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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/CS/SB 1154
INTRODUCER:	Community Affairs Committee; Innovation, Industry, and Technology Committee; and Senator Baxley
SUBJECT:	Community Associations
DATE:	February 10, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	**Fav/CS**
2.	Paglialonga	Ryon	CA	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1154 revises the regulation and governance of condominium, cooperative, and homeowners' associations under chs. 718, 719, and 720, F.S., respectively.

The bill authorizes parcel owners, including a parcel owner in a condominium, cooperative, or homeowners' association, to extinguish discriminatory restrictions in recorded title transactions.

For condominium associations, the bill:

- Prohibits a unit owner's insurance policy from including rights of subrogation against the association if the association's policy does not provide subrogation rights against the unit owner;
- Reduces the time period an association must maintain official records of bids for work, equipment, or services to be performed from 7 years to 1 year after receipt of the bid;
- Requires associations to provide members a checklist of all records that are made available for inspection and copying in response to a written request for official records. The checklist must be signed by a ch. 468, F.S., licensed manager or include an affidavit attesting the veracity of the list executed by an authorized agent of the association. Delivery of the checklist (and the affidavit if needed) to a member creates a rebuttable presumption that the association complied with the right of a member to inspect official records of the association;

- Provides that the Division of Florida Condominiums, Timeshares, and Mobile Homes may adopt rules outlining the requirements of the checklist and requirements for the training and education of association board members;
- Permits associations with 150 or more units to make official records available for inspection through an application that can be downloaded on a mobile device;
- Provides that only a board member's service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit;
- Permits associations to electronically transmit members written notice of a meeting;
- Permits associations to charge unit owners the actual costs of performing a background check or screening of a potential unit occupant when a unit owner transfers an interest to the occupant through a sale, mortgage, lease, sublease, or other transfer. The actual costs of the background check or screening must be supported by an invoice from the independent third party company conducting the investigation;
- Removes prohibition against an association employing or contracting with any service provider that is owned or operated by a board member or person who has a financial relationship with a board member or officer;
- Permits unit owners to install a charging station for an electric vehicle or a natural gas fuel vehicle on a parking area exclusively designated for use by the unit owner. The unit owner is required to be responsible for the costs related to the installation, maintenance, and removal of the charging station for an electric vehicle or a natural gas fuel vehicle;
- Provides a process for the parties in certain condominium disputes to initiate presuit mediation as an alternative to mandatory nonbinding arbitration. Election and recall disputes are not eligible for mediation and must be arbitrated or filed in court;
- Clarifies what costs a condominium developer may expend escrow funds to satisfy; and
- Repeals the requirement that the condominium ombudsman must maintain his or her office in Leon County.

For cooperative associations, the bill:

- Provides that an interest in a cooperative unit is an interest in real property; and
- Permits board or committee members to appear and vote by telephone, real-time video conferencing, or similar real-time electronic or video communication.

For homeowners' associations, the bill:

- Permits associations to adopt, by rule, procedures for posting meeting notices and agendas on a website and emailing members meeting notices and agendas;
- Requires sign-in sheets, voting proxies, ballots, and all other papers related to voting to be maintained as official records; and
- Clarifies the situations in which an association is obligated to create or fund association reserve accounts.

For condominiums and cooperatives, association members are not required to demonstrate any purpose or state any reason for inspecting official records.

For condominium and homeowners' associations, the bill clarifies that payment of a fine is due five days after notice of the fine is provided to the unit owner, tenant, or invitee of the unit owner.

The effective date of the bill is July 1, 2020.

II. Present Situation:

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the 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., for associations that are still under developer control.[1] The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.[2] After control of the condominium is transferred from the developer to the unit owners, the division has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to association records.[3] For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.[4]

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, associations, and association board members.[5]

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its 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. Also, Florida law authorizes the division to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.[6]

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, F.S., the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative

[1] Sections 718.501(1) and 719.501(1), F.S.
[2] *Id.*
[3] Section 718.501(1), F.S.
[4] Section 719.501(1), F.S.
[5] Sections 718.501(1) and 719.501(1), F.S.
[6] *Id.*

> 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 F.S., 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.

For homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.[7]

Condominium

A condominium is a "form of ownership of real property created under ch. 718, F.S."[8] Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements and members of the condominium association.[9] For unit owners, membership in the association is an unalienable right and required condition of unit ownership.[10] A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.[11] A declaration is similar to a constitution in that it:

> [S]trictly 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.[12]

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, Associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.[13] Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a "board of administration."[14] The board of administrators is individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided

[7] *See* s. 720.306(9)(c), F.S.
[8] Section 718.103(11), F.S.
[9] *See* s. 718.103, F.S.
[10] *Id.*
[11] Section 718.104(2), F.S.
[12] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[13] Section 718.303(3), F.S.
[14] Section 718.103(4), F.S.

shares by unit owners.[15] In litigation, an association's board of directors are the individuals in charge of directing attorney actions.[16]

Cooperative Associations

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

> [T]hat 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 owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.[17] 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.[18]

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as 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.[19]

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."[20] Unless specifically stated to the contrary in the articles of incorporation, 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.[21]
Homeowners' associations are administered by a board of directors whose members are elected.[22] 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 a

[15] Section 718.103(2), F.S.
[16] Section 718.103(30), F.S.
[17] *See Walters v. Agency for Health Care Administration*, 2019 WL 6691513, 44 Fla. L. Weekly D2898 (Fla. 3rd DCA 2019)
[18] *See* ss. 719.106(1)(g) and 719.107, F.S.
[19] *See* s. 720.302(1), F.S.
[20] Section 720.301(9), F.S.
[21] Section 720.302(5), F.S.
[22] *See* ss. 720.303 and 720.307, F.S.

recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.[23] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[24]

Homeowners associations mainly differ from condominiums, in the type of property individually owned. Condominium unit owners essentially own airspace within a building, whereas homeowner association members own a parcel of real property or land.

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 community associations. The chapters delineate requirements for notices of meetings,[25] recordkeeping requirements, including which records are accessible to the members of the association,[26] and financial reporting.[27] Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Discriminatory Real Estate Restrictions

Present Situation

Federal and state law prohibits discrimination based on race and several other characteristics in the sale, lease, or use of real property. The Fourteenth Amendment to the United States Constitution grants equal civil and legal rights, including due process and equal protection under the law, to all persons within its jurisdiction.

In Florida, the basic rights are provided in Article I of the Florida Constitution, including the right to due process.[28] Specifically, Article I, section 2, of the Florida Constitution, provides:

> Basic rights.—All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. No person shall be

[23] *See* ss. 720.301 and 720.303, F.S.
[24] Section 720.303(1), F.S.
[25] *See* ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.
[26] *See* ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.
[27] *See* ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners' associations, respectively.
[28] FLA. CONST. art. I, s. 9.

> deprived of any right because of race, religion, national origin, or physical disability.

Nonetheless, discriminatory restrictive covenants and other instruments—relics of an era when real estate discrimination was legal—remain in the records of many, perhaps all, counties, and can still be found in a title search. Though these documents are not legally enforceable, their existence has troubled many people who have discovered that a property that they own or rent, or would like to own or rent, was once encumbered by a discriminatory restriction.[29] However, current law does not appear to provide a way to strike or otherwise disavow these provisions in the public records.

Fair Housing Act

This state's Fair Housing Act (act), which was closely modeled from the federal act,[30] broadly prohibits discrimination in the sale or rental of real property, including by way of racist restrictive covenants.

The act's main operative provisions relating to the sale, rental, and use of real estate are outlined in ss. 760.23(1) and (2), F.S.:

> (1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.
>
> (2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, or religion.

Moreover, s. 760.23(3), F.S., specifically prohibits discriminatory notices and statements:

> (3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, handicap, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

However, these provisions are subject to exceptions and exemptions, as set forth in s. 760.29, F.S. For instance, the prohibitions do not apply to the sale or rental of a single-family house by its owner, or the rental of a small multi-unit building, such as a duplex if the owner lives in one of the units. The act also does not apply to prevent a religious organization from restricting the occupancy, sale, or rental of its facilities to members of its religion. Moreover, the

[29] *See, e.g., Attorney wants outdated, racist covenant language in Betton Hills stripped*, TALLAHASSEE DEMOCRAT (July 1, 2019), https://www.tallahassee.com/story/news/money/2019/07/01/attorney-wants-outdated-racist-covenant-language-betton-hills-stripped-tallahassee/1546406001/ (last visited Jan. 14, 2020).
[30] *See* 42 U.S.C. §§ 3601-19.

act's prohibitions on discrimination based on familial status "do not apply with respect to housing for older persons."

As for enforcement, the act authorizes a person who alleges that he or she has been injured by a discriminatory housing provision to pursue administrative and civil remedies. However, the act does not mention an opportunity for a homeowner to obtain a written determination that the act or any other law extinguishes a discriminatory restriction on his or her property. Similarly, the act does not allow a condominium, cooperative, or homeowners' association to forego its normal procedures for removing these provisions from a document affecting a parcel within the association.

Effect of Proposed Changes

The bill creates s. 712.065, F.S., to provide a process for the extinguishment of a discriminatory restriction in a recorded title transaction. The bill defines the term "discriminatory restriction" to mean:

> [A] provision in a title transaction recorded in this state which restricts the ownership, occupancy, or use of any real property in this state by any natural person on the basis of a characteristic that has been held, or is held after July 1, 2020, by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability.

