

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1357 Community Associations  
**SPONSOR(S):** Civil Justice Subcommittee; La Rosa and Cortes, J.  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1716

| REFERENCE                              | ACTION              | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|---------------------|---------|--|
| 1) Civil Justice Subcommittee          | 11 Y, 1 N, As<br>CS | Malcolm | Bond                                     |
| 2) Business & Professions Subcommittee |                     |         |  |
| 3) Judiciary Committee                 |                     |         |  |

### SUMMARY ANALYSIS

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

- revises the types of official records an association must retain;
- requires a condominium or homeowners' association with 7,500 or more units or parcels to provide a secure website for association members to view certain official records and meeting notices;
- requires an outgoing or recalled board member to turn over the administrative rights or controls of the association's website to the incoming board;
- requires the directors and officers of the board of an association to disclose any activity that may reasonably be construed as a conflict of interest and establishes procedures for providing notice of a vote on a conflict-of-interest transaction;
- prohibits a homeowners' association from enforcing traffic laws and criminal laws;
- creates style and form requirements for amendments to a homeowners' association's governing documents and provides that nonmaterial errors in the amendment process do not invalidate an otherwise properly adopted amendment;
- provides that an amendment to a declaration or governing document is effective when properly recorded in the same public records where the declaration or governing document is recorded;
- provides that restrictions in a homeowners' association's rules related to a parcel owner's ability to offer a home for rent only apply to parcel owners who consent to the rule or purchase their home after the rule is enacted;
- provides that if a homeowners' association does not file a claim for a lien or a foreclosure action on any assessment that is 24 months past due, the association may not proceed against the member for such past due assessments.
- requires that before a homeowners' association transfers the right to collect past due assessments to a third party, transfers a lien to a third party, or files a foreclosure action, the association must offer the past due member a payment plan that complies with certain requirements; and
- provides that if a homeowners' association transfers a lien or the right to collect past due assessments to a third party, it must provide notice to the member at least 30 days before the transfer.

The bill does not appear to have a fiscal impact on state or local governments.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### ***Condominiums***

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which is comprised of units which are individually owned, but have an undivided share of access to common facilities.<sup>1</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>2</sup> A declaration is similar to a constitution as it governs the relationship among unit owners and the association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.<sup>3</sup>

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights.<sup>4</sup> The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."<sup>5</sup> The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.<sup>6</sup>

##### ***Homeowners' Associations***

A homeowners' association is a corporation responsible for the operation of a community subdivision in which the membership is made up of parcel owners, whose membership is a mandatory condition of parcel ownership. A homeowners' association is authorized to impose assessments that, if unpaid, may become a lien on the parcel. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S.<sup>7</sup>

A homeowners' association is administered by an elected board of directors. The powers and duties of a homeowners' association includes the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to those documents.

No state agency has direct oversight of homeowners' associations. Florida law provides procedures and minimum requirements for operating a homeowners' association and provides for a mandatory binding arbitration program, administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) in the Department of Business and Professional Regulation, only for certain election disputes.

##### **Effect of the Bill**

##### **Condominiums and Homeowners' Associations - Association Records**

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

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<sup>1</sup> s. 718.103(11), F.S.

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

<sup>3</sup> *Id.* at (5).

<sup>4</sup> s. 718.103(2), F.S.

<sup>5</sup> *Id.* at (4).

<sup>6</sup> s. 718.112, F.S.

<sup>7</sup> s. 720.301(9), F.S.

- 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>8</sup>

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.
- 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>9</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 1 year after the date of the election, vote, or meeting.

### **Condominiums and Homeowners' Associations – Website**

Currently law does not require a condominium or homeowners' association to maintain a website. The bill requires a condominium or homeowners' association with 7,500 or more units or 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 website that contain any required notices, records, or documents. The following documents must be placed on the website:

- Copies of the association's official records.
- The annual budget and financial report, and any proposed budget and financial reports to be considered at the annual meeting.
- Any document created by the association or a board member relating to the recall of a director.
- Documentation reporting the compensation of directors, officers, or members.
- A list of all contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium or homeowners'

<sup>8</sup> ss. 718.111(12)(a) and 720.303(4), F.S.

<sup>9</sup> See s. 720.307(4), F.S.

association, or other entity in which an association director is also a director or officer is financially interested.

- Any fidelity bond entered into by the association.
- Any contract or document regarding a conflict of interest or possible conflict of interest.<sup>10</sup>
- Notice of any board meeting and the agenda for the meeting, placed online no later than 14 days before the meeting 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. The association must post on the website any documents to be considered during the meeting or listed on the agenda no later than 7 days before the meeting.

