

By Senator Altman

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1 A bill to be entitled
2 An act relating to condominiums; amending s. 718.112,
3 F.S.; limiting the application of certain requirements
4 relating to bylaws to residential condominiums and
5 their associations and boards; providing an effective
6 date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Paragraphs (a), (b), (d), (k), and (l) of
11 subsection (2) of section 718.112, Florida Statutes, are amended
12 to read:

13 718.112 Bylaws.—

14 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
15 following and, if they do not do so, shall be deemed to include
16 the following:

17 (a) *Administration*.—

18 1. The form of administration of the association shall be
19 described indicating the title of the officers and board of
20 administration and specifying the powers, duties, manner of
21 selection and removal, and compensation, if any, of officers and
22 boards. In the absence of such a provision, the board of
23 administration shall be composed of five members, except in the
24 case of a condominium which has five or fewer units, in which
25 case in a not-for-profit corporation the board shall consist of
26 not fewer than three members. In the absence of provisions to
27 the contrary in the bylaws, the board of administration shall
28 have a president, a secretary, and a treasurer, who shall
29 perform the duties of such officers customarily performed by

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30 officers of corporations. Unless prohibited in the bylaws, the
31 board of administration may appoint other officers and grant
32 them the duties it deems appropriate. Unless otherwise provided
33 in the bylaws, the officers shall serve without compensation and
34 at the pleasure of the board of administration. Unless otherwise
35 provided in the bylaws, the members of the board shall serve
36 without compensation.

37 2. When a unit owner files a written inquiry by certified
38 mail with the board of administration, the board shall respond
39 in writing to the unit owner within 30 days after ~~of~~ receipt of
40 the inquiry. If the condominium is a residential condominium,
41 the board's response shall either give a substantive response to
42 the inquirer, notify the inquirer that a legal opinion has been
43 requested, or notify the inquirer that advice has been requested
44 from the division. If the board in a residential condominium
45 requests advice from the division, the board shall, within 10
46 days after ~~of~~ its receipt of the advice, provide in writing a
47 substantive response to the inquirer. If a legal opinion is
48 requested, the board shall, within 60 days after the receipt of
49 the inquiry, provide in writing a substantive response to the
50 inquiry. The failure to provide a substantive response to the
51 inquiry as provided herein precludes the board from recovering
52 attorney ~~attorney's~~ fees and costs in any subsequent litigation,
53 administrative proceeding, or arbitration arising out of the
54 inquiry. The association may through its board of administration
55 adopt reasonable rules and regulations regarding the frequency
56 and manner of responding to unit owner inquiries, one of which
57 may be that the association is only obligated to respond to one
58 written inquiry per unit in any given 30-day period. In such a

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59 case, any additional inquiry or inquiries must be responded to
60 in the subsequent 30-day period, or periods, as applicable.

61 (b) *Quorum; voting requirements; proxies.*—

62 1. Unless a lower number is provided in the bylaws, the
63 percentage of voting interests required to constitute a quorum
64 at a meeting of the members is a majority of the voting
65 interests. Unless otherwise provided in this chapter or in the
66 declaration, articles of incorporation, or bylaws, and except as
67 provided in subparagraph (d)4., decisions shall be made by a
68 majority of the voting interests represented at a meeting at
69 which a quorum is present.

70 2. Except as specifically otherwise provided herein, unit
71 owners in a residential condominium may not vote by general
72 proxy, but may vote by limited proxies substantially conforming
73 to a limited proxy form adopted by the division. A voting
74 interest or consent right allocated to a unit owned by the
75 association may not be exercised or considered for any purpose,
76 whether for a quorum, an election, or otherwise. Limited proxies
77 and general proxies may be used to establish a quorum. Limited
78 proxies shall be used for votes taken to waive or reduce
79 reserves in accordance with subparagraph (f)2.; for votes taken
80 to waive the financial reporting requirements of s. 718.111(13);
81 for votes taken to amend the declaration pursuant to s. 718.110;
82 for votes taken to amend the articles of incorporation or bylaws
83 pursuant to this section; and for any other matter for which
84 this chapter requires or permits a vote of the unit owners.
85 Except as provided in paragraph (d), a proxy, limited or
86 general, may not be used in the election of board members in a
87 residential condominium. General proxies may be used for other

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88 matters for which limited proxies are not required, and may be
89 used in voting for nonsubstantive changes to items for which a
90 limited proxy is required and given. Notwithstanding this
91 subparagraph, unit owners may vote in person at unit owner
92 meetings. This subparagraph does not limit the use of general
93 proxies or require the use of limited proxies for any agenda
94 item or election at any meeting of a timeshare condominium
95 association or a nonresidential condominium association.

