

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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**BILL:** CS/SB 744

**INTRODUCER:** Regulated Industries Committee and Senator Passidomo

**SUBJECT:** Community Associations

**DATE:** March 28, 2017      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	<b>Fav/CS</b>
2.			JU	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 744 revises requirements related to the governance and operation of condominium, cooperative, and homeowners' associations.

The bill revises the requirement that high-rise condominium and cooperative buildings must be retrofitted with a fire safety system and an engineered lifesafety systems (ELSS). The bill:

- Permits unit owners in high-rise buildings to vote to forego retrofitting for a fire safety system and an engineered lifesafety system (ELSS);
- Provides that an association or unit owner is not required to retrofit association property, common elements, or units with a fire sprinkler system or ELSS if the building is 75 feet or less in height;
- Exempts commercial and mixed-use condominiums (but not cooperatives) from the requirement to retrofit a building less than 75 feet in height;
- Extends the time for an association to apply for a building permit, if it has not completed retrofitting or voted to forego retrofitting, from December 31, 2019, to December 31, 2021;
- Requires that a licensed professional engineer, instead of a licensed contractor or electrician, provide the certificate of compliance for a condominium; and
- Revises the process for the members to vote to forego retrofitting a building.

The bill repeals the provisions that require a condominium, 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 instead of a compiled, reviewed, or audited financial statement.

The bill:

- Clarifies that approval by the voting interests in a condominium is required before any material alterations or substantial additions to common elements or association property are commenced;
- Requires condominium associations to maintain for one year as an official record all bids and contracts for work performed, as is currently required for cooperative and homeowners' associations;
- Requires condominium and cooperative associations to maintain electronic records relating to voting as an official record;
- Repeals the prohibition against a condominium association waiving financial reporting requirements for more than three consecutive years;
- Permits condominium associations to provide electronic notices of meetings;
- Repeals the July 1, 2018, deadline for the classification as a condominium bulk buyer or bulk assignee; and
- Permits members of the board of administration of cooperative and homeowners' associations to communicate by e-mail, as is allowed for condominium associations.

For cooperative associations, the bill:

- Requires that notice of any board meeting in a cooperative association in which regular or special assessments against unit owners are to be considered must specifically state that the assessments will be considered and provide the estimated amount and description of the purposes for such assessments.
- Prohibits 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;
- Provides 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; and
- Provides that, if provided in the cooperative association's bylaws, the cost of bulk contracts for communication services, information services, or internet services is deemed a common expense of the cooperative association, and that such contracts may be canceled by a majority vote of the voting interests.

Regarding homeowners' associations, the bill also:

- Requires that an association hold a special meeting of the parcel owners if the board adopts an annual budget that requires assessments that exceed 115 percent of the assessments for the preceding fiscal year;
- Permits the parcel owners to adopt a substitute budget at the special meeting by a majority approval of all voting interests; and
- Provides that, if the developer controls the board, assessments may not exceed 115 percent of the prior fiscal year unless the assessments are approved by a majority of all voting interests.
- Prohibits write-in nominations for elections to the board in certain circumstances; and

- Provides a clarification of existing law that the accrual of interest on unpaid assessments, and the application of payments to interest, late fees, collection costs and associated reasonable attorney fees, and the delinquent assessment, in that order of priority, controls over any restrictive endorsement, designation, or instruction placed on or accompanying a payment, including any purported accord and satisfaction (that the parcel owner paid a lesser amount in full satisfaction of the amount due) pursuant to s. 673.3111, F.S.

The bill provides an effective date of July 1, 2017.

## II. Present Situation:

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

Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.<sup>1</sup> The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.<sup>2</sup> After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.<sup>3</sup> For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.<sup>4</sup>

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

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

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

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

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

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

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

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

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

In regards to homeowners' associations, the division's authority is limited to arbitration of recall election disputes.<sup>7</sup>

### **Condominium**

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."<sup>8</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>9</sup> A declaration is similar to a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.<sup>10</sup>

A condominiums is administered by a board of directors referred to as a "board of administration."<sup>11</sup>

### **Cooperative Associations**

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

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<sup>7</sup> See s. 720.306(9)(c), F.S.