The bill provides that discriminatory restrictions are unlawful, are unenforceable, and are null and void. Under the bill, a discriminatory restriction in a previously recorded title transaction is extinguished and severed from the recorded title transaction. The remainder of the title transaction remains enforceable and effective. If any notice preserving or protecting interests or rights is recorded under s. 712.05, F.S., the Marketable Record Title Act,[31] the recording does not reimpose or preserve any discriminatory restriction.

If a discriminatory restriction affects a covenant or other restriction, the bill authorizes a parcel owner to request the removal of the discriminatory restriction by an amendment approved by a majority vote of the board of directors of the respective property owners' association or an owners' association in which all owners may voluntarily join. Parcel owners may approve such an amendment, notwithstanding any other requirements for approval of an amendment of the covenant or restriction. If the amendment does not change other nondiscriminatory provisions of the covenant or restriction, the recording of an amendment removing a discriminatory restriction

[31] The Marketable Record Title Act in ch. 712, F.S., provides a process to extinguish most "rights" in real property that were not created in or after the "root of title." The root of title is essentially the most recent title transaction (such as a deed) that is more than 30 years old. (MRTA) Section 712.05, F.S., provides a process to preserve right or interests in land that would be extinguished under MRTA if not preserved.

does not constitute a title transaction occurring after the root of the title for purposes of s. 712.03(4), F.S.[32]

The bill also creates ss. 718.112(1)(c), 719.106(3), 720.3075(6), F.S., to authorize condominium, cooperative, and homeowners' associations, respectively, to extinguish a discriminatory restriction according to s. 712.065, F.S.

Condominium Unit Insurance

Present Situation

A condominium association is required to use its best efforts to maintain insurance for the association, the association property, the common elements, and the condominium property.[33] Insurance coverage for the association must insure the condominium property as originally installed all alterations or additions made to the condominium property.[34]

Condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, wall, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments. Such property and insurance is the responsibility of the unit owner.[35]

A condominium unit owner's insurance policy must conform to s. 627.714, F.S.,[36] which requires that an individual unit owner's residential property insurance policy must state that the coverage afforded by the policy is excess coverage over the amount recoverable under any policy covering the same property.[37]

An association is not obligated to pay for reconstruction or repairs to an improvement, benefiting a specific unit and installed by a unit owner.[38]

Alternatively, s. 718.111(11)(j), F.S., provides that any portion of the condominium property that must be insured by the association against property loss under s. 718.111(11)(f), F.S., which is damaged by an insurable event, shall be reconstructed, repaired, or replaced as necessary by the association as a common expense to the association. Under s. 718.111(j)1., F.S., the subrogation[39] rights of an insurer are not compromised if the unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by an association's insurance proceeds if such damage is caused by intentional conduct, negligence, or

[32] Section 712.03, F.S., provides exceptions to the applicability of MRTA, i.e., rights that are not extinguished by MRTA. Section 712.03(4), F.S., provides an exception to MRTA for estates, interests, claims, or charges arising out of a title transaction which has been recorded subsequent to the effective date of the root of title.
[33] Section 718.111(11), F.S.
[34] Section 718.111(11)(f), F.S.
[35] Section 718.111(11)(f)3., F.S.
[36] Section 718.111(11)g), F.S.
[37] Section 627.714(4), F.S.
[38] Section 718.111(11)(n), F.S.
[39] The term "subrogation" is described a legal right held by insurance carriers to legally pursue a third party that caused an insurance loss to the insured. This is done in order to recover the amount of the claim paid by the insurance carrier to the insured for the loss. *See* Investopedia.com, *Subrogation*, at https://www.investopedia.com/terms/s/subrogation.asp (last visited Feb. 3, 2020).

failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees.

Section 718.111(11)(j)3., F.S., provides that an association may reimburse the unit owner without the waiver of any subrogation rights, if:

- The cost of repair or reconstruction is the unit owner's responsibility;
- The association has collected the cost of such repair or reconstruction from the unit owner; and
- The association from insurance proceeds reimburses the unit owner.

Section 718.111(j), F.S., does not provide a condominium unit owner or their insurer a private right of action against another unit owner or their insurer for property damage caused by the latter's intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association.[40]

In 2010, the Legislature repealed a prohibition against an insurance policy issued to an individual unit owner providing rights against the condominium association.[41]

Fannie Mae mortgage lending guidelines require that the insurance policy for a condominium project waive the right of subrogation against unit owners.[42]

Effect of Proposed Changes

The bill amends s. 627.714(4), F.S., to provide that a condominium unit owner's insurance policy may not provide subrogation rights against the association operating the condominium in which the property is located if the association's insurance policy does not provide a subrogation right against the unit owners. This revision would deny condominium unit insurers the right to pursue claims against associations for property losses sustained by a unit owner due to association actions.

