

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1450

INTRODUCER: Regulated Industries Committee and Senator Simpson

SUBJECT: Homeowners' Association Meetings

DATE: March 24, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1450 requires that meetings of the board of directors of a homeowners' association and meetings of the association's membership must be held at locations that are accessible to physically handicapped persons.

**II. Present Situation:**

**Homeowners' Associations**

Florida law recognizes corporations that operate homeowners' associations, provides procedures for doing so, and protects the rights of association members.<sup>1</sup>

A "homeowners' association" is defined 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.<sup>2</sup>

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<sup>1</sup> See s. 720.302(1), F.S.

<sup>2</sup> Section 720.301(9), F.S.

Homeowners' associations are also governed by either ch. 607, F.S., (relating to for-profit corporations) or by ch. 617, F.S., (relating to not-for-profit corporations).<sup>3</sup>

Section 720.301(4), F.S., defines the terms "declaration of covenants," or "declaration," to mean, "a recorded written instrument in the nature of covenants running with the land which subjects 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."

Section 720.301(8), F.S., defines the term "member" to mean "a member of an association, and may include, but is not limited to, a parcel owner or an association representing parcel owners or a combination thereof."

Section 720.301(10), F.S., defines the term "parcel owner" to mean the record owner of legal title to a parcel.

Section 720.301(11), F.S., defines the term "voting interest" to mean "the voting rights distributed to the members of the homeowners' association, pursuant to the governing documents."

Homeowners' associations are administered by a board of directors whose members are elected.<sup>4</sup> 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. The governing documents include recorded declarations of covenants, bylaws, articles of incorporation, and any duly adopted amendments to these documents.<sup>5</sup> The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>6</sup>

### **Americans with Disabilities Protections**

The Americans with Disabilities Act of 1990 (ADA or "act")<sup>7</sup> protects Americans with disabilities from discrimination related to employment, the provision of public services, and the provision of access to and enjoyment of public accommodations. With regard to public accommodations, the act provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

The act defines a disability to mean:

- A physical or mental impairment that substantially limits one or more major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.<sup>8</sup>

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<sup>3</sup> Section 720.302(5), F.S.

<sup>4</sup> See ss. 720.303 and 720.307, F.S.

<sup>5</sup> See ss. 720.301 and 720.303, F.S.

<sup>6</sup> Section 720.303(1), F.S.

<sup>7</sup> Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*

<sup>8</sup> 42 U.S.C. 12102(1).

In relevant part, the act provides:<sup>9</sup>

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce:

- (A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
- (B) a restaurant, bar, or other establishment serving food or drink;
- (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition entertainment;
- (D) an auditorium, convention center, lecture hall, or other place of public gathering;
- (E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
- (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
- (G) a terminal, depot, or other station used for specified public transportation;
- (H) a museum, library, gallery, or other place of public display or collection;
- (I) a park, zoo, amusement park, or other place of recreation;
- (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
- (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

Florida has adopted the architectural accessibility requirements of the ADA into the Florida Building Code.<sup>10</sup>

### **State Regulation of Homeowners' Associations**

Unlike condominium and cooperative associations,<sup>11</sup> which are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation (department), homeowners' associations are not regulated by a state agency.

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<sup>9</sup> 42 U.S.C. 12181(7).

<sup>10</sup> Section 553.503, F.S.

<sup>11</sup> See chs. 718 and 719, F.S., respectively.

Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The number of homeowners' associations or persons living in communities governed by homeowners' associations in Florida is unknown. Although homeowners' associations are required to file articles of incorporation with the Division of Corporations (division) in the Department of State, the division cannot identify corporations that are homeowners' associations under ch. 720, F.S.<sup>12</sup>

### **Meetings of the Board**

Section 720.303(2)(a), F.S., provides for the conduct of meetings of the board. It requires a quorum for a meeting of the board. All meetings of the board must be open to all members. However, meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege are not required to be open to non-board members. The quorum and open meeting requirements apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds. These requirements also apply to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

### **Meetings of Members**

Section 720.306, F.S., provides for meetings of the members of the homeowners' association. Section 720.306(1)(a), F.S., requires a quorum of 30 percent of the total voting interests, unless a lower number is provided in the bylaws. Section 720.306(2), F.S., requires that an association must hold an annual meeting of its members for the transaction of any and all proper business at a time, date, and place stated in, or fixed in accordance with, the bylaws. The election of directors, if one is required to be held, must be held at, or in conjunction with, the annual

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<sup>12</sup> Homeowners' Association Task Force, *Final Report of the Homeowners' Association Task Force*, February 2004, page 5. A copy of the report is available on the internet at <http://www.ccfj.net/DBPRTFfinalreport.pdf> (Last visited March 11, 2014).

meeting or as provided in the governing documents. Membership meetings are held to elect leaders, adopt and approve association financial statements, amend the governing documents, handle items of special business involving the membership, and to address other matters for the general welfare of the community.<sup>13</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 720.303, F.S., to require the meetings of the board of directors of a homeowners' association to be held at locations that are accessible to physically handicapped persons.

**Section 2** amends s. 720.306, F.S., to require the meetings of the members of an association to be held at locations that are accessible to physically handicapped persons.

The bill does not define the term “physically handicapped.”

**Section 3** provides an effective date of July 1, 2014.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

None.

#### C. Government Sector Impact:

None.

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<sup>13</sup> See Peter M. Dunbar and Charles F. Dudley, *The Law of Florida Homeowners Associations*, 9th ed. (2012-2013) s. 2.1.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 720.303 and 720.306.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries Committee on March 13, 2014:**

- Changes the title of the bill from an act relating to “Homeowners’ Association Board Meetings” to an act relating to “Homeowners’ Association Meetings.”
- Amends s. 720.306(1)(a), F.S., to require that meetings of the membership of the association must be held at locations that are accessible to physically handicapped persons.

**B. Amendments:**

None.