<sup>8</sup> Section 718.103(11), F.S.

<sup>9</sup> Section 718.104(2), F.S.

<sup>10</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>11</sup> Section 718.103(4), F.S.

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

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.<sup>12</sup>

### **Homeowners’ Associations**

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.<sup>13</sup>

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”<sup>14</sup> Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.<sup>15</sup>

Homeowners’ associations are administered by a board of directors whose members are elected.<sup>16</sup> The powers and duties of homeowners’ associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.<sup>17</sup> The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.<sup>18</sup>

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

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners’ associations, provide for the governance of these associations. For example, the chapters delineate requirements for notices of meetings,<sup>19</sup> recordkeeping

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<sup>12</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>13</sup> See s. 720.302(1), F.S.

<sup>14</sup> Section 720.301(9), F.S.

<sup>15</sup> Section 720.302(5), F.S.

<sup>16</sup> See ss. 720.303 and 720.307, F.S.

<sup>17</sup> See ss. 720.301 and 720.303, F.S.

<sup>18</sup> Section 720.303(1), F.S.

<sup>19</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.

requirements, including which records are accessible to the members of the association,<sup>20</sup> and financial reporting.<sup>21</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

### **Official Records**

Section 718.111(12)(c), F.S., for condominium associations, s. 719.104(2), F.S., for cooperative associations, and s. 720.303(5), F.S., for homeowners’ associations, provide for the maintenance of the official records of an association. These provisions delineate the types of records that the association must maintain and identify types of records that are and are not accessible to their members. Condominium, cooperatives, and homeowners’ associations are required to maintain official records for at least seven years.<sup>22</sup>

Condominium and cooperative associations must maintain as an official record all bid and contracts for work to be performed.<sup>23</sup> Cooperative and homeowners’ associations are required to maintain these bids and contracts for one year.<sup>24</sup>

Condominium and cooperative associations must maintain as an official record the ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners. These records must be maintained for one year from the date of the election, vote, or meeting to which the document relates.<sup>25</sup> Homeowners’ association are not required to maintain such a record.<sup>26</sup>

### **Financial Reporting**

Sections 718.11(13), 719.104(4), and 720.303(7), F.S., provide the financial reporting requirements for condominium, cooperative, and homeowners’ associations, respectively. These provisions for each association type are comparable.

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

Associations may not waive the financial reporting requirements for more than three consecutive years. The type of financial reporting that an association must perform is based on the association’s total annual revenue. An association with total annual revenue of:

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<sup>20</sup> See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners’ associations.

<sup>21</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>22</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>23</sup> Sections 718.111(12)(a)11.d., 719.104(2)(a)9.d., and 720.303(4)(i), F.S., respectively.

<sup>24</sup> See ss. 719.104(2)(a)9.d., and 720.303(4)(i), F.S., respectively.

<sup>25</sup> Sections 718.111(12)(a)12., and 719.104(2)(a)10., F.S., respectively.

<sup>26</sup> See s. 720.303(4), F.S.

- 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>27</sup>
- At least \$300,000 but less than \$500,000 must prepare reviewed financial statements.<sup>28</sup>
- \$500,000 or more must prepare audited financial statements.<sup>29</sup>

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

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

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

### **Notice of Board Meetings**

Condominium and cooperative associations are required to notice all board meetings by posting a notice in a conspicuous place on the cooperative's or condominium's property for at least 48 hours. The notice must be posted 14 days before meetings when a nonemergency special assessment or an amendment to the rules regarding unit use is to be considered.<sup>30</sup>

### **Fire Safety Certificate of Compliance — Condominium and Cooperative Associations**

#### ***Florida Fire Prevention Code***

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire. The State Fire Marshal: regulates, trains, and certifies fire service personnel and fire safety inspectors;

<sup>27</sup> A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3<sup>rd</sup> ed. (Barron's 2000).