Official Records – Condominium, Cooperative, and Homeowners' Associations

Present Situation

Florida law specifies the official records that condominium, cooperative, and homeowners' associations must maintain.[43] Generally, the official records must be maintained in Florida for at least seven years.[44] Certain of these records must be accessible to the members of an association.[45] Additionally, certain records are protected or restricted from disclosure to

[40] *See Universal Property & Casualty Insurance Company v. Loftus*, 276 So.3d 849 (Fla. 4th DCA 2019)
[41] Chapter 2010-174, s. 9, Laws of Fla. (amending s. 718.111(1)(g), F.S.)
[42] Fannie Mae, Selling Guide, Fannie Mae Single Family, Special Requirements for Condo Projects, p. 903, Dec. 4, 2019, available at https://www.fanniemae.com/content/guide/sel120419.pdf (last visited Jan. 27, 2020).
[43] See ss. 718.111(12), 719.104(2), 720.303(5), F.S., relating to condominium, cooperative, and homeowners' associations, respectively.
[44] See ss. 718.111(12)(b), 719.104(2)(b), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners' associations, respectively.
[45] *See* ss. 718.111(12)(a), 719.104(2)(a), and 720.303(5), F.S., , relating to condominium, cooperative, and homeowners' associations, respectively.

members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.[46]

Condominium associations with 150 or more units are required to post digital copies of specified documents on its website.[47]

Effect of Proposed Changes

The bill amends ss. 718.111(12), 718.501, 719.104(2)(c), and 720.303(5), F.S., to revise the official records requirements for condominiums, cooperatives, and homeowners' associations.

For condominium associations, the bill:

- Reduces the time period bids for work performed and bids for materials, equipment, or services must be maintained by associations to 1 year after receipt. Under current law, such records must be maintained for seven years.[48]
- Permits condominium associations with 150 or more to post digital copies of specified documents on an application that can be downloaded on a mobile device.
- Requires the DBPR Division of Condominiums, Timeshares, and Mobile Homes to have additional oversight responsibilities over the manner and format official records of a condominium association are maintained to provide unit owners easy access to these documents for inspection.
- Requires associations to create and maintain a checklist of official records that must be made available to a unit owner upon request. The checklist must identify documents not available. The checklist must be signed by a manager licensed under ch. 468, F.S., or the association must provide the person requesting records an affidavit attesting the veracity of the checklist. The checklist and affidavit must be maintained for at least 7 years from the document request. Delivery of the checklist and affidavit create a rebuttable presumption that the association complied with open record inspection requirements in s. 718.111(12)(c)1., F.S.
    - Clarifies that a renter only has the right to inspect copies of the declaration of condominium, association bylaws, and rules.
    - Amends s. 718.501, F.S., to:
        - Define "financial issue" as an issue related to operating, budgets, reserve schedules, accounting records under s. 718.111(12)(a)11., F.S., notices of meetings, minutes of meetings discussing budget or financial issues, assessment for common expenses, fees, or fines, the commingling of funds, or the records detailing the revenues and expenses of the association;
        - Provide that the Division of Condominiums, Timeshares, and Mobile Homes may adopt rules to define what a financial interest issue is under the section and outline the requirements of the checklist under s. 718.111(c)1., F.S.;
        - Clarifies the division has jurisdiction to investigate the maintenance of association records; and

[46] *See* ss. 718.111(12)(c), 719.104(2)(c), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners' associations, respectively.
[47] Section 718.111(12)(g), F.S.
[48] Sections 719.104(2)(a)9.d. and 720.303(4)(i), F.S., provide an identical provision for cooperative and homeowners' associations, respectively.

- Clarifies that the division may adopt rules to establish requirements for the training and educational programs required by s. 718.501(2)(j), F.S.

The bill permits condominium associations to make digital copies of specified documents available to members through an application that may be downloaded on a mobile device as an alternative to the requirement posting copies of the documents on a website.

Regarding the official records requirements for condominium and cooperative associations, the bill prohibits condominium and cooperative associations from requiring a unit owner to demonstrate a purpose or state a reason for the inspection.[49]

Regarding homeowners' associations, the bill designates as an official record for all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by owners in the association's official records.[50] Under the bill, these records must be maintained for one year after the date of the election, vote, or meeting to which the document relates.