96 3. A ~~Any~~ proxy given is effective only for the specific
97 meeting for which originally given and any lawfully adjourned
98 meetings thereof. A proxy is not valid longer than 90 days after
99 the date of the first meeting for which it was given. Each ~~Every~~
100 proxy is revocable at any time at the pleasure of the unit owner
101 executing it.

102 4. A member of the board of administration or a committee
103 may submit in writing his or her agreement or disagreement with
104 any action taken at a meeting that the member did not attend.
105 This agreement or disagreement may not be used as a vote for or
106 against the action taken or to create a quorum.

107 5. If any of the board or committee members meet by
108 telephone conference, those board or committee members may be
109 counted toward obtaining a quorum and may vote by telephone. A
110 telephone speaker must be used so that the conversation of those
111 members may be heard by the board or committee members attending
112 in person as well as by any unit owners present at a meeting.

113 (d) *Unit owner meetings.*—

114 1. An annual meeting of the unit owners shall be held at
115 the location provided in the association bylaws and, if the
116 bylaws are silent as to the location, the meeting shall be held

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117 within 45 miles of the condominium property. However, such
118 distance requirement does not apply to an association governing
119 a timeshare condominium.

120 2. Unless the bylaws provide otherwise, a vacancy on the
121 board caused by the expiration of a director's term shall be
122 filled by electing a new board member, and the election must be
123 by secret ballot. An election is not required if the number of
124 vacancies equals or exceeds the number of candidates. For
125 purposes of this paragraph, the term "candidate" means an
126 eligible person who has timely submitted the written notice, as
127 described in sub-subparagraph 4.a., of his or her intention to
128 become a candidate. Except in a timeshare or nonresidential
129 condominium, or if the staggered term of a board member does not
130 expire until a later annual meeting, or if all members' terms
131 would otherwise expire but there are no candidates, the terms of
132 all board members expire at the annual meeting, and such members
133 may stand for reelection unless prohibited by the bylaws. If the
134 bylaws or articles of incorporation permit terms of no more than
135 2 years, the association board members may serve 2-year terms.
136 If the number of board members whose terms expire at the annual
137 meeting equals or exceeds the number of candidates, the
138 candidates become members of the board effective upon the
139 adjournment of the annual meeting. Unless the bylaws provide
140 otherwise, any remaining vacancies shall be filled by the
141 affirmative vote of the majority of the directors making up the
142 newly constituted board even if the directors constitute less
143 than a quorum or there is only one director. In a residential
144 condominium association of more than 10 units or in a
145 residential condominium association that does not include

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146 timeshare units or timeshare interests, coowners of a unit may
147 not serve as members of the board of directors at the same time
148 unless they own more than one unit or unless there are not
149 enough eligible candidates to fill the vacancies on the board at
150 the time of the vacancy. A ~~Any~~ unit owner in a residential
151 condominium desiring to be a candidate for board membership must
152 comply with sub-subparagraph 4.a. and must be eligible to be a
153 candidate to serve on the board of directors at the time of the
154 deadline for submitting a notice of intent to run in order to
155 have his or her name listed as a proper candidate on the ballot
156 or to serve on the board. A person who has been suspended or
157 removed by the division under this chapter, or who is delinquent
158 in the payment of any monetary obligation due to the
159 association, is not eligible to be a candidate for board
160 membership and may not be listed on the ballot. A person who has
161 been convicted of any felony in this state or in a United States
162 District or Territorial Court, or who has been convicted of any
163 offense in another jurisdiction which would be considered a
164 felony if committed in this state, is not eligible for board
165 membership unless such felon's civil rights have been restored
166 for at least 5 years as of the date such person seeks election
167 to the board. The validity of an action by the board is not
168 affected if it is later determined that a board member is
169 ineligible for board membership due to having been convicted of
170 a felony. This subparagraph does not limit the term of a member
171 of the board of a nonresidential condominium.