<sup>28</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>29</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

<sup>30</sup> Sections 718.112(2)(c) & 719.106(1)(c)(1), F.S.

investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.<sup>31</sup>

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (FFPC),<sup>32</sup> which contains all fire safety laws and 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 laws and rules.<sup>33</sup> The State Fire Marshal adopts a new edition of the FFPC every three years.

The fire prevention codes and standards require all existing high-rise buildings,<sup>34</sup> including condominiums and cooperatives, to be retrofitted with fire sprinkler system or with an engineered lifesafety system (ELSS).<sup>35</sup> Florida adopted the requirement to retrofit high-rise, existing multi-family structures after 87 people lost their lives in the MGM Grand Hotel Fire in 1980 and 97 people lost their lives in the San Juan DuPont Plaza fire in 1986.<sup>36</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.<sup>37</sup>

### ***Condominium and Cooperatives***

Because of the requirement to retrofit, residents of high-rise buildings have claimed that the cost to retrofit a building, which has been issued a certificate of occupancy at the time of completion, would be an unfair cost to residents, many of whom are elderly and live on fixed incomes.<sup>38</sup>

The DBPR estimated that retrofitting a condo would cost from \$595 to \$8,633 per unit. The costs vary depending on a number of factors such as 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>

<sup>31</sup> Section 633.104, F.S.

<sup>32</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 March 23, 2017).

<sup>33</sup> Fla. Admin. Code Ch. 69A-60.

<sup>34</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, 5<sup>th</sup> Edition, 2012.

<sup>35</sup> Section 31.3.5.11.2, Florida Fire Prevention Code, 5<sup>th</sup> Edition, 2012

<sup>36</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 March 23, 2017).

<sup>37</sup> See ss. 31.3.5.11.4 and 31.3.5.11.1, Florida Fire Prevention Code, 5<sup>th</sup> Edition, 2012.

<sup>38</sup> Bogdanoff, Ellyn Setnor, *Why the Florida Legislature needs to fix condo sprinkler-system problem/Opinion*, February 14, 2017, at <http://www.sun-sentinel.com/opinion/commentary/fl-eboped-engineered-life-safety-20170214-story.html> (last visited March 23, 2017); and Doris, Tony, *Fire Sprinkler retrofit law in county: Hot air or good measure?*, July 3, 2016, at: <http://www.mypalmbeachpost.com/news/local/fire-sprinkler-retrofit-law-county-hot-air-good-safety-measure/90zpFFEtn2F9PzLBtp0bdK/> (last visited March 23, 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 March 23, 2017).



In 2003, the Legislature amended the requirement to retrofit a residential condominium<sup>40</sup> or cooperative<sup>41</sup> building by providing that:

- Unit owners in residential condominium or cooperative may vote to forego retrofitting a building with a fire sprinkler system or an ELSS. A vote to forego retrofitting required a two-thirds vote of all voting interests in the affected condominium or cooperative association.
- Local governments may not require retrofitting with a fire sprinkler system before the end of 2014.
- However, a residential condominium or cooperative association could not vote to forego retrofitting a sprinkler system in any “common area” of a “high rise” building,<sup>42</sup> including any enclosed hallway, corridor, lobby, stairwell, or entryway.

In 2010, the Legislature again amended these provisions to:

- Provide that unit owners may vote to forego retrofitting a sprinkler system in common areas of a high rise building;
- Reduce the voting requirement to forego retrofitting a sprinkler system from a two-thirds vote to a majority vote;
- Prohibit local government from requiring retrofitting before the end of 2019; and
- Remove the ability of a residential condominium or cooperative to vote to forego retrofitting a building with an ELSS.<sup>43</sup>

Current law provides that:

- An association is not required to retrofit common elements, association property, or units of a residential condominium to meet current building code requirement for a building that has been certified for occupancy by the applicable government entity if the unit owners vote to forego retrofitting by majority vote.
- Local governments may not require completion of retrofitting with a fire sprinkler system before the end of 2019.
- The retrofit requirement applies to all condominium and cooperatives regardless of height.
- Current law only applies to fire sprinkler systems. No statutory authority exist for a condominium or cooperative to forego retrofitting a building with an ELSS.
- The authority to vote to forego retrofitting is limited to residential condominiums and cooperatives.<sup>44</sup>

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<sup>40</sup> Section 718.103(23), F.S., provides that a residential condominium consist of two more units, any of which are intended for use as a private temporary or permanent residence, and that a condominium that contains commercial and residential units is a mixed-use condominium.

<sup>41</sup> Section 719.103(22), F.S., provides that a residential cooperative consist of units intended for use as a private residence. If a cooperative has commercial and residential units then the cooperative is a residential cooperative with respect to those units intended for use as a private residence.

<sup>42</sup> A high-rise building is defined as a building greater than 75 feet in height. The building height is measured from the lowest level of fire department access to the floor of the highest occupiable story. *See*, ch. 2003-14, Laws of Fla., codified as ss 718.112(2)(l) and 719.1055(5), F.S.

<sup>43</sup> Ch.2010-174, s. 3, Laws of Fla., codified as ss. 718.112(2)(l) and 719.1055(5), F.S. (2010).

<sup>44</sup> Sections 718.112(2)(l) and 719.1055(5), F.S.

Condominium 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 lifesafety code.<sup>45</sup>

A vote to forego retrofitting may be obtained by limited proxy, a personally cast ballot at a membership meeting, or by execution of written consent by the member. The vote is effective when a certificate attesting to the vote is recorded in the county public records.<sup>46</sup>

Written notice of the vote must be mailed or hand delivered to all unit owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests. Such vote may be called once every three years. Current law does not provide for the use of electronic voting.<sup>47</sup>

A local authority may not require completion of retrofitting with a fire sprinkler system before the end of 2019 for a cooperative or condominium association that has not voted to forego or completed retrofitting.<sup>48</sup>

By December 31, 2016, a cooperative association that has not retrofitted or voted to forego retrofitting is required to initiate an application for a building permit with the local authority demonstrating that the building will be compliant with fire sprinkler system requirements by December 31, 2019.<sup>49</sup>

The DBPR must require condominium and cooperatives to report the membership vote and recording of the certificate attesting to the vote and, if retrofitting has been undertaken, the per-unit cost of such work. The DBPR must annually report to the State Fire Marshal the number of associations that have elected to forego retrofitting.<sup>50</sup>

### **Distressed Condominium Relief Act**

In 2010, the Legislature enacted, the “Distressed Condominium Relief Act” as part VII of ch. 718, F.S., which defines the extent to which successors to the developer, including a construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties and other responsibilities of the developer.<sup>51</sup>

The 2010 act created the categories of "bulk buyers" and "bulk assignees."

A “bulk assignee” is a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or

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

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

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

<sup>50</sup> *Id.*

<sup>51</sup> Ch. 2010-174, s. 18, Laws of Fla., codified as part VII, ch. 718, F.S.

substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.<sup>52</sup>

A “bulk buyer” is a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in the act to conduct sales, leasing, and marketing activities within the condominium. A bulk buyer is exempt from payment of working capital contributions and from rights of first refusal.<sup>53</sup>

Section 718.704(1), F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the condominium parcels were acquired prior to July 1, 2018. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

The Act was created in reaction to the "massive downturn in the condo market which has occurred throughout the state" and was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for a specific and defined period:

The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condo associations, and thereby declares that the provisions of this part may be used by purchasers of condo inventory for only a specific and defined period.<sup>54</sup>

Originally, the time limitation for classification as a bulk assignee or bulk buyer ended July 1, 2012.<sup>55</sup> In 2012, the Legislature extended the time limitation to July 1, 2015.<sup>56</sup> In 2014, the legislature again amended s. 718.707, F.S., to extend the time limitation to July 1, 2016.<sup>57</sup>

In 2015, the Legislature further amended s. 718.707, F.S., to provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the parcels were acquired between July 1, 2010, and July 1, 2018.