A homeowners' association website required by the bill must also contain:

- a copy of the information submitted to the division to comply with the reporting requirement in s. 720.303(14), F.S.;<sup>11</sup> and
- the certification of each director required by s. 720.3033(1).<sup>12</sup>

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.

The current roster of all members with their mailing addresses and parcel identifications may not be placed on the website. The website must include the following statement: "A current roster of all members and their mailing addresses and parcel identifications is available at the request of any association member." The notice must include the e-mail address of the person to contact for a copy of the roster.

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

### **Condominiums and Homeowners' Associations – Turn Over of Association Records**

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>13</sup> While there is no similar requirement in current law for a homeowners' association board member who has lost his or her seat on due to an election, current law does provide that when a director of the homeowners' association's board of directors has been recalled and is in possession of records and property of the association, he or she must turn over such records to the board within five business days.<sup>14</sup>

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. Additionally, the bill requires a board member of a homeowners' association who lost his or her seat due to an election or a recall to turn over all official records and property of the association, including administrative rights or controls of an association's

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<sup>10</sup> See "Condominiums and Homeowners' Associations – Conflict-of-Interest Transactions" section below.

<sup>11</sup> See "Homeowners' Association - Reporting Requirement" section below.

<sup>12</sup> s. 720.3033(1), F.S., requires each director of a homeowners' association to certify "that he or she has read the association's declaration of covenants, articles of incorporation, bylaws, and current written rules and policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members." In lieu of such written certification, the director may submit a certificate of having satisfactorily completed a certified educational curriculum.

<sup>13</sup> s. 718.111(12)(f), F.S.

<sup>14</sup> s. 720.303(10), F.S.

website or other digital or electronic asset, to the incoming board within five days after the election or the effective date of the recall. The bill also requires a developer, at the time that control of the board of directors of a homeowners' association can be elected by the members of the association, to turn over to the association any administrative rights or controls of the association's website or other digital or electronic asset.

### **Condominiums and Homeowners' Associations – Conflict-of-Interest Transactions**

If a condominium or homeowners' association enters into a contract or transaction with a director or any business in which one of the association's directors is also a director, officer, or is financially interested, current law requires that the board disclose the financial interest or that the contract or transaction be fair or reasonable. Additionally, the board must:

- enter a disclosure of the financial interest in the minutes of the meeting in which the contract or transaction was approved;
- approve the contract or transaction by two-thirds of the directors present at the meeting; and
- disclose the contract or transaction at the meeting of the members. At the meeting, the contract may be canceled by a majority vote of the members present.<sup>15</sup>

The bill requires the directors and officers of a board of a condominium or homeowners' association to disclose any activity that may reasonably be construed as a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice, as described below, or board approval taken at a properly noticed member meeting:

- The director or officer, or a relative residing in the same household as him or her, enters into a contract for goods or services with the association.
- The director or officer, or a relative residing in the same household as him or her, holds an interest of more than 35 percent in any corporation or other business entity that conducts, or proposes to conduct, business with the association.
- A corporation or other business entity that, directly or indirectly, owns or controls the director or officer, or otherwise influences any decisions made by the director or officer, intends to conduct business with the association.

If a director or officer intends to engage in an activity that may reasonably be construed as a conflict of interest he or she must provide prior notice to the board by placing the issue on a meeting agenda and submitting the issue to the board for a vote. If the board votes against the action, the director or officer must notify the board of his or her intention not to pursue the action or withdraw from the position as director or officer. If the board finds that an officer or director has violated the conflicts-of-interest provisions, the board must immediately remove the officer or director from office.

The board must provide notice of any possible conflict of interest and any related proposed contracts or documents related to the conflict at least 7 days before the meeting at which the possible conflict of interest will be considered or voted upon by the board. A director or officer has an interest in the transaction involving the possible conflict of interest may attend the meeting at which the transaction is considered by the board and must be allowed to make a presentation regarding the transaction. After the presentation, the director or officer must leave the meeting during the discussion and must recuse him or herself from the vote.

A condominium or homeowners' association with 7,500 or more parcels must place the required pre-meeting notice of a possible conflict of interest on the front page of its website at least 7 days before the meeting. Any related proposed contracts or documents must be attached to the agenda provided on the website.

The bill also provides that for a homeowners' association with 7,500 or more parcels, the board must consist of at least five members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee of the association.

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<sup>15</sup> ss. 718.3026(3); 720.3033(2), F.S.

