

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1405 Community Associations
SPONSOR(S): Business & Professions Subcommittee; Bracy
TIED BILLS: **IDEN./SIM. BILLS:** SB 1292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Brown-Blake	Anstead
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), located under the Department of Business and Professional Regulation (Department), has limited regulatory authority over condominium associations, cooperative associations, and homeowner's associations (limited only to arbitration of election and recall disputes). A condominium is a form of real property ownership created pursuant to ch. 718, F.S. A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S.

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

- Requires the Division to contact an association and request the association provide a copy of a financial report to an unit owner or a member when contacted by the unit owner or member regarding the association's failure to provide a financial report in the required time;
- Removes the provision permitting an association operating fewer than 50 units, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures in lieu of financial statements;
- Revises records retention provisions to require that condominium associations and homeowners' associations maintain the same official records;
- Requires a condominium association with 500 or more units and a homeowners' association with 7,500 or more parcels to provide a secure website for association members to view specified official records and meeting notices;
- Requires an outgoing or recalled board member to turn over the administrative rights or controls of the condominium association's website to the incoming board.

There appears to be no 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:

General

The Division provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities;
- Homeowner's Associations (limited to arbitration of election and recall disputes).¹

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which maybe owned by one or more persons, but have an undivided share of access to common facilities.² A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.³ A declaration governs the relationships among condominium unit owners and the condominium association.

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association,⁴ and individual units are leased to the residents, who own shares in the cooperative association.⁵ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical.

A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute. The Department currently only provides arbitration for election and recall disputes for homeowners' associations but does not regulate homeowners' associations. However, the Department does regulate the community association managers which often manage homeowners' associations.

Providing a Financial Report

Background

In accordance with ss. 718.111(13), 719.104(4), and 720.303(7), F.S., within 90 days after the end of the fiscal year or calendar year, or annually on a date provided in the bylaws, the association is required to prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or calendar year, or other date as provided in the bylaws, the association must provide each member⁶,

¹ *Id.*

² s. 718.103(11), F.S.

³ s. 718.104(2), F.S.

⁴ s. 719.103(2), F.S.

⁵ s. 719.103(26), F.S.

⁶ s. 718.111(13), F.S., requires that the condominium association "mail a copy of the financial report to each unit owner at the last address furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice

a copy of the financial report or a notice that a copy of the financial report is available upon request without charge, upon receipt of a written request from the member or unit owner.

Effect of the Bill

Under the financial reporting requirements for condominiums associations, cooperative associations, and homeowners' associations, the bill provides that a member or unit owner may contact the Division to report an association's failure to provide a copy of the financial report within the required time. Upon notification, the Division is required to contact the association to request the association comply with the requirement to provide a copy of the financial report to the unit owner or member. If the association fails to comply further, the association is then required to provide a copy of the financial report for the current fiscal year and the two subsequent fiscal years to the Division. The Division shall maintain the records and provide a copy to a member of the public upon request.

Preparing a Financial Report

Background

Condominiums associations, cooperative associations, and homeowners' associations are required to comply with financial reporting requirements enumerated in ss. 718.111, 719.104, and 720.303, F.S. Those associations whose total annual revenues meet the following criteria shall prepare a complete set of financial statements according to the generally accepted accounting principles. The associations shall prepare the financial statements as follows:

- An association with total annual revenues between \$150,000 and \$299,999 shall prepare a compiled financial statement;
- An association with total annual revenues between \$300,000 and \$499,999 shall prepare a reviewed financial statement;
- An association with total annual revenues of \$500,000 or more shall prepare an audited financial statement.

Some associations are exempt from the preceding requirements if they do not meet the total annual revenue requirements or are of a certain size. Such associations must comply with the following requirements:

- An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.⁷
- An association in a community of fewer than 50 units, regardless of the association's annual revenues, **shall** prepare a report of cash receipts and expenditures in lieu of the financial statements.⁸

Effect of the Bill

Under the financial reporting requirements for condominiums associations, cooperative associations, and homeowners' associations, the bill removes the provisions that an association operating fewer than 50 units or parcels, regardless of the association's annual revenues, shall ["may" for homeowners'

that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner."

⁷ A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association. For condominium associations, "reserves" could include reserves accumulated and expended for capital expenditures, deferred maintenance and any other category for which the association maintains reserves.

⁸ ss. 719.104(4) and 720.303(7), F.S., provides that this exemption from the requirement to prepare a financial report applies unless the declaration or other recorded governing documents provide otherwise.

associations] prepare a report of cash receipts and expenditures in lieu of financial statements; thereby the type of year-end financial reports required to be completed by the association would be based solely on the level of annual revenues.

