

**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 Judiciary

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BILL: CS/CS/SB 744

INTRODUCER: Judiciary Committee; Regulated Industries Committee; and Senator Passidomo

SUBJECT: Community Associations

DATE: April 20, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

SB 744 revises requirements for the governance and operation of condominium, cooperative, and homeowners' associations, with the most significant changes pertaining to fire safety systems in condominium and cooperative buildings and financial reporting by condominium and cooperative associations.

The bill no longer automatically permits a condominium or cooperative association having fewer than 50 units to prepare an annual report of cash receipts and expenditures instead of a more thorough type of financial statement. However, the option remains for the associations to vote to do so.

Additionally, the bill no longer requires a condominium or cooperative association having a building 75 feet or less in height to vote to forego retrofitting the building with fire safety systems, such as fire sprinklers. As to taller buildings, two-thirds of the voting interests must vote to forego retrofitting. The bill clarifies that if an association, whether by vote or by statute, is permitted to forego retrofitting a building with a fire sprinkler system, it may also forego retrofitting with an engineered lifesafety system.

Regarding homeowners' and cooperative associations, the bill specifies that the board members of each type of association may communicate by e-mail, but not vote by e-mail. Condominium law already includes a similar provision.

The bill makes several changes affecting the optional termination of a condominium.

Specifically, the bill:

- Requires that an optional termination of a condominium be approved by at least 80 percent of a condominium's voting interests, regardless of what the condominium's governing documents would require;
- Decreases the threshold to veto a termination from 10 percent to 5 percent of the voting interests;
- Also, the bill prohibits an optional termination of a condominium created by conversion (such as from an apartment complex) until 10 years after conversion; and
- Increases consumer protections in terminations of condominiums 80-percent-owned by a "bulk owner."

The bill makes several changes that relate only to cooperative associations. The bill strips a director or officer of the board of a cooperative association of his or her post if he or she is more than 90 days delinquent in paying any money due the association. As to associations having more than 10 units, the bill prohibits co-owners of a unit from serving simultaneously on the association's board, unless the co-owners own more than one unit or there are not enough eligible candidates.

## II. Present Situation:

### **Condominiums, Cooperatives, and Homeowners' Associations in General**

#### *Condominiums*

A condominium is a "form of ownership of real property created pursuant to [chapter 718, F.S.], which is comprised entirely of units that may be owned by one or more persons, and in which there is, [as part of the ownership of] each unit, an undivided share in common [portion of the condominium property]." <sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located. <sup>2</sup> The declaration must include the condominium's bylaws, and the declaration functions as the condominium's "constitution," subject to applicable laws. <sup>3</sup> A condominium is administered by a board of directors referred to as a "board of administration." <sup>4</sup>

#### *Cooperatives*

A cooperative is similar to a condominium in many ways. However, a key distinction between the two is the sense in which a person may "own" a unit in a condominium or a cooperative. In a cooperative, a "unit owner" owns a share in the cooperative association, and he or she leases, instead of owns, a unit. <sup>5</sup> The cooperative association is the corporation or other legal entity that

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

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

<sup>3</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

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

<sup>5</sup> See s. 719.103(26), F.S.

owns the record interest or leasehold of the cooperative's property.<sup>6</sup> The cooperative association may assess costs for the maintenance of common elements.<sup>7</sup>

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

Another legal relationship that may exist between the members of a community is membership in a homeowners' association. A homeowner's association, unlike a condominium association or cooperative, generally exists in a subdivision of single-family homes or in a mobile home community. However, a key legal distinction between homeowners' associations and the other arrangements is that members of a homeowners' association do not necessarily own a share in the common areas of the community, though they will often have to pay to maintain these areas. Indeed, the Florida Statutes authorize homeowners' associations to impose assessments that, if unpaid, may become a lien on the homeowner's property.<sup>8</sup>

Homeowners' associations are administered by an elected board of directors.<sup>9</sup> The officers and directors of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>10</sup> The powers and duties of homeowners' associations include the powers and duties provided in statute<sup>11</sup> and in the governing documents of the association, which include the recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.<sup>12</sup>

### **Statutes Governing Condominiums, Cooperatives, and Homeowner's Associations**

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, regulate these associations, along with each association's governing documents. For example, these chapters describe requirements for notices of meetings,<sup>13</sup> recordkeeping requirements, requirements to make certain records of an association accessible to its members,<sup>14</sup> and financial reporting requirements.<sup>15</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

### ***Official Records***

The Florida Statutes specify those official records that must be maintained by these condominium, cooperative, and homeowners' associations.<sup>16</sup> As a general matter, these records

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<sup>6</sup> Section 719.103(12), F.S.