## Homeowners' Association - Reporting Requirement

Under current law, by November 22, 2013, a community association manager or management firm, or the association when there is no community association manager or management firm, must have reported to the Division the association's legal name, federal employer identification number, mailing and physical addresses, total number of parcels, and total amount of revenues and expenses from the association's annual budget. This reporting requirement is set to expire on July 1, 2016.<sup>16</sup>

The bill deletes the July 1, 2016 expiration of the reporting requirement and requires a community association manager or management firm to submit its report by October 1 of each year. An association that does not use a community association manager or management firm is exempt from the reporting requirement. The bill also requires the report to identify the community association manager or management firm, and the report must be updated when any of the reported information changes.

## Homeowners' Association - Fines and Suspensions

Currently law authorizes a homeowners' association to levy fines and suspend the right of a member to use certain common areas and facilities if a member fails to comply with the association's rules and governing documents.<sup>17</sup> The association must provide the member with a notice and a hearing.<sup>18</sup> Fines may exceed \$100 per violation, but may be levied for each day of a continuing violation.<sup>19</sup> The fines levied may not exceed \$1,000 in the aggregate unless otherwise provided for in the governing documents. A fine of less than \$1,000 may not become a lien against a parcel.<sup>20</sup> If a fine or suspension is imposed, the homeowners' association must provide written notice of the fine or suspension by mail or hand delivery to the parcel owner and any tenant, licensee, or invitee of the parcel owner.<sup>21</sup>

Current law does not limit what type of conduct or actions that a homeowners' association may include in its governing documents that would make a member liable for a fine or suspension of use rights.

The bill prohibits a homeowners' association from enforcing traffic laws and state and federal criminal laws or from levying fines or suspending a member's right to use common areas and facilities for violations of such laws. Additionally, the bill prohibits an association from placing any requirements in its governing documents regarding compliance with traffic laws or state and federal criminal laws.

## Homeowners' Associations - Amendments to Governing Documents

Current law provides that a homeowners' association may amend its governing documents. The process for amendment and the vote required are generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. Generally, a homeowners' association must furnish each member with a copy of an amendment within 30 days of recording; however, in certain circumstances, in lieu of providing a copy of the recorded amendment, the association may provide notice to members that the amendment was adopted and identify the book and page number or instrument number of the recorded amendment.<sup>22</sup>

The bill requires that a proposal to amend an existing provision of a homeowners' association declaration must contain the full text of the provision to be amended and may not be revised or amended by reference only to the declaration title or number. Words to be added must be inserted in the text and underlined, and words to be deleted must be stricken with hyphens. However, if the proposed change is so extensive that this procedure would hinder the understanding of the proposed

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<sup>16</sup> s. 720.303(14), F.S.

<sup>17</sup> s. 720.305(1), (2), F.S.

<sup>18</sup> *Id.* at (3).

<sup>19</sup> s. 720.305(2), F.S.

<sup>20</sup> *Id.* at (1).

<sup>21</sup> *Id.* at (3).

<sup>22</sup> s. 720.306(1), F.S.

amendment, it is not necessary to use underlined and stricken text. Instead, a notation must be inserted before the proposed amendment stating: "Substantial rewording of declaration. See provision for present text."

The bill provides that any nonmaterial errors or omissions in the amendment process do not invalidate an otherwise properly adopted amendment. Additionally, an amendment to a declaration or any recorded governing document is effective when properly recorded in the same public records where the declaration or governing document is recorded.

The bill also provides that any amendment to a homeowners' association's governing documents that prohibits a parcel owner from renting his or her home, altering the duration of the rental term, or specifying or limiting the number of times a parcel owner is entitled to rent his or her home only applies to parcel owners who consent to the amendment and parcel owners who acquire title to their homes after the effective date of the amendment.

### **Homeowners' Associations - Election of Directors**

Current law provides that the procedure for electing directors of a homeowners' association board must be in accordance with those provided in the governing documents.<sup>23</sup> Currently, there are no requirements as to manner or location in which an election must take place.

The bill requires an association with 7,500 parcels or more to allow association members to vote in the election of directors at a designated location from 7 a.m. to 7 p.m. on the day of the election.

### **Homeowners' Associations - Past Due Assessments and Liens**

Current law provides that the governing documents for any homeowners' association created after October 1, 1995, must describe the manner in which expenses are shared and must specify each member's proportional share of the expenses, more generally referred to as "assessments."<sup>24</sup> An unpaid assessment may result in a lien against the parcel.<sup>25</sup> An association lienor may pursue foreclosure, or transfer the lien or the right to collect past due assessments to a third party.

The bill provides that if an association is owed past due assessments by a member, the association may seek collection of the past due assessments, file a claim for a lien on the property, proceed to foreclosure, or waive the assessments and not proceed in any action against the member. If the association does not file a claim of lien or a foreclosure action and the past due assessment remains outstanding 24 months after the date it was due, the association may not proceed against the member for such past due assessments or related fees. This 24-month time period is extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay in a parcel owner's bankruptcy proceedings.