Condominium and Homeowners' Association Official Records

Background

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

- 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;
- All other written records which are related to the operation of the association.⁹

Effect of the Bill

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;¹⁰
- 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.

Condominium and Homeowners' Association Access to Records

Background

The condominium association shall provide access to the official records for inspection by any association member or the authorized representative of the member at reasonable times.¹¹ The right to

⁹ ss. 718.111(12)(a), and 720.303(4), F.S.

¹⁰ See s. 720.307(4), F.S.

¹¹ s. 718.111(12)(c), F.S.

inspect includes the right to make or obtain copies at the expense of the member. Currently, law does not require a condominium or homeowners' association to maintain a website.

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.¹²

Effect of the Bill

The bill requires a condominium association with 500 more units and a homeowners' association with 7,500 or more 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;
- 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 association's 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' 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;
- 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.;
- The certification of each director required by s. 720.3033(1), F.S.¹³

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.

¹² s. 718.111(12)(f), F.S.

¹³ 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.

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.

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

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.

B. SECTION DIRECTORY:

Section 1 amends s. 718.111, F.S., relating to maintaining and providing access to condominium association records and preparing and providing financial reports.

Section 2 amends s. 719.104, F.S., relating to preparing and providing cooperative associations' financial reports.

Section 3 amends s. 720.303, F.S., relating to maintaining and providing access to homeowners' association records and preparing and providing financial reports.

Section 4 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department has indicated that the expenditures and revenues are unknown. As currently drafted, maintaining these records would have a minimal impact that could be addressed by current staffing. If the language were amended to require the division to review financial statements to ensure it is compliant, this would require additional staff, however details are unknown at this time.

It is anticipated that 1 AA II FTE would be necessary to process the financial reports required by the proposed bill. However, this cost may be avoided if the financial reports were required to be submitted electronically.¹⁴

2. Expenditures:

See note above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹⁴ Email from Susan Datre, Office of Legislative Affairs, Florida Department of Business and Professional Regulation, Re: Fiscal on CS/HB 1405 MH bill, January 28, 2016, (on file with the Business and Professions Subcommittee).

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain associations operating fewer than 50 units or parcels are currently able to prepare a report of cash receipts and expenditures in lieu of a financial statement. The bill would remove this exemption from the financial statements requirement, thus requiring the associations to prepare financial statements according to generally accepted accounting principles. Some of these associations may choose to hire accountants or community association managers to have the financial statements prepared. Associations operating with fewer than 50 units that were previously allowed to prepare a cash receipts and expenditures report in lieu of the financial reporting requirements set under ss. 718.111, 719.104, and 720.303, F.S., would now incur costs ranging from \$1,000-\$5,000 based on their annual revenues. This amount could exceed \$5,000 based on annual revenues, size, amenities and complexity of accounting systems of the associations.¹⁵

The number of associations that would be affected is unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

¹⁵ Email from Justin A.Thames, Director of Government Affairs, Florida Institute of CPAs, Re: HB1405, cost of financial reports, January 25, 2016, (on file with the Business and Professions Subcommittee).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Business & Professions Subcommittee considered and adopted a strike-all amendment and two amendments to the strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that an association unit owner or member may contact the Division if the association fails to provide a copy of the financial report within the required time and after the unit owner/member has submitted a written request.
- Requires the Division to contact the association within 5 business days of the unit owner's or member's initial contact, to request the association comply.
- Requires the association to submit a copy of the financial report to the Division within 7 business days if the association continues to not provide the copy to the unit owner or member.
- Requires the association to provide a copy of the financial report to the Division for the 2 subsequent fiscal years within 21 days after the final financial report is completed or received by the association.
- Prohibits the association that fails to provide a copy of the financial report to a unit owner or member from waiving the financial reporting requirement
- Requires the Division to maintain the records and provide a copy to members of the public upon request.
- Amends the official records maintained by condominium associations to mirror the official records maintained by homeowners' associations.
- Requires condominium associations with more than 500 parcels and homeowners' associations with more than 7500 parcels to provide members with access to a protected website that contains specific records and documents.
- Permits condominium associations with less than 500 parcels and homeowners' associations with less than 7500 parcels to provide the documents on a website.
- Requires outgoing board members to turn over administrative rights or controls of a website or other digital or electronic assets to the incoming board.

This staff analysis is drafted to reflect the committee substitute.