<sup>7</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>8</sup> Section 720.301(9), F.S.

<sup>9</sup> See ss. 720.303 and 720.307, F.S.

<sup>10</sup> Section 720.303(1), F.S.

<sup>11</sup> Chapter 720, Florida Statutes.

<sup>12</sup> See ss. 720.301 and 720.303, F.S.

<sup>13</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>14</sup> See s. 718.111(12), F.S., relating to condominiums, s. 719.104(2), F.S., relating to cooperatives, and s. 720.303(4), F.S., relating to homeowners' associations.

<sup>15</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.

<sup>16</sup> See s. 718.111(12), F.S., relating to condominium associations, s. 719.104(2), F.S., relating to cooperative associations, and s. 720.303(5), F.S., relating to homeowners' associations.

must be maintained in this state for at least 7 years.<sup>17</sup> Certain of these records must be accessible to the members of an association.

One type of record—bids and contracts—must be maintained for 1 year by cooperative and homeowners' associations<sup>18</sup> but for 7 years by condominium associations.<sup>19</sup>

Condominium and cooperative associations, but not homeowners' associations, must maintain as an official record the ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners. And these records must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates.<sup>20</sup>

### ***Financial Reporting***

These associations must also prepare and produce annual financial reports for the preceding fiscal year.<sup>21</sup>

The type of financial reporting that an association must perform differs based on the association's total annual revenue. From the least stringent to the most stringent, an association that has a total annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- At least \$150,000 but less than \$300,000 must prepare *compiled* financial statements.<sup>22</sup>
- At least \$300,000 but less than \$500,000 must prepare *reviewed* financial statements.<sup>23</sup>
- \$500,000 or more must prepare *audited* financial statements.<sup>24</sup>

An association having fewer than 50 units or parcels, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures.<sup>25</sup>

<sup>17</sup> See s. 718.111(13)(b), F.S., for condominiums, s. 719.104(2)(b), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners' associations.

<sup>18</sup> See ss. 719.104(2)(a)9.d., and 720.303(4)(i), F.S.

<sup>19</sup> Section 718.111(12)(a)11.d., F.S.

<sup>20</sup> Sections 718.111(12)(a)12., and 719.104(2)(a)10., F.S.

<sup>21</sup> See ss. 718.111(13), 719.104(4), and 720.303(7), F.S. However, both the condominium and the cooperative statute include the following language, "An association may not waive the financial reporting requirements of this section for more than 3 consecutive years." This strongly implies that these associations may waive the reporting requirement for up to three years, though the statute nowhere says this.

<sup>22</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*, 3rd ed. (Barron's 2000).

<sup>23</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>24</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

<sup>25</sup> Sections 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S.

The type of report or statement required may often be adjusted to a more or less stringent type if approved by vote of the association.<sup>26</sup>

### ***Notice of Board Meetings***

Condominium and cooperative associations must post notice of all board meetings in a conspicuous place on the property for at least the 48 hours prior to the meeting, except in emergencies. However, 14 days' notice is required for a meeting at which a nonemergency special assessment or an amendment to any rule regarding unit use will be considered.<sup>27</sup> This notice apparently does not need to state that a special assessment or rule change regarding unit use will be considered at the meeting.

Similarly, homeowners' associations must post notice of a board meeting in a conspicuous place in the community for the 48 hours prior to the meeting, except in emergencies. Alternatively, if notice is not posted in a conspicuous place, then it must be mailed or delivered to each member 7 days prior to the meeting, except in emergencies. Notice of a meeting at which assessments might be levied must include a statement to that effect.<sup>28</sup> Moreover, for any meeting at which a special assessment or a change to a rule regarding parcel use will be considered, notice must be provided at least 14 days prior to the meeting.<sup>29</sup>

### **Fire Prevention in Condominium and Cooperative Buildings**

Retrofitting a condominium or cooperative building with a fire sprinkler system is not required if an association votes to forego it, even if other provisions of law or rules<sup>30</sup> may otherwise require retrofitting condominium or cooperative buildings with fire sprinkler systems or an engineered lifesafety system (ELSS).<sup>31</sup>

If an association has previously voted to forego this retrofitting, the matter may be brought up for a vote to undo the prior decision as often as once every 3 years.