172 3. The bylaws must provide the method of calling meetings
173 of unit owners, including annual meetings. Written notice must
174 include an agenda, must be mailed, hand delivered, or

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175 electronically transmitted to each unit owner at least 14 days
176 before the annual meeting, and must be posted in a conspicuous
177 place on the condominium property at least 14 continuous days
178 before the annual meeting. Upon notice to the unit owners, the
179 board shall, by duly adopted rule, designate a specific location
180 on the condominium property or association property where all
181 notices of unit owner meetings shall be posted. This requirement
182 does not apply if there is no condominium property or
183 association property for posting notices. In lieu of, or in
184 addition to, the physical posting of meeting notices, the
185 association may, by reasonable rule, adopt a procedure for
186 conspicuously posting and repeatedly broadcasting the notice and
187 the agenda on a closed-circuit cable television system serving
188 the condominium association. However, if broadcast notice is
189 used in lieu of a notice posted physically on the condominium
190 property, the notice and agenda must be broadcast at least four
191 times every broadcast hour of each day that a posted notice is
192 otherwise required under this section. If broadcast notice is
193 provided, the notice and agenda must be broadcast in a manner
194 and for a sufficient continuous length of time so as to allow an
195 average reader to observe the notice and read and comprehend the
196 entire content of the notice and the agenda. Unless a unit owner
197 waives in writing the right to receive notice of the annual
198 meeting, such notice must be hand delivered, mailed, or
199 electronically transmitted to each unit owner. Notice for
200 meetings and notice for all other purposes must be mailed to
201 each unit owner at the address last furnished to the association
202 by the unit owner, or hand delivered to each unit owner.
203 However, if a unit is owned by more than one person, the

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204 association must provide notice to the address that the
205 developer identifies for that purpose and thereafter as one or
206 more of the owners of the unit advise the association in
207 writing, or if no address is given or the owners of the unit do
208 not agree, to the address provided on the deed of record. An
209 officer of the association, or the manager or other person
210 providing notice of the association meeting, must provide an
211 affidavit or United States Postal Service certificate of
212 mailing, to be included in the official records of the
213 association affirming that the notice was mailed or hand
214 delivered in accordance with this provision.

215 4. The members of the board of a residential condominium
216 shall be elected by written ballot or voting machine. Proxies
217 may not be used in electing the board in general elections or
218 elections to fill vacancies caused by recall, resignation, or
219 otherwise, unless otherwise provided in this chapter. This
220 subparagraph does not apply to an association governing a
221 timeshare condominium.

222 a. At least 60 days before a scheduled election, the
223 association shall mail, deliver, or electronically transmit, by
224 separate association mailing or included in another association
225 mailing, delivery, or transmission, including regularly
226 published newsletters, to each unit owner entitled to a vote, a
227 first notice of the date of the election. A ~~Any~~ unit owner or
228 other eligible person desiring to be a candidate for the board
229 must give written notice of his or her intent to be a candidate
230 to the association at least 40 days before a scheduled election.
231 Together with the written notice and agenda as set forth in
232 subparagraph 3., the association shall mail, deliver, or