Condominiums Term Limits for Board Members

Present Situation

The terms of all condominium association board members expire at the annual meeting, unless:
- It is a timeshare or nonresidential condominium;
- The staggered term of a board member does not expire until a later annual meeting; or
- All members' terms would otherwise expire but there are no candidates.[51]

Board members may serve terms longer than one year if permitted by the bylaws or articles of incorporation. A board member may not serve more than eight consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.[52]

Section 718.112(2)(d)2., F.S., was amended by ch. 2018-96, s. 2, Laws of Fla., to allow board members to serve longer than 1 year if permitted by the bylaws or article of incorporation, but provided that the board members could not serve more than eight consecutive years. The effective date of the change was July 1, 2018. The division issued a declaratory statement on September 12, 2018, that:

> If at the time of the next scheduled election the current board member has served on the association board for eight consecutive years, the board member would be ineligible to serve unless there are fewer eligible candidates than vacant seats on the board or unless that candidate is

[49] Section 720.303(5)(c), F.S., provides a comparable provision for homeowners' associations.
[50] Sections 718.111(12)(a)12. and 719.104(2)(a)10., F.S., provide an identical provision for condominium and cooperative associations, respectively.
[51] Section 718.112(2)(d), F.S. The term of a board member does not expire at the annual board meeting if the association is for a timeshare or nonresidential condominium, the staggered term of a board member does not expire until a later annual meeting, or all members' terms would otherwise expire but there are no candidates.
[52] *Id.*

approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election.[53]

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2., F.S., to provide that only service on the board of a condominium association that occurs on or after July 1, 2018, may be used when calculating a board member's term limit.

Condominium Meeting Notices

Present Situation

A condominium association must provide written notice for the annual meeting of the unit owners. The notice must include an agenda. Current law does not specify whether the requirement to include an agenda applies to all meetings of unit owners, including the annual meeting. The notice must be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting. The notice must also be posted in a conspicuous place on the condominium property for at least 14 continuous days before the annual meeting. Instead of posting the notice in a conspicuous place, a condominium may repeatedly broadcast the notice and agenda on a closed-circuit cable television system serving the association.[54]

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)3., F.S., to extend the notice requirements to all meetings of the unit owners.

Condominium Voting Process

Present Situation

At least 60 days before a scheduled election, a condominium association must mail, deliver, or electronically transmit to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda for the unit owner meeting, the association must mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates.[55]

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)4., F.S., to require the second notice of the election to be sent to all unit owners entitled to vote not less than 14 days, or more than 34 days, before the date of the election.

[53] *In re: Petition for Declaratory Statement, Apollo Condominium Association, Inc.,* DS 2018-035, Division of Florida Condominiums, Timeshares, and Mobile Homes, September 12, 2018.
[54] Section 718.112(d), F.S.
[55] Section 718.112(2)(d)4., F.S.

Condominium Transfer Fees

Present Situation

Condominium associations may charge unit owners costs or fees in connection with the sale, lease, sublease, or transfer of their unit, if:

- The fee is limited to $100 or less;
- The fee is authorized in the association's governing documents; and
- The association is required to approve the transfer.[56]

For example, if a unit owner utilizes their property as a vacation rental and has three separate guest leases during a month, the condominium may charge up to $300 in transfer fees if the above requirements are met under s. 718.112(2)(i), F.S.

Also, condominium associations may require a potential renter to provide the association with a security deposit equivalent to one month of rent. The association must place the security deposit in an escrow account maintained by the association.[57]

Effect of Proposed Changes

The bill amends s. 718.112(2)(i), F.S., to permit a condominium association to charge unit owners a fee for the actual costs of performing a background check or screening of an individual receiving a property interest in a condominium unit. This revision would apply when an association incurs actual costs while checking the background of a person in connection with a unit owner's sale, mortgage, lease, sublease, or other transfer of a unit. The revision requires that the association support the actual costs of background checks and screening with an invoice from an independent third party company conducting the investigation.

The association does need authorization under its declaration, articles, or bylaws to charge a fee for the background check or screening. The fee for the background check or screening may exceed the $100 charge limit per transfer and may extend to whatever actual costs an association expends in the screening process. A husband and wife, or parent and dependent child, are considered one applicant for transfer purposes.

Condominium Boards and Conflicts of Interest

Present Situation

Sections 718.3027, F.S., requires an officer or director of a condominium association (that is not a timeshare condominium association), to disclose any financial interest of the officer or director (or such person's relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. Section 718.3027(2), F.S., requires the board of a condominium association to approve a contract for services or other transactions by an affirmative vote of two-thirds of all other directors present.

[56] Section 718.112(2)(i), F.S.
[57] *Id.*

Section 718.112(2)(p), F.S., also prohibits an association (that is not a timeshare condominium association) from employing or contracting with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity[58] by blood or marriage of a board member or officer. This prohibition does not apply to a service provider in which a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.

Section 718.112(2)(p), F.S., appears to conflict with ss. 718.3027 and 720.3033, F.S., because those sections permit financial relationships that may create a conflict of interest when the financial interests are disclosed, and the contract or transaction is approved by the board or the members, as appropriate. However, s. 718.112(2)(p), F.S., expressly prohibits such potential conflicts of interest whether the financial interest is disclosed or approved by the board or the members.

Effect of Proposed Changes

The bill repeals s. 718.112(2)(p), F.S., relating to conflicts of interests between officers or directors of a condominium association and service providers. This revision does not prevent certain relationships from being considered a conflict of interest under s. 718.3027, F.S.