A condominium or cooperative association that was not in compliance with the requirements regarding a fire sprinkler system and had not voted to forego these requirements had until December 31, 2016, to apply for a building permit to undergo retrofitting. This application was required to demonstrate that the association would become compliant by December 31, 2019.<sup>32</sup>

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<sup>26</sup> See, e.g., 720.303(7)(c)-(d), F.S.

<sup>27</sup> In addition to being conspicuously posted, this notice must be mailed, delivered, or electronically transmitted to the unit owners. Sections 718.112(2)(c)1. and 719.106(1)(c), F.S.

<sup>28</sup> Section 720.303(2)(c)1., F.S.

<sup>29</sup> *Id.*

<sup>30</sup> See ch. 633, F.S., and the Florida Fire Prevention Code, <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/free-access?mode=view> (last visited April 11, 2017).

<sup>31</sup> An ELSS consists of a combination of partial automatic sprinkler protection, smoke detection alarms, smoke control, or compartmentation or other approved systems or both. See ss. 31.3.5.11.4 and 31.3.5.11.1, Florida Fire Prevention Code, 5th Edition, 2012.

<sup>32</sup> Sections 718.112(2)(l) and 719.1055(5)(a)1., F.S.

Condominiums and cooperatives that complete retrofitting must receive a certificate of compliance from a licensed electrical contractor or electrician as evidence of compliance with the applicable fire and life safety code.<sup>33</sup>

The Chief Financial Officer, acting in his capacity as the State Fire Marshal, adopts by rule the Florida Fire Prevention Code (FFPC),<sup>34</sup> which contains all fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety rules.<sup>35</sup> The State Fire Marshal adopts a new edition of the FFPC every 3 years.

The FFPC requires all existing high-rise buildings,<sup>36</sup> including condominiums and cooperatives, to be retrofitted with fire sprinkler system or with an engineered lifesafety system (ELSS).<sup>37</sup> Florida adopted the requirement to retrofit high-rise, existing multi-family structures after 87 people died in the MGM Grand Hotel Fire in 1980 and 97 people died in the San Juan DuPont Plaza fire in 1986.<sup>38</sup>

In a report published in 2009, the Department of Business and Professional Regulation presented the estimated per-unit cost of retrofitting a sample of condominium buildings from Clearwater to the Keys. The per-unit cost varied widely, from \$595 to \$8,633. The factors said to account for this variation included the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.<sup>39</sup>

### **Termination of a Condominium**

The termination of a condominium is authorized under two circumstances.<sup>40</sup> One circumstance is that in which the continued operation of the condominium would constitute economic waste or the ability to continue the condominium is impossible because of laws or regulations. The second circumstance is that in which a sufficient percentage of the voting interests of the condominium approve a plan of termination. A termination that occurs under the second circumstance is referred to as an optional termination.

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<sup>33</sup> *Id.*

<sup>34</sup> A copy of the Florida Fire Prevention Code is available at: <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/free-access?mode=view> (last visited Apr. 13, 2017).

<sup>35</sup> Ch. 69A-60, F.A.C.

<sup>36</sup> A high-rise building is a building where the floor of an occupied story is greater than 75 feet (23 meters) above the lowest level of fire department vehicle access. Section 3.3.30.6, Florida Fire Prevention Code, 5th ed., 2012.

<sup>37</sup> Section 31.3.5.11.2, Florida Fire Prevention Code, 5th ed., 2012.

<sup>38</sup> Florida Fire and Sprinkler Association, High-rise Sprinkler retrofit requirement frequently asked questions, [http://www.floridafiresprinkler.com/files/4714/7122/2210/Hi\\_Rise\\_Retrofit\\_-\\_FAQ\\_Final.pdf](http://www.floridafiresprinkler.com/files/4714/7122/2210/Hi_Rise_Retrofit_-_FAQ_Final.pdf) (last visited Apr. 13, 2017).