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<sup>52</sup> Section 718.703(1), F.S.

<sup>53</sup> Section 718.703(2), F.S.

<sup>54</sup> Section 718.702, F.S.

<sup>55</sup> Ch. 2010-174, s. 18, Laws of Fla.

<sup>56</sup> Ch. 2012-61, s. 36, Laws of Fla.

<sup>57</sup> Ch. 2014-74, s. 5, Laws of Fla.

## **Budgets and Reserve Accounts - Homeowners' Associations**

### ***Budgets***

Homeowners' associations must prepare an annual budget for the coming year that includes estimated revenues and expenses, estimated surplus or deficits, and sets out all fees and charges paid for by the association for recreational amenities.<sup>58</sup>

The board of a condominium association is required by current law to call a special meeting if the board adopts an annual budget that requires an assessment that exceeds 115 percent of assessments for the preceding fiscal year. The condominium board must conduct a special meeting of the unit owners to consider a substitute budget if the board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all voting interests. The meeting must take place within 60 days of the adoption of the annual budget, and the notice must be delivered by mail or hand delivery at least 14 days before the meeting.<sup>59</sup> Homeowners' associations are not required to follow such a process.

### ***Reserve Accounts***

A reserve account is an account into which an association collects periodic advance payments to cover future anticipated and specific capital expenditures and deferred maintenance items. A homeowners' association must prepare an annual budget that sets out:

- The annual operating expenses;
- The estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year; and
- All fees or charges paid for by the association for recreational amenities.<sup>60</sup>

The association is required to provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member.<sup>61</sup>

The budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible. If the reserve account is not established by developer or by a vote of the members, the account must be funded pursuant to the requirements of the governing documents. If the reserve account is established by the developer or by a vote of the members, the reserves shall be determined, maintained, and waived in the manner provided in s. 720.303(6), F.S. A majority of the total voting interests of the association may vote to terminate a reserve account.<sup>62</sup> The budget of the association must include a notice, as specified in current law, regarding whether the budget includes or does not include reserve accounts.<sup>63</sup>

The members may elect to establish a reserve account by an affirmative vote of a majority of the total voting interests of the association at a duly called meeting of the membership or by the

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<sup>58</sup> Section 720.303(6)(a), F.S.

<sup>59</sup> Section 718.112(2)(e)2.a., F.S.

<sup>60</sup> Section 720.303(6)(a), F.S.

<sup>61</sup> *Id.*

<sup>62</sup> Section 720.303(6)(b), F.S.

<sup>63</sup> Section 720.303(6)(c), F.S.

written consent of a majority of the total voting interests. The approval to establish reserve accounts must designate the components for which the reserve accounts are established.<sup>64</sup>

The homeowners' association must compute the amount in the reserve account with a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association must also annually adjust the replacement reserve assessments to take into account any changes in estimates of cost or useful life of a reserve item.<sup>65</sup>

A homeowners' association may vote to waive funding, reduce funding, or terminate a reserve account by a majority vote of the voting interests. A vote to waive or reduce reserves is applicable only as to one fiscal year.<sup>66</sup>

There are two types of reserve accounts:

- Separate reserve accounts for each asset; and
- Pooled reserve accounts for two or more assets.<sup>67</sup>

Current law provides funding formulas for separate and pooled reserve accounts.<sup>68</sup> Reserve funds and any interest accruing on the funds must remain in the reserve account or accounts and must be used only for authorized reserve expenditures, unless their use for other purposes is approved in advance by a majority vote at a meeting at which a quorum is present. Prior to turnover of control of an association by a developer to parcel owners, the developer-controlled association cannot vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.<sup>69</sup>

### **Elections – Homeowners' Associations**

Homeowners' associations are administered by a board of directors whose members are elected.<sup>70</sup> An association is required to hold board of director elections at its annual meeting or as provided in its governing documents.<sup>71</sup> Elections are conducted in accordance with the procedures set forth in the governing documents of the association. An election is not required unless more candidates are nominated than vacancies exist.<sup>72</sup>

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<sup>64</sup> Section 720.303(6)(d), F.S.