Condominium Alternative Fuel Charging Station

Present Situation

A condominium association may not prohibit a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The electricity charges for the station must be separately metered and payable by the unit owner.[59] Current law does not expressly permit a unit owner to install a natural gas fuel station.

Natural gas fuel is any liquefied petroleum gas product, compressed natural gas product, or a combination of these products used in a motor vehicle.[60] The term includes all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.[61] However, the term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electricity generation.[62]

---

[58] Relatives of the third degree of consanguinity include great grandparent, aunt/uncle, niece/nephew, and great grandchild. *See*: https://www.uab.edu/humanresources/home/images/M_images/Relations/PDFS/FAMILY%20MEMBER%20CHART.pdf (last visited Jan. 17, 2020).
[59] Section 718.113(8), F.S.
[60] Section 206.9951(2), F.S.
[61] *Id.*
[62] *Id.*

Effect of Proposed Changes

The bill amends s. 718.113(8), F.S., to include an exclusively designated parking area as a location where the association may not prohibit a unit owner from installing an electric vehicle charging station.

The bill also amends s. 718.113(8), F.S., to permit a unit owner to install a natural gas fuel station. A unit owner installing a natural gas fuel station is subject to the same requirements as an owner installing an electric vehicle charging station. The unit owner is responsible for complying with all federal, state, or local laws or regulations applicable to the installation, maintenance, or removal of an electric vehicle charging or natural gas charging station. The unit owner, or his or her successor, who installs a natural gas fuel station, is responsible for the cost for the supply and storage of the natural gas fuel station.

The bill also allows a unit owner to use an embedded meter to separately meter the fuel used on an electric vehicle or natural gas fuel vehicle charging station.

CondominiumAlternative Dispute Resolution

Present Situation

Section 718.1255, F.S., provides an alternative dispute resolution process for certain disputes between unit owners and condominium associations. The division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration. Section 718.1255, F.S., states that the purpose of mandatory nonbinding arbitration is to provide efficient, equitable, and inexpensive decisions when disputes arise between owners and associations. An arbitrator's final order is not binding unless the parties agree to be bound, or the parties fail to file a petition for a trial de novo in the circuit court within 30 days after the mailing of the arbitrator's final order. A petition for arbitration tolls any applicable statute of limitations for the dispute, and, if there is a trial de novo, an arbitrator's decision is admissible as evidence.[63]

Non-binding arbitration is required for disagreements that involve the authority of the board of directs to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements.[64] Additionally, disputes pertaining to the board of directors' failure to properly conduct elections, give adequate notice of meetings, properly conduct meetings and provide access to association books and records must also be litigated in non-binding arbitration before Florida law grants unit owners access to the court system.[65] These types of disputes can be characterized as enforcement actions because they involve enforcing the terms and conditions of the condominium governing documents.

The division does not have jurisdiction to arbitrate the following disputes between a unit owner and an association that involve: [66]

- Title to any unit or common element;

[63] Section 718.1225(4), F.S.
[64] *Id.*
[65] *Id.*
[66] *Id.*

- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or another removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

The filing fee for an arbitration petition is $50.[67]

As a component of mandatory non-binding arbitration, any party may petition the arbitrator to refer the case to mediation.[68] The purpose of mediation is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.[69] The dispute remains in arbitration, but the parties can select a mediator from a list of paid and volunteer mediators provided by the arbitrator.[70] The parties must share equally in the cost of the mediation.[71] If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates unless all parties agree in writing to continuing the arbitration proceedings, in which case the arbitrator's decision will be binding or nonbinding as the parties have agreed.[72]

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center as provided in s. 44.201, F.S.

Section 720.311, F.S., provides an alternative dispute resolution program for certain homeowner association disputes. An aggrieved party in a homeowners association dispute initiates the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in s. 720.311, F.S., and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.[73]

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.[74]

[67] Section 718.1255(4)(a), F.S.
[68] Section 718.1255(4)(e), F.S.
[69] Section 718.1255(4)(g), F.S.
[70] Section 718.1255(4)(e), F.S.
[71] Section 718.1255(4)(h), F.S.
[72] *Id.*
[73] *Id.*
[74] Section 720.311(2)(b), F.S.

If mediation is not successful in resolving all the disputed issues between the parties, the parties may proceed to civil court or may elect to enter into binding or non-binding arbitration.[75]

Effect of Proposed Changes

The bill creates s. 718.1255(5), F.S., to authorize a party to a condominium dispute to initiate presuit mediation following the procedure for the mediation of homeowners' association disputes in s. 720.311, F.S. Under the bill, parties in a condominium dispute may use the mediation process to resolve a dispute without first initiating the arbitration process. However, the bill also amends s. 718.1255(4)(a), F.S., to provide that prior to court litigation, a party to a condominium dispute may either initiate presuit mediation as provided above or may petition the division for nonbinding arbitration. This provision also states that arbitration shall be binding on the parties if all parties agree in a writing filed in arbitration.