<sup>39</sup> Department of Business and Professional Regulation, *Condominium Sprinkler Retrofit Report, A Review of Retrofit Costs and the Impact of Retrofitting on Insurance Premiums*, October 2009, available at: <http://www.myfloridalicense.com/dbpr/lsc/documents/CondominiumSprinklerRetrofitReportOctober2009.pdf> (last visited Apr. 13, 2017).

<sup>40</sup> Section 718.117, F.S. This section's termination provisions apply to all condominiums in this state in existence on or after July 1, 2007.

### ***Optional Termination***

Unless the declaration of condominium provides a lower percentage, a condominium may be terminated at any time if, in a vote on a plan of termination, at least 80 percent of the condominium's total voting interests vote for termination and less than 10 percent of the total voting interests reject the termination.<sup>41</sup> If 10 percent or more of the voting interests reject the plan of termination, another termination may not be considered for 18 months after the date of rejection.<sup>42</sup>

If a "bulk owner" owns 80 percent of the total voting interests of a condominium, the optional termination of the condominium is subject to additional limitations and requirements. These limitations and requirements are meant to protect the non-bulk owners.<sup>43</sup> A bulk owner is defined as a single holder of an association's voting interests or an owner together with a related entity or entities that would be considered an insider<sup>44</sup> holding these voting interests.<sup>45</sup>

The plan of termination must make the following disclosures to unit owners in a sworn statement before a plan of termination may be presented for consideration:

- The identity of any person who owns or controls 50 percent or more of the condominium units or, if owned by an artificial entity, the person who owns or controls it and the person who owns or controls 20 percent of the entity that constitutes the bulk owner;
- The units acquired by the bulk owner, the date of acquisition and the price of each unit; and
- The relationship of any board member to the bulk owner.<sup>46</sup>

The unit owners, other than the bulk owner or owners, are entitled to elect at least one-third of the board before approval of any plan of termination.<sup>47</sup>

If a plan goes forward, all unit owners other than the bulk owner must be compensated in an amount equal to at least 100 percent of the fair market value of their units, as determined by an independent appraiser selected by the termination trustee.<sup>48</sup> An original purchaser from the developer who rejects the plan of termination and whose unit was granted a homestead exemption and who is current in payment of assessments, other monetary obligations to the association, and any mortgage encumbering the unit on the date of recording of the plan of termination must receive the original purchase price paid for the unit or current fair market value, whichever is greater.<sup>49</sup> The plan of termination must provide for the payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien.<sup>50</sup> The payment may not exceed the unit's share of the proceeds of termination under the plan.<sup>51</sup>

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<sup>41</sup> Section 718.117(3), F.S.

<sup>42</sup> Section 718.117(3)(a)2., F.S.

<sup>43</sup> Section 718.117(3)(c), F.S.

<sup>44</sup> See s. 726.102(8), F.S., for the definition of "insider."

<sup>45</sup> *Id.*

<sup>46</sup> Section 718.117(3)(c)5., F.S.

<sup>47</sup> Section 718.117(3)(d), F.S.

<sup>48</sup> Section 718.117(3)(c)3., F.S.

<sup>49</sup> *Id.*

<sup>50</sup> Section 718.117(3)(c)4., F.S.

<sup>51</sup> *Id.*

Additionally, former unit owners are allowed to lease their units if the former condominium units are offered for lease to the public<sup>52</sup> and a relocation fee must be paid to former unit owners who had a homestead exemption on their units.<sup>53</sup>

### *Number of Condominium Terminations*

The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation furnished the numbers of condominium terminations for the previous 5 calendar years, which are shown in the chart below:<sup>54</sup>

<b>Calendar Year</b>	<b>Total Terminations</b>	<b>Optional Terminations</b>
<b>2012</b>	30	28
<b>2013</b>	37	35
<b>2014</b>	38	37
<b>2015</b>	33	33
<b>2016</b>	29	26

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

The Division of Florida Condominiums, Timeshares, and Mobile Homes may enforce and ensure compliance with the provisions of the condominium chapter of the Florida Statutes, as well as with the rules relating to the development, construction, sale, lease, ownership, and operation, and management of residential condominium units.<sup>55</sup> The Division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control. The Division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association. After control of the condominium or cooperative 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>56</sup>

As part of the Division's authority to investigate complaints, the Division is authorized to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.<sup>57</sup>

<sup>52</sup> Section 718.117(3)(c)1., F.S.

