control of the board from the developer to nondeveloper parcel owners:

- When the developer has abandoned or deserted his or her responsibility to maintain and complete the advertised amenities or infrastructure. There is a rebuttable presumption that the developer has abandoned and deserted the property, if the developer has unpaid assessments or guaranteed amounts under s. 720.308 for a period of more than 2 years;
- When the developer files a petition seeking protection in bankruptcy under chapter 7 of the United States Bankruptcy Code, 11 U.S.C. chapter 7;
- When the developer loses title to the property either through a foreclosure action or the transfer of a deed in lieu of foreclosure unless the successor owner has accepted an assignment of developer rights and responsibilities; and
- When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members.

Furthermore, the bill provides that nondeveloper parcel owners are entitled to elect at least one member of the board of directors once 50 percent of the parcels in all phases of the community have been conveyed to members.

Community Association Managers

Current Situation

Current law establishes licensure requirements for community association managers.¹³ A community association manager or firm must be licensed if he or she serves as management for an association of more than 10 units or an association with a budget of \$100,000 or greater.¹⁴ In 2011, there were 15,481 licensed community association managers. Community association managers are licensed by the

¹¹ Section 720.307, F.S.

¹² Section 718.301, F.S.

¹³ Chapter 468, Part VIII, F.S.

¹⁴ Section 468.432(2), F.S.

Division of Professions within the DBPR. The profession is overseen by the Regulatory Council of Community Association Managers.¹⁵

Community association managers are managers of homeowner and condominium associations, rented or leased housing units, buildings, or land (including rights-of-way). "Community Association Management" means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for payment and when the association served contains more than 10 units or has an annual budget in excess of \$100,000:

- Controlling or disbursing funds of a community association;
- Preparing budgets or other financial documents for a community association;
- Assisting in the noticing or conduct of community association meetings; and
- Coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.¹⁶

The Division of Professions investigates complaints and allegations of a violation of part VIII of ch. 468, F.S., ch. 455, F.S., or any rule adopted thereunder, filed against community association managers or firms and forwarded from other divisions under DBPR.¹⁷

DBPR may impose the following administrative penalties against licensed community association managers:

- Denial of an application for licensure;
- Revocation or suspension of a license;
- Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense;
- Issuance of a reprimand;
- Placement of the community association manager on probation for a period of time and subject to such conditions as the department specifies; and
- Restriction of the authorized scope of practice by the community association manager.¹⁸

The grounds for disciplinary action include the following:

- Violation of any provision of chapter 468, Part VIII, F.S., relating to community association managers;
- Committing acts of gross misconduct or gross negligence in connection with the profession;
- Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed;
- Making misleading, deceptive, or fraudulent representations related to the licensee's profession;
- Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to a crime in any jurisdiction which relates to the practice of a licensee's profession;
- Failing to perform any statutory or legal obligation placed upon a licensee;
- Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession;
- Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform;
- Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of such responsibilities knows, or has reason to know, such person is not qualified by training, experience, and authorization when required to perform them; and
- Failing to report in writing to the board or, if there is no board, to the department within 30 days after the licensee is convicted or found guilty of, or entered a plea of nolo contendere or guilty

¹⁵ Section 468.4315, F.S.

¹⁶ Section 468.431(2), F.S.

¹⁷ Section 468.436, F.S.

¹⁸ Section 468.436(4), F.S.

to, regardless of adjudication, a crime in any jurisdiction. A licensee must report a conviction, finding of guilt, plea, or adjudication entered before the effective date of this paragraph within 30 days after the effective date of this paragraph.¹⁹

Effect of Changes

The bill amends s. 468.436(2), F.S., to provide that DBPR may take administrative action against a community association manager's license for violations of chs. 718, 719, or 720, F.S., that are committed during the course of performing community management services pursuant to a contract with an association.

The bill provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill requires DBPR to collect and report data on homeowners' associations to the Governor and the Legislature. DBPR reports that implementation of the bill will require 96 hours of staff time, which it can accomplish within existing resources.²⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires a homeowners' association to maintain an insurance policy or fidelity bonding for anyone who controls or disburses association funds. The cost of such a policy would depend on the policy limit, the amount of the deductible, the number of people covered by the policy, and the types of losses that would be covered. According to industry representatives, a premium would cost anywhere between \$309 per year for a \$10,000 policy limit to \$2,346 for a policy limit of up to \$1,000,000. The homeowners may waive this requirement annually by a majority vote.

D. FISCAL COMMENTS:

The bill is not expected to have a fiscal impact on state funds.

¹⁹ Section 468.436(2), F.S.

²⁰ Email from Sam Verghese of DBPR, sent March 18, 2013 (on file with Business and Professional Regulation Subcommittee).