

**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 Regulated Industries

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BILL: SB 1292

INTRODUCER: Senator Ring

SUBJECT: Community Associations

DATE: January 28, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Caldwell	RI	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	FP	_____

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**I. Summary:**

SB 1292 amends the provisions for financial statements for condominium, cooperative, and homeowners' associations in ss. 718.111(13), 719.104(4), and 720.303(7), F.S., respectively.

The bill requires that associations that have not provided a member with a copy of the financial report after the member has made a request for the financial report, must provide the member with a copy of the financial report after the member has notified the division that he or she was not provided a copy of the financial report. If the association fails to provide the member with a copy of the financial report, the association must provide the division with a copy of the financial report for the next 3 years and may not waive a financial reporting requirement.

The bill deletes the provision that requires associations of fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures.

The bill provides an effective date of July 1, 2015.

**II. Present Situation:**

**Division of Florida Condominiums, Timeshares, and Mobile Homes**

Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation administers the provisions of chs. 718 and 719, F.S., F.S., for condominium and cooperative associations, respectively. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.<sup>1</sup> The division

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<sup>1</sup> Sections 718.501(1) and 719.501(1), F.S.

also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association.<sup>2</sup> After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.<sup>3</sup> For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.<sup>4</sup>

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.<sup>5</sup>

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., or ch. 719, F.S., or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practice and to take affirmative action to carryout the purpose of the applicable chapter. The division may also petition the court to appoint a receiver or conservator to implement a court order, or to enforce of an injunction or temporary restraining order. The division may also may also impose civil penalties.<sup>6</sup>

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. 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.

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<sup>2</sup> *Id.*

<sup>3</sup> Section 718.501(1), F.S.

<sup>4</sup> Section 718.501(1), F.S.

<sup>5</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>6</sup> *Id.*

In regards to homeowners' associations, the division's authority is limited to arbitration of recall election disputes.

### **Condominium**

A condominium is a "form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."<sup>7</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>8</sup> A declaration is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.<sup>9</sup>

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."<sup>10</sup> A declaration of condominium may be amended as provided in the declaration.<sup>11</sup> If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.<sup>12</sup> Condominiums are administered by a board of directors referred to as a "board of administration."<sup>13</sup>

### **Cooperative Associations**

Section 719.103(12), F.S., defines a "cooperative" to mean:

that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.<sup>14</sup>

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<sup>7</sup> Section 718.103(11), F.S.

<sup>8</sup> Section 718.104(2), F.S.

<sup>9</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>10</sup> Section 718.104(5), F.S.

<sup>11</sup> *See* s. 718.110(1)(a), F.S.

<sup>12</sup> Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

<sup>13</sup> Section 718.103(4), F.S.

<sup>14</sup> *See* ss. 719.106(1)(g) and 719.107, F.S.

## Homeowners' Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.<sup>15</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, and 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>16</sup> 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.<sup>17</sup>

Homeowners' associations are administered by a board of directors whose members are elected.<sup>18</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, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.<sup>19</sup> The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>20</sup>

## Chapters 718, 719, and 720, F.S.

Although condominiums and cooperatives are regulated by the FCTMH division, homeowners' associations are not regulated. Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for requirements for the governance of these associations. For example, the chapters delineate requirements for notices of meetings,<sup>21</sup> recordkeeping requirements, including which records are accessible to the members of the association,<sup>22</sup> and financial reporting.<sup>23</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

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<sup>15</sup> See s. 720.302(1), F.S.

<sup>16</sup> Section 720.301(9), F.S.

<sup>17</sup> Section 720.302(5), F.S.

<sup>18</sup> See ss. 720.303 and 720.307, F.S.

<sup>19</sup> See ss. 720.301 and 720.303, F.S.

<sup>20</sup> Section 720.303(1), F.S.

<sup>21</sup> See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.

<sup>22</sup> See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners' associations.

<sup>23</sup> See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners' associations.

## Financial Reporting

Sections 718.11(13), 719.104(4), and 720.303(7), provide the financial reporting requirements for condominium, cooperative, and homeowners' associations, respectively. These provisions for these associations are comparable.

Within 90 days following the end of the fiscal or calendar year or annually on such date as provided in the association's bylaws, the board must complete, or contract with a third party to complete the financial statements. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

Associations may not waive the financial reporting requirements for more than three consecutive years.

An association having total annual revenues between \$150,000 and less than \$300,000 must prepare compiled financial statements.<sup>24</sup> An association having total annual revenues of at least \$300,000 but less than \$500,000 must prepare reviewed financial statements.<sup>25</sup> An association having total revenues of \$500,000 or more must prepare audited financial statements.<sup>26</sup>

An association with total annual revenue of less than \$150,000 must prepare a report of cash receipts and expenditures.

An association of fewer than 50 units or parcels, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures. Provisions specify the information that must be disclosed in the report of cash receipts and expenditures. Cooperative and homeowners' associations may provide otherwise in their governing documents.

If approved by a majority of voting interests present at a duly called meeting, an association may prepare or cause to be prepared:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

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<sup>24</sup> A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3<sup>rd</sup> ed. (Barron's 2000).

<sup>25</sup> A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

<sup>26</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

### **III. Effect of Proposed Changes:**

The bill amends the provisions for financial statements for condominium, cooperative, and homeowners' associations in ss. 718.111(13), 719.104(4), and 720.303(7), F.S., respectively.

The bill requires that associations that have not provided a member with a copy of the financial report after the member has made a request for the financial report, must provide the member with a copy of the financial report after the member has notified the division that he or she was not provided a copy of the financial report. If the association fails to provide the member with a copy of the financial report, the association must provide the division with a copy of the financial report for the next 3 years and may not waive a financial reporting requirement.

The bill deletes the provision that requires associations of fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures.

Current law and the bill do not authorize the division to investigate or enforce violations of ch. 720, F.S., by homeowners' associations.

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

### **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:**

An association may incur added costs if it unable to waive the financial reporting requirement due to failing to provide a member with a copy of the financial report upon the written request of a member. Associations of fewer than 50 units or parcels, regardless of the association's annual revenues, would be required to prepare a compiled, reviewed, or audited financial statement instead of a report of cash receipts and expenditures.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 718.111, 719.104, and 720.303.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.