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233 electronically transmit a second notice of the election to all
234 unit owners entitled to vote, together with a ballot that lists
235 all candidates. Upon request of a candidate, an information
236 sheet, no larger than 8 1/2 inches by 11 inches, which must be
237 furnished by the candidate at least 35 days before the election,
238 must be included with the mailing, delivery, or transmission of
239 the ballot, with the costs of mailing, delivery, or electronic
240 transmission and copying to be borne by the association. The
241 association is not liable for the contents of the information
242 sheets prepared by the candidates. In order to reduce costs, the
243 association may print or duplicate the information sheets on
244 both sides of the paper. The division shall by rule establish
245 voting procedures consistent with this sub-subparagraph,
246 including rules establishing procedures for giving notice by
247 electronic transmission and rules providing for the secrecy of
248 ballots. Elections shall be decided by a plurality of ballots
249 cast. There is no quorum requirement; however, at least 20
250 percent of the eligible voters must cast a ballot in order to
251 have a valid election. A unit owner may not permit any other
252 person to vote his or her ballot, and any ballots improperly
253 cast are invalid. A unit owner who violates this provision may
254 be fined by the association in accordance with s. 718.303. A
255 unit owner who needs assistance in casting the ballot for the
256 reasons stated in s. 101.051 may obtain such assistance. The
257 regular election must occur on the date of the annual meeting.
258 Notwithstanding this sub-subparagraph, an election is not
259 required unless more candidates file notices of intent to run or
260 are nominated than board vacancies exist.

261 b. Within 90 days after being elected or appointed to the

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262 board of an association of a residential condominium, each newly
263 elected or appointed director shall certify in writing to the
264 secretary of the association that he or she has read the
265 association's declaration of condominium, articles of
266 incorporation, bylaws, and current written policies; that he or
267 she will work to uphold such documents and policies to the best
268 of his or her ability; and that he or she will faithfully
269 discharge his or her fiduciary responsibility to the
270 association's members. In lieu of this written certification,
271 within 90 days after being elected or appointed to the board,
272 the newly elected or appointed director may submit a certificate
273 of having satisfactorily completed the educational curriculum
274 administered by a division-approved condominium education
275 provider within 1 year before or 90 days after the date of
276 election or appointment. The written certification or
277 educational certificate is valid and does not have to be
278 resubmitted as long as the director serves on the board without
279 interruption. A director of an association of a residential
280 condominium who fails to timely file the written certification
281 or educational certificate is suspended from service on the
282 board until he or she complies with this sub-subparagraph. The
283 board may temporarily fill the vacancy during the period of
284 suspension. The secretary shall cause the association to retain
285 a director's written certification or educational certificate
286 for inspection by the members for 5 years after a director's
287 election or the duration of the director's uninterrupted tenure,
288 whichever is longer. Failure to have such written certification
289 or educational certificate on file does not affect the validity
290 of any board action.

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291 c. Any challenge to the election process must be commenced
292 within 60 days after the election results are announced.

293 5. Any approval by unit owners called for by this chapter
294 or the applicable declaration or bylaws, including, but not
295 limited to, the approval requirement in s. 718.111(8), must be
296 made at a duly noticed meeting of unit owners and is subject to
297 all requirements of this chapter or the applicable condominium
298 documents relating to unit owner decisionmaking, except that
299 unit owners may take action by written agreement, without
300 meetings, on matters for which action by written agreement
301 without meetings is expressly allowed by the applicable bylaws
302 or declaration or any law that provides for such action.

303 6. Unit owners may waive notice of specific meetings if
304 allowed by the applicable bylaws or declaration or any law. If
305 authorized by the bylaws, notice of meetings of the board of
306 administration, unit owner meetings, except unit owner meetings
307 called to recall board members under paragraph (j), and
308 committee meetings may be given by electronic transmission to
309 unit owners who consent to receive notice by electronic
310 transmission.

311 7. Unit owners have the right to participate in meetings of
312 unit owners with reference to all designated agenda items.
313 However, the association may adopt reasonable rules governing
314 the frequency, duration, and manner of unit owner participation.

315 8. A unit owner may tape record or videotape a meeting of
316 the unit owners subject to reasonable rules adopted by the
317 division.

318 9. Unless otherwise provided in the bylaws, any vacancy
319 occurring on the board before the expiration of a term may be

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320 filled by the affirmative vote of the majority of the remaining
321 directors, even if the remaining directors constitute less than
322 a quorum, or by the sole remaining director. In the alternative,
323 a board may hold an election to fill the vacancy, in which case
324 the election procedures must conform to sub-subparagraph 4.a.
325 unless the association governs 10 units or fewer and has opted
326 out of the statutory election process, in which case the bylaws
327 of the association control. Unless otherwise provided in the
328 bylaws, a board member appointed or elected under this section
329 shall fill the vacancy for the unexpired term of the seat being
330 filled. Filling vacancies created by recall is governed by
331 paragraph (j) and rules adopted by the division.