Under the bill, election and recall disputes are not eligible for presuit mediation and must be arbitrated by the division or filed directly with a court of competent jurisdiction. The bill permits condominium election disputes to proceed directly to court instead of the arbitration process with a division arbitrator.

The bill amends s. 718.112(2)(k), F.S., to require that a condominium association's bylaws provide for mandatory dispute resolution. It deletes the requirement that an association's bylaws must provide for mandatory nonbinding arbitration.

Condominium Developer Sale Deposits Prior to Closing

Present Situation

Under s. 718.202(3), F.S., condominium developers are given the right to withdraw funds from an escrow account for the sale of a unit if the sale contract provides. This subsection provides that the developer may withdraw escrow funds in excess of 10 percent of the purchase price once construction improvement has begun. However, these escrow funds may only be expended in the actual construction and development of condominium property where the unit is located.

On the other hand, this section also provides that no part of escrow funds may be used for salaries, commissions, expenses of salespersons, and advertising purposes.

Effect of Proposed Changes

The bill amends s. 718.202(3), F.S., to clarify what expenses may be considered proper use of escrow funds in the "actual construction and development of the condominium property." The bill provides that escrow funds may be used for the actual costs incurred by the developer, and defines actual costs to include, but not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development.

The bill also clarifies that escrow funds may not be spent on marketing, promotional purposes, loan fees, costs or interest, attorney fees, accounting fees, or insurance.

[75] Section 720.311(2)(c), F.S.

Condominium Ombudsman

Present Situation

The office of the ombudsman within the division is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. Also, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.[76]

The ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[77]

The ombudsman is required to maintain his or her principal office in Leon County.[78]

Effect of Proposed Changes

The bill amends s. 718.5014, F.S., to delete the requirement that the condominium ombudsman maintains his or her principal office in Leon County.

Cooperative Property

Present Situation

A corporation owns the building and land comprising a cooperative. A person who buys into a cooperative does not receive title to a unit or any portion of the cooperative's building or land. Instead, the purchaser receives shares of the cooperative association and leases a unit from the association.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.[79] Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.[80] Real property is anything permanent, fixed, and immovable, such as land or a building. At common law, a 99-year leasehold was not considered an interest in real property. However, a long-term leasehold interest is taxed in the same manner as a fee interest, so case law commonly declares long-term leaseholds to be an interest in real property for taxation purposes.[81]

In Florida, a cooperative is treated as real property for some homestead purposes. Although the general definition of a homestead, including for taxation purposes, follows the common-law rule

[76] Sections 718.5011 and 718.5012, F.S.
[77] *Id.*
[78] Section 718.5014, F.S.
[79] *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996)
[80] Am. Jur. 2d Property § 18.
[81] *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); *See* generally, The Florida Bar, *Practice Under Florida Probate Code Chapter 19* (9th ed. 2017).

that requires an interest in real property, the Florida Constitution specifically extends the exemption to a cooperative unit.[82] Florida's homestead laws apply to a cooperative the exemption from forced sale by creditors[83] and the exemption from ad valorem taxation. However, a cooperative is not subject to Florida's homestead protections on devise and descent.[84]

The Condominium Act in ch. 718, F.S., specifically provides that "[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold." Thus, an ownership interest in a condominium is expressly converted by statute into an interest in real property, but there is no corresponding provision in the Cooperative Act.[85] The Third District Court of Appeal has recognized a need for clarification of this type of ownership interest.[86] In 2019, the Third District Court of Appeal certified a question of great public importance to the Florida Supreme Court concerning homestead protections for devise and descent of cooperative property.[87]

Effect of the Proposed Changes

The bill amends the definition of "unit" in s. 719.103(25), F.S., to provide that an interest in a cooperative unit is an interest in real property.

Cooperative Association Meetings

Present Situation

When a board or committee member of a cooperative association participates in a meeting by telephone conference, that board or committee member's participation by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by unit owners present at a meeting.[88]

Effect of Proposed Changes

The bill amends s. 719.106(1)(b)5., F.S., to provide that a cooperative association board member or committee member who attends a meeting by telephone, real time video conferencing, or similar real-time electronic or video communication counts toward a quorum and may vote as if physically present.[89]

---

[82] FLA. CONST. art. VII, s. 6(a) provides: "The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years."
[83] Sections 222.01, and 222.05, F.S.
[84] *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); In re *Estate of Wartels*, 357 So.2d 708 (Fla. 1978).
[85] Section 718.106(1), F.S.
[86] *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008)
[87] *Walters v. Agency for Health Care Administration*, 2019 WL 6691513, 44 Fla. L. Weekly D2898 (Fla. 3rd DCA 2019)
[88] Section 719.106(1)(b)5., F.S.
[89] Section 718.112(2)(b)5., F.S., provides a comparable provision for condominium associations.