#### *Payment Plans*

The bill requires that before an association transfers a lien or the right to collect past due assessments to a third party or files a foreclosure action, the association must offer payment plans for members to pay any past due assessments and related fees. A payment plan must allow a member to pay past due assessments and any related fees levied by the association within the past 24 months. In addition to payments made pursuant to a payment plan, members are responsible for paying any current assessments that arise during the payment plan. A service charge may be assessed and included in the fees collected in the payment plan if additional fees were not charged in addition to the original total of the past due assessments.

A payment plan must:

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<sup>23</sup> s. 720.306(9), F.S.

<sup>24</sup> s. 720.308(1), F.S.

<sup>25</sup> s. 720.301(1), F.S.

- Consist of at least 12 monthly payments, if the past due assessments and related fines total \$500 or less;
- Consist of at least 18 monthly payments, if the past due assessments and related fines total more than \$500;
- Require the member to pay in full any current assessments that arise during the payment plan
- Divide the total past due assessments and related fees into equal payments to be paid on a monthly basis; and
- Not provide any additional terms or requirements other than to comply with the existing governing documents of the association.

If a member agrees to participate in the payment plan, the 24-month limit on pursuing past due assessments is tolled until the past due assessments, related fees, and any assessments that arise during the payment plan are paid. If the member does not comply with the terms of the payment plan, the association is no longer subject to the 24-month time limit.

#### *Notice of Transfer to Third Parties*

The bill provides that if an association transfers a lien or the right to collect past due assessments to a third party, the association must provide notice to the member at least 30 days before the transfer. The notice must state that the transfer includes the right to place a lien. The notice must be served on the member by certified mail, return receipt requested, or by personal service.

#### **Other Effects of the Bill**

The bill provides that “community association management services” has the same definition as “community association management” in ch. 468, F.S., which regulates community association managers.

The bill provides that the terms “community association management” or “community association management services” have the same meaning as provided in s. 468.431.

The bill makes technical, drafting, and conforming changes to chs. 718 and 720, F.S.

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

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 468.431, F.S., related to definitions.

Section 2 amends s. 718.103, F.S., related to definitions.

Section 3 amends s. 718.111, F.S., related to the association.

Section 4 amends s. 718.3026, F.S., related to contracts for products and services; in writing; bids; exceptions.

Section 5 amends s. 720.303, F.S., related to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 6 amends s. 720.3033, F.S., related to officers and directors.

Section 7 amends s. 720.305, F.S., related to obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.

Section 8 amends s. 720.306, F.S., related to meetings of members; voting and election procedures; amendments.

Section 9 amends s. 720.307, F.S., related to transition of association control in a community.



Section 10 amends s. 720.308, F.S., related to assessments and charges.

Section 11 amends s. 720.3085, F.S., related to payment for assessments; lien claims.

Section 10 amends s. 720.311, F.S., related to dispute resolution.

Section 11 provides an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

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

### **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 condominium or homeowners' association with 7,500 or more units or parcels to provide a secure website so that association members can view certain official records notices of the association. Associations that are required to comply with this requirement may incur indeterminate costs in creating, operating, and maintaining the website.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

The extension in the bill of the reporting requirement in s. 720.303(14), F.S., for homeowners' association community managers and management firms may create a need for rulemaking by the division.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill imposes a number of requirements upon a condominium association with 7,500 or more units. The largest condominium association in Florida has 1,980 units.<sup>26</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Civil Justice Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- retain the exemption in current law that provides that certain service contracts are not subject to the contract regulations for condominium associations;
- provide that certain amendments to a homeowners' association's governing documents related to a parcels owner's ability to offer a home for rent only apply to certain parcel owners;
- requires a recalled board member of a condominium or homeowners' association to turn over the administrative rights or controls of the association's website to the board;
- provides that the 24-month limit for a homeowners' association to collect on past due assessments is extended for the period of time the association is subject to a bankruptcy stay;
- removes the electronic notice provisions related to a homeowners' association's transfer of a lien or past due assessments to a third party; and
- makes technical and grammatical corrections.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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<sup>26</sup> See Florida Department of Business and Professional Regulation, *Condominiums, Timeshares, and Mobile Homes Public Records*, [http://www.myfloridalicense.com/dbpr/sto/file\\_download/public-records-CTMH.html](http://www.myfloridalicense.com/dbpr/sto/file_download/public-records-CTMH.html) (last visited Jan. 23, 2016).