<sup>65</sup> Section 720.303(6)(e), F.S.

<sup>66</sup> Section 720.303(6)(f), F.S.

<sup>67</sup> *See s. 720.303(6)(g), F.S.*

<sup>68</sup> Section 720.303(6)(g), F.S. *See also* Division of Florida Condominiums, Timeshares, and Mobile Homes, Budgets & Reserves Schedules: A Self-Study Training Manual, available at:

<http://www.myfloridalicense.com/dbpr/lsc/documents/BudgetsandReserveSchedules.pdf> (last visited March 24, 2017).

<sup>69</sup> Section 720.303(6)(h), F.S.

<sup>70</sup> ss. 720.303 & 720.307, F.S.

<sup>71</sup> Section 720.306(9)(a), F.S.

<sup>72</sup> *Id.*

### **Assessments – Homeowners’ Associations**

Homeowners’ associations may impose assessments on owners. Assessments and installments of assessments that are not timely paid accrue interest. Any payment received by an association for payment of an assessment or installment that accrued interest will first be applied to the interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees, and then to the delinquent assessment.<sup>73</sup>

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

### **Official Records – Condominium and Cooperative Associations**

The bill amends s. 718.111(12)(a)11.d., F.S., to require condominium associations to maintain for one year as an official record all bids and contracts for work performed. The bill conforms to the requirement for cooperative and homeowners’ associations in ss. 719.104(2)(a)9.d., and 720.303(4)(i), F.S., respectively.

The bill amends s. 718.111(12)(a)11.d., and 719.104(2)(a)10., F.S., to include electronic records relating to voting to the list of official records that must be kept by a condominium or cooperative association.

### **Financial Reporting – Condominium, Cooperative, and Homeowners’ Associations**

The bill repeals ss. 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S., the provisions that require condominium, cooperative, and homeowners’ associations of fewer than 50 units, regardless of the association’s annual revenues, to prepare a report of cash receipts and expenditures.

The bill also amends s. 718.111(13)(d), F.S., to repeal the prohibition against an condominium association waiving financial reporting requirements for more than three consecutive years. The bill does not repeal an identical provision related to financial reporting by a cooperative association in s. 719.104(4)(b)4., F.S. Current law does not provide a comparable provision for homeowners’ associations.

### **Notice of Board Meetings**

The bill amends s. 718.112(2)(c)1., F.S., to provide that, in addition to any of the authorized means of providing notice of a board meeting, a condominium association may, by rule, adopt a procedure for conspicuously posting meeting notices and the agenda on a website serving the association, including a provision that the association send an electronic notice providing a hypertext link to such website where the notice is posted.

### **Fire Safety Certificate of Compliance — Condominium and Cooperative Associations**

The bill amends s. 718.112(2)(l), F.S., to revise the fire safety requirements for condominium associations to require that a licensed professional engineer, instead of a licensed contractor or

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<sup>73</sup> Section 720.3085(3), F.S.

electrician, must provide the certificate of compliance.<sup>74</sup> However, the bill retains the provision in s. 719.1055(5), F.S., as to cooperatives, that requires a licensed contractor or electrician to provide the certificate of compliance.<sup>75</sup>

For condominium and cooperative associations, the bill amends ss. 718.112(2)(l) and 719.1055(5), F.S., to:

- Permit a vote to forego retrofitting for a fire safety system and an engineered lifesafety systems (ELSS);
- Provide that an association or unit owner is not required to retrofit association property, common elements, or units with fire sprinkler system or ELSS if the building is 75 feet or less in height;
- Exempt commercial and mixed-use condominiums (but not cooperatives) from the requirement to retrofit a building less than 75 feet in height;
- Prohibit a local authority from requiring retrofitting of a fire sprinkler system or ELSS until on or after January 1, 2022; and
- Extend the time for an association to apply for a building permit, if it has not completed retrofitting or voted to forego retrofitting, from December 31, 2019, to December 31, 2021.