332 10. This chapter does not limit the use of general or
333 limited proxies, require the use of general or limited proxies,
334 or require the use of a written ballot or voting machine for any
335 agenda item or election at any meeting of a timeshare
336 condominium association or nonresidential condominium
337 association.

338
339 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
340 association of 10 or fewer residential units may, by affirmative
341 vote of a majority of the total voting interests, provide for
342 different voting and election procedures in its bylaws, which
343 may be by a proxy specifically delineating the different voting
344 and election procedures. The different voting and election
345 procedures may provide for elections to be conducted by limited
346 or general proxy.

347 (k) *Arbitration*.—There shall be a provision for mandatory
348 nonbinding arbitration as provided for in s. 718.1255 for any

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349 residential condominium.

350 (1) *Certificate of compliance.*— A provision that a
351 certificate of compliance from a licensed electrical contractor
352 or electrician may be accepted by the association's board as
353 evidence of compliance of the condominium units with the
354 applicable fire and life safety code must be included.
355 Notwithstanding chapter 633 or of any other code, statute,
356 ordinance, administrative rule, or regulation, or any
357 interpretation of the foregoing, an association, condominium, or
358 unit owner is not obligated to retrofit the common elements,
359 association property, or units of a residential condominium with
360 a fire sprinkler system in a building that has been certified
361 for occupancy by the applicable governmental entity if the unit
362 owners have voted to forego such retrofitting by the affirmative
363 vote of a majority of all voting interests in the affected
364 condominium. The local authority having jurisdiction may not
365 require completion of retrofitting with a fire sprinkler system
366 before January 1, 2020 ~~the end of 2019~~. By December 31, 2016, a
367 residential condominium ~~an~~ association that is not in compliance
368 with the requirements for a fire sprinkler system and has not
369 voted to forego retrofitting of such a system must initiate an
370 application for a building permit for the required installation
371 with the local government having jurisdiction demonstrating that
372 the association will become compliant by December 31, 2019.

373 1. A vote to forego retrofitting in a residential
374 condominium may be obtained by limited proxy or by a ballot
375 personally cast at a duly called membership meeting, or by
376 execution of a written consent by the member, and is effective
377 upon recording a certificate attesting to such vote in the

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378 public records of the county where the condominium is located.
379 The association shall mail or hand deliver to each unit owner
380 written notice at least 14 days before the membership meeting in
381 which the vote to forego retrofitting of the required fire
382 sprinkler system is to take place. Within 30 days after the
383 association's opt-out vote, notice of the results of the opt-out
384 vote must be mailed or hand delivered to all unit owners.
385 Evidence of compliance with this notice requirement must be made
386 by affidavit executed by the person providing the notice and
387 filed among the official records of the association. After
388 notice is provided to each owner, a copy must be provided by the
389 current owner to a new owner before closing and by a unit owner
390 to a renter before signing a lease.

391 2. If there has been a previous vote to forego
392 retrofitting, a vote to require retrofitting may be obtained at
393 a special meeting of the unit owners called by a petition of at
394 least 10 percent of the voting interests. Such a vote may only
395 be called once every 3 years. Notice shall be provided as
396 required for any regularly called meeting of the unit owners,
397 and must state the purpose of the meeting. Electronic
398 transmission may not be used to provide notice of a meeting
399 called in whole or in part for this purpose.

400 3. As part of the information collected annually from
401 condominiums, the division shall require condominium
402 associations to report the membership vote and recording of a
403 certificate under this subsection and, if retrofitting has been
404 undertaken, the per-unit cost of such work. The division shall
405 annually report to the Division of State Fire Marshal of the
406 Department of Financial Services the number of condominiums that

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407 have elected to forego retrofitting.

408 4. Notwithstanding s. 553.509, an association may not be
409 obligated to, and may forego the retrofitting of, any
410 improvements required by s. 553.509(2) upon an affirmative vote
411 of a majority of the voting interests in the affected
412 condominium.

413 Section 2. This act shall take effect July 1, 2014.