<sup>53</sup> Section 718.117(3)(c)2. F.S.

<sup>54</sup> E-mail from Colton Madill, DBPR, March 28, 2017, on file with the Senate Committee on Regulated Industries.

<sup>55</sup> Section 718.501(1), F.S.

<sup>56</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>57</sup> *Id.*



### III. Effect of Proposed Changes:

#### Changes Common to Condominium and Cooperative Associations

##### *Financial Reporting Requirements for Associations of Cooperatives and Condominiums*

Under the bill, the associations of condominiums and cooperatives having fewer than 50 units are no longer required to prepare a report of cash receipts and expenditures, which they were required to do unless their governing documents provided otherwise. In effect, this means that these smaller associations are required to prepare financial statements in accordance with their annual revenue, just as the associations of larger condominiums and cooperatives must. As such, regardless of the number of units, the association of a condominium or cooperative having annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- Between \$150,000 and less than \$300,000 must prepare *compiled* financial statements.<sup>58</sup>
- At least \$300,000 but less than \$500,000 must prepare *reviewed* financial statements.<sup>59</sup>
- \$500,000 or more must prepare *audited* financial statements.<sup>60</sup>

However, the type of report or statement required may be adjusted by vote of the association.

Also, the bill strikes the following language from current law: “An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.” However, the effect of this deletion is uncertain because nowhere in the statute does it expressly permit an association to waive financial reporting requirements for any length of time.

##### *When a Vote is Necessary to Opt Out of Retrofitting with Fire-Prevention Systems*

Under current law, retrofitting with a fire sprinkler system is not required if a mere majority of an association votes to forego it. Under the bill, however, no vote by the association is necessary to forego retrofitting in buildings that are 75 feet or less in height; as to taller buildings a vote to forego retrofitting must be approved by a two-thirds vote of the association.

Current law only permits an association to forego required retrofitting with a fire sprinkler system. However, even if an association votes to forego retrofitting with a fire sprinkler system, retrofitting with an engineered lifesafety system (ELSS) may still be required. The bill addresses this issue, clarifying that when an association is permitted to forego retrofitting with a fire sprinkler system, it is also permitted to forego retrofitting with an ELSS.

<sup>58</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*, 3rd ed. (Barron’s 2000).

<sup>59</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>60</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

The bill specifies that these provisions on retrofitting do not apply to “timeshare condominiums.”<sup>61</sup>

### ***Procedural Matters Relating to a Vote to Opt Out of Retrofitting***

In addition to the several ways provided in current law to vote as to whether to forego retrofitting, the bill also permits “electronic voting.” The bill further provides that an association’s failure to provide timely notice to unit owners of a vote to forego retrofitting requirements does not invalidate the vote if notice of the results is provided to the owners.

Under the bill, as under current law, a vote to forego retrofitting may be reversed by a subsequent vote. Current law permits this subsequent vote if at least 10 percent of the voting interests call for it, but the bill also permits a majority of the board to call for a vote to reconsider retrofitting. These votes to reconsider retrofitting can occur at any time because the bill repeals the prohibition on these reconsideration votes happening more often than once every 3 years. Also, the bill requires two thirds of an association to vote in favor of retrofitting, but current law requires a mere majority.

### ***Required Sign or Symbol to Indicate a Lack of Sprinkler System***

The bill requires a condominium or cooperative association that operates a building having at least three stories but lacking a fire sprinkler system in the common areas of the building to mark the building with a sign or symbol approved by the State Fire Marshal. The sign or symbol must sufficiently indicate the lack of a sprinkler system in the common areas to persons conducting fire control and other emergency operations. The State Fire Marshal must ensure that the dimensions and placement of the sign or symbol do not diminish the aesthetic value of the building. Moreover, the State Fire Marshal must adopt rules regarding the appearance, use, and location of the sign or symbol.

### ***Other Fire Safety System Provisions***

Under current law, a condominium or cooperative association that was not in compliance with the requirements regarding a fire sprinkler system and that did not vote to forego these requirements had until December 31, 2016, to apply for a building permit. Under the bill, these associations now have until December 31, 2018. Under current law, the application for a building permit must demonstrate that the association will become compliant by December 31, 2019, a date which the bill changes to December 31, 2021.