Regarding the process used by an association to vote to forego the requirement to retrofit, the bill:

- Permits the use of electronic voting in addition to other currently authorized voting methods;
- Provides that the recorded certificate must be signed by an officer or agent of the association;
- Removes the requirement that notice of a vote to forego and vote results be hand delivered or mailed to each unit owner and instead requires that a notice of a vote to forego must be delivered or mailed to each unit owner;
- Provides that failure to timely give unit owners notice of the results of a vote to forego retrofitting does not invalidate the results of the vote, if the notice of the results is provided to the unit owners;
- Repeals the requirement that current owners must provide a copy of the notice of the results of a vote to forego retrofitting to a new unit owner before closing or a renter before signing a lease;
- Permits a majority of the board of directors to hold a special meeting for the unit owners to vote to retrofit if there has already been a vote to forego retrofitting, but the association may not send notice of such a special meeting of the board by electronic transmission;
- Repeals the requirement that a vote to require retrofitting may only be called once every three years if there has already been a previous vote to forego retrofitting; and
- Provides that failure to notify the DBPR of a vote to forego retrofitting and to record the certificate in the county's public records does not invalidate the vote to forego retrofitting.

### **Alterations and Additions to Condominium Property**

The bill amends s. 718.113(2), F.S., to clarify that approval by the voting interests is required before a material alteration or substantial addition to the common elements or association

<sup>74</sup> Section 471.005(5), F.S., provides for the licensing of professional engineers by the Board of Professional Engineers in the DBPR.

<sup>75</sup> Sections 489.115 and 489.511, F.S., provides for the certification of contractors and electrical contractors, respectively.

property is commenced. Current law requires that 75 percent of the total voting interests must approve a material alteration or substantial addition to the common elements or association property, but does not specify when the approval must be obtained.

### **Distressed Condominium Relief Act**

The bill amends s. 718.707, F.S., to remove the deadline of July 1, 2018, for classification as a condominium bulk buyer or bulk assignee.

### **Board Members – Cooperatives**

The bill 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.

### **Communications by Board Members - Cooperative and Homeowners' Associations**

The bill amends ss. 719.106(1)(c) and 720.303(2)(a), F.S., to permit members of the board of administration of cooperative and homeowners' associations, respectively, to communicate by e-mail. The board members may not cast votes on association matters via e-mail. Current law permits board members of a condominium association to communicate, but not cast votes, by e-mail.<sup>76</sup>

### **Board Meetings – Cooperative Associations**

Regarding meetings of the board of a cooperative association, the bill also amends s. 719.106(1)(c), F.S., to:

- Require that notice of any meeting at which regular or special assessments against unit owners are to be considered must specifically state that the assessments will be considered and provide the estimated amount and description of the purposes for such assessments;
- Authorize the board to adopt, by rule, a procedure for conspicuously posting a meeting notice and agenda on a website serving the association;
- Require that the association's rule for posting a meeting notice and agenda require that the association must send an electronic notice to members with a hypertext link to the website where the notice is posted; and
- Require that a notice on the association's website must be posted for at least as long as the physical posting of a meeting notice is required (not less than 14 days before a meeting).<sup>77</sup>

### **Director and Officers – Cooperative Associations**

The bill 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. Current law provides a comparable provision for officers and directors of condominium and homeowners' associations.<sup>78</sup>

<sup>76</sup> See s. 718.112(2)(c), F.S.

<sup>77</sup> See s. 719.106(1)(c), F.S.

<sup>78</sup> See ss. 718.112(2)(n) and 720.306(9)(b), F.S., respectively.