Homeowners' Associations Electronic Meeting Notices

Present Situation

A homeowners' association is required to notify all board members at least 48 hours before the meeting by posting a meeting notice in a conspicuous place on the association's property. Alternatively, the notice may be mailed, hand-delivered, or electronically transmitted at least seven days before the meeting.[90]

Meeting notices must be posted 14 days before any meeting where a nonemergency special assessment or an amendment to the rules regarding unit use is to be considered.[91]

Instead of posting or mailing notices, a homeowners' association with more than 100 members may broadcast notices on a closed-circuit cable television system for at least four times every broadcast hour of each day that a posted notice is otherwise required.[92]

Effect of Proposed Changes

The bill amends s. 720.303(2), F.S., to provide an additional method for homeowners' associations to provide meeting notices by authorizing the board to adopt, by rule, a procedure for conspicuously posting a meeting notice and agenda on a website serving the association. The rule must:

- Require the association to send an electronic notice to members with a hypertext link to the website where the notice is posted; and
- Require the notice on the association's website to be posted for at least as long as the physical posting of a meeting notice is required.[93]

Homeowners' Associations Governing Document Amendments

Present Situation

Section 720.306(1)(b), F.S., requires that, unless otherwise provided in the governing documents or required by law, the governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. The association is required to provide copies of the amendment to the members within 30 days after recording an amendment to the governing documents. If a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted.[94]

---

[90] Section 720.303(2)(c), F.S. Sections 718.112(2) and 719.106(1), F.S., provide comparable notice requirements for condominium and cooperative associations.
[91] *Id.*
[92] *Id.*
[93] Sections 718.112(2)(c) and 719.106(1)(c), F.S., provide comparable notice requirements for meetings in condominium and cooperative associations, respectively.
[94] *See* s. 720.306(1)(b), F.S. The consent of mortgage holder and assignees is required for any mortgage recorded before July 1, 2013.

A written notice must also be sent to certain mortgage holders or assignees to obtain consent or joinder for the proposed amendment.[95]

Notices related to amendments to the governing documents must be mailed or delivered to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the parcel is located.[96]

Effect of Proposed Changes

The bill amends s. 720.306(1)(g), F.S., to require that notices related to amendments to the governing documents must be mailed or delivered to the address identified as the parcel owner's mailing address in the official records of the association. The bill removes the requirement that the address on the property appraiser's website for the county in which the parcel is located is to be used for notices.

Homeowners' Association Developers and Reserve Accounts

Present Situation

Under s. 720.303(6)(a), F.S., homeowners' associations are required to prepare an annual budget that sets out the annual operating expenses and reflects the estimated revenues, expenses, and surplus or deficit associations anticipate for the fiscal year. The annual budget must also set out separately all fees or charges paid for by the association for recreational amenities. The association must provide members with a copy of the annual budget.[97]

In addition to annual operating expenses, the budget may include reserve accounts. The reserve accounts are maintained for capital expenditures and deferred maintenance costs the association is responsible for paying. If reserve accounts are not funded adequately and an association is liable for paying the costs of repair or maintenance of a capital improvement, the deficit may result in a special assessment imposed on members.[98]

During the development of a homeowners' association, the developer may be obligated to pay operating expenses and association assessments on lots the developer owns when the developer controls the association board. However, under s. 720.308(1)(b), F.S., a developer has the right to avoid paying these expenses and assessments if the developer elects to fund the difference between assessments received from lot owners and the operating expenses incurred that exceed the assessment receivable. This is referred to as deficit funding.

In the 2016 case, *Mackenzie v. Centex Homes*,[99] Florida's Fifth District Court of Appeals ruled that it is unclear whether s. 720.308(1)(b), F.S., excuses a developer from paying only its share of association operating expenses and assessments or excuses the developer from paying all other contributions including reserve funds. Although the governing documents of an association

[95] *See* s. 720.306(1)(d), F.S.
[96] Section 720.306(1)(g), F.S.
[97] Section 720. 303(6)(a), F.S.
[98] *Id.* at (b)
[99] *Mackenzie v. Centex Homes*, 208 So.3d 790 (Fla. 5th DCA 2016).

may specify whether reserve funds are included in operating expenses and assessment, the *Centex* court found the developer's governing documents were ambiguous on the matter.

Through cannons of statutory interpretation, the fifth district court of appeals ruled that Centex (the developer) was liable for funding the reserve accounts of the association because the developer-controlled association initially established a reserve account and did not defund or waive the reserve accounts according to the procedure outlined in s. 720.303(6), F.S. To comply with s. 720.303(6), F.S., a developer choosing to provide deficit funding to an