Lastly, the bill provides that a local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system *or other ELSS* before January 1, 2022, instead of the compliance date set forth in current law, which is December 31, 2019.

### ***Notice of Board Meetings***

Under the bill, notice of a meeting of the board of a condominium or cooperative association may be posted to a website. However, for this notice to be sufficient, an association must have adopted, by rule, a procedure for posting notice in this manner and the association must provide

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<sup>61</sup> Timeshare condominiums are governed by s. 721.24, F.S.

unit owners with an electronic notice with a hyperlink to the website containing the meeting notice. Nonetheless, boards may still post notice of meetings in the ways permitted under current law.

### ***Electronic Records***

The bill adds *electronic* records relating to voting to the list of official records that a condominium or cooperative association must maintain.

### **Changes Common to Cooperative and Homeowners' Associations**

The bill expressly permits members of a cooperative or homeowners' association board to communicate using e-mail but it prohibits these persons from casting a vote in this manner. Condominium law already includes a similar provision.

### **Changes Relating Only to Condominium Associations**

#### ***Optional Terminations of Condominiums***

For an optional condominium termination plan to proceed, the bill requires that at least 80 percent of the total voting interests of a condominium vote for termination. However, the bill prohibits a termination plan from proceeding if it is rejected by 5 percent of the condominium's voting interests. In contrast, current law prohibits the progress of a termination plan if at least 10 percent of the voting interests vote against termination.

Moreover, under current law, the approval percentage is a default threshold that may be supplanted by the terms of a condominium's declaration to make it easier or more difficult to terminate a condominium. The threshold in the bill, however, will supplant any approval threshold in a condominium's declaration.

The bill also increases the minimum time periods between successive votes on a termination plan. If 5 percent or more of the voting interests of a condominium reject a plan of termination, a subsequent plan may not be considered for 24 months, instead of 18 months as under current law.

#### ***Optional Terminations of Condominiums Created by Conversion of Other Form of Property***

Some condominiums are created by the conversion of non-condominium property, such as apartment buildings. The bill extends the time between the date that a condominium is created by conversion and the date that the condominium association may vote for optional termination to 10 years from 5 years.

#### ***Optional Termination of Condominiums that are At Least 80-percent-owned by Bulk Owners***

Compared to other condominium terminations, current law places more restrictions on the termination of a condominium if a bulk owner owns at least 80 percent of the condominium's total voting interests.

The bill broadens the requirement to disclose to the unit owners anyone who owns a significant portion of the condominium before a plan of termination is presented to the unit owners. Specifically, the plan must include written, sworn disclosures of the identity of any person or entity that owns or controls at least 25 percent (instead of 50 percent, as in current law) of the condominium units. Moreover, if it is an artificial entity that owns at least 25 percent of the units, then the following must also be disclosed in the same manner:

- The natural person or persons who directly or indirectly manage or control the artificial entity or entities; and
- The natural person or persons who directly or indirectly own or control 10 percent (instead of 20 percent as under current law) or more of the artificial entity or entities that constitute the bulk owner.

The written and sworn disclosure must also include the factual circumstances that show that the plan complies with the requirements of s. 718.117, F.S., the statute amended by the bill, and shows that the plan supports the expressed public policies of the statute.

As under current law, each unit owner other than the bulk owner must be compensated at least 100 percent of the fair market value of his or her unit. Additionally, current law requires that a unit owner receive at least the original purchase price paid for his or her unit if he or she:

- Was an original purchaser;
- Rejected the plan of termination; and
- Received a homestead exemption on the unit.

The bill, in contrast, requires only that a person's unit have been granted homestead-exemption status for the person to be guaranteed at least the original purchase price.

### ***Official Records of Associations of Condominiums***

The bill requires condominium associations to maintain as an official record all bids and contracts for work performed for 1 year instead of the current law's 7-year requirement. This conforms condominium law in this regard to the laws regulating homeowners' associations and cooperative associations.

### **Changes Relating Only to Cooperative Associations**

Regarding cooperative associations, the bill strips a director or officer of the board of a cooperative association of his or her post if he or she is more than 90 days delinquent in paying any money due the association. The bill also prohibits co-owners of a unit from serving simultaneously on the board of a cooperative association that has more than 10 units unless the co-owners own more than one unit or unless there are not enough eligible candidates.

### **Effective Date**

The bill takes effect July 1, 2017.

**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:

The bill may have a positive impact on property owners in condominium or cooperative buildings that are 75 feet or less in height, as these property owners are now exempt from the requirement that their buildings be retrofitted with fire safety systems.

The bill may cause a negative impact on homeowners' associations that have fewer than 50 parcels, as well as condominium and cooperative associations that have fewer than 50 units, both of which, under current law, must prepare a statement of cash receipts and expenditures, instead of a more-rigorous type of financial report. Depending on these associations' revenues, they may now be required to engage more-costly accounting services to prepare their financial reports.

However, the bill may also reduce costs to condominium associations to prepare financial statements. Current law allows associations to opt for a less thorough, and therefore less costly, reporting option, but not for more than 3 consecutive years. Under the bill, an association may opt for a less thorough reporting for unlimited consecutive years.

## 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: 633.2225, 718.111, 718.112, 718.113, 718.117, 719.104, 719.1055, 719.106, 719.107, and 720.303.

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

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

**CS by Judiciary on April 19, 2017:**

The committee substitute:

- Requires a condominium or cooperative association to post a sign or symbol on a building that has three or more stories if the building lacks a fire sprinkler system.
- Requires that a condominium or cooperative association having a building taller than 75 feet may forego retrofitting with a fire sprinkler system or engineered lifesafety system only upon two-thirds of the association's total voting interests vote to do so. In contrast, the bill required only a mere majority to vote to forego retrofitting.
- Requires two-thirds of a condominium or cooperative association to vote to retrofit a building if the association has previously voted not to retrofit the building; in contrast, current law requires a mere majority.
- Omits a provision of the underlying bill that would have deleted the current law's requirement that in order for a person to receive the favorable "bulk buyer" or "bulk assignee" legal status, he or she must have acquired 8 or more condominium units *by July 1, 2018*.
- Removes a provision of the underlying bill that required the board of a homeowners' association, if requested by 10 percent of the voting interests, to reconsider an annual budget that includes assessments that are at least 115 percent of those in the previous year's budget.
- Requires that an optional termination of a condominium be approved by at least 80 percent of a condominium's voting interests, regardless of what the condominium's governing documents would require.
- Reduces the percentage of a condominium's voting interests necessary to veto an optional termination from 10 percent to 5 percent.
- Prohibits an optional termination of a condominium that was created by conversion (such as from an apartment complex) until 10 years after conversion; current law requires only 5 years to have passed since conversion.
- Increases consumer protections in the process to terminate a condominium that is at least 80-percent-owned by a "bulk owner."

**CS by Regulated Industries on March 28, 2017:**

The committee substitute:

- Amends s. 718.113(2), F.S., to clarify that approval by the voting interests is required before any material alterations or substantial additions to common elements or association property is commenced.
- Repeals ss. 719.104(4)(c)2. and 720.303(7)(b)2., F.S., the provisions that require cooperative and homeowners' associations of fewer than 50 units or parcels,

regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures.

- Amends s. 719.1055(5), F.S., to retain the requirement that a licensed contractor or electrician must provide the certificate of compliance for a cooperative association.
- Replaces the term "life safety" with the term "lifesafety."
- Amends s. 719.106(1)(a)1., F.S., to prohibit co-owners of a unit in a residential cooperative association of more than 10 units from serving on the board at the same time, unless the co-owners own more than one unit or there are not enough eligible candidates.
- Creates s. 719.106(1)(m), F.S., to provide that an officer or director of a cooperative association is deemed to have abandoned the office if he or she is more than 90 days delinquent in a monetary obligation due to the association.
- Amends s. 719.106(1), F.S., to provide that, if provided in the cooperative association's bylaws, the cost of bulk contracts for communication services, information services, or internet services are deemed a common expense of the cooperative association, and that such contracts may be canceled by a majority vote of the voting interests.
- Amends s. 720.303(2), F.S., to permit homeowners' associations to provide meeting notices to members by facsimile number or e-mail.
- Removes revisions in the bill to s. 720.303(6), F.S., relating to the maintenance and funding of reserve accounts in the budget of a homeowners' association.

**B. Amendments:**

None.