### **Common Expenses – Cooperative Associations**

The bill amends s. 719.106(1), F.S., to allow, if provided in the cooperative association's bylaws, the cost of a master antenna television system or duly franchised cable television system to be deemed a common expense of the association, including bulk contracts for communication services, information services, or internet services.

The bill also includes contracts for communication services, information services, or internet services among the types of contracts that a cooperative association may cancel by a majority vote of the voting interests.

### **Meeting Notices**

The bill amends s. 720.303(2), F.S., to permit homeowners' associations to provide meeting notices to members by facsimile number or e-mail. Current law permits condominium and cooperative association to electronically transmit meeting notices to members.<sup>79</sup>

### **Budgets Homeowners' Associations**

The bill amends s. 720.303(6), F.S., dealing with the annual budget of a homeowners' association to require that an association conduct a special meeting of the parcel owners if the board adopts an annual budget that requires assessments that exceed 115 percent of the assessments for the preceding fiscal year. The special meeting must be conducted within 60 days of the adoption of the annual budget. The parcel owners may consider and adopt a substitute budget at the special meeting by a majority approval of all voting interests.

If the developer controls the board, assessments may not exceed 115 percent of the prior fiscal year unless the assessments are approved by a majority of all voting interests.

### **Elections – Homeowners' Associations**

The bill amends s. 720.306(9)(a), F.S., to provide that write-in nominations are not permitted if an election is not required because there are either an equal number or fewer qualified candidates to the number of vacancies and nominations from the floor are not required by the bylaws or this section.<sup>80</sup> The candidates will commence service on the board of directors regardless of whether a quorum is attained at the annual meeting.

### **Assessments – Homeowners' Associations**

The bill amends s. 720.3085(3), F.S., to clarify existing law that the accrual of interest on unpaid assessments, and the application of payments to interest, late fees, collection costs and associated reasonable attorney fees, and the delinquent assessment, in that order of priority, controls over any restrictive endorsement, designation, or instruction placed on or accompanying a payment,

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<sup>79</sup> See ss. 718.112(2)(c) and 719.106(1), F.S., respectively.

<sup>80</sup> Section 720.306(9)(a), permits a member to nominate himself or herself as a candidate for the board at a meeting where the election is held.

including any purported accord and satisfaction (that the parcel owner paid a lesser amount in full satisfaction of the amount due) pursuant to s. 673.3111, F.S.<sup>81</sup> A comparable provision is in current law for payments received by a condominium association, but not for payments received by a cooperative.<sup>82</sup>

#### **Effective Date**

The bill provides an effective date of 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:**

CS/SB 744 may result in a positive impact on property owners in residential and commercial high-rise buildings, if those buildings are exempted from the requirement to retrofit the building with a fire sprinkler system or a lifesafety system.

The bill may cause a negative impact on condominium associations, cooperatives, and homeowners' associations operating fewer than 50 units, if the association is required to hire an accountant to complete a compiled, reviewed, or audited financial statement instead of the report of cash receipts and expenditures required under current law.

Members of a homeowners' association may incur costs related to the requirement in the bill to fund reserve accounts.

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<sup>81</sup> The Florida Uniform Commercial Code (UCC) in s. 673.3111, F.S., provides for the accord and satisfaction of a claim by use of an instrument, which is defined in s. 673.1041, F.S., as an unconditional promise or order to pay a fixed amount of money, with or without interest.

<sup>82</sup> See s. 718.116(3), F.S.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The bill amends s. 718.112(2)(l), F.S., to revise the fire safety requirements for condominium associations to require that a licensed professional engineer, instead of a licensed contractor or electrician, provide the certificate of compliance. However, the bill retains the provision in s. 719.1055(5), F.S., that requires a licensed contractor or electrician to provide the certificate of compliance for cooperative associations. An amendment should be considered if the intent is to apply identical requirements to both types of communities.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.112, 718.113, 718.707, 719.104, 719.1055, 719.106, 720.303, 720.306, 720.3085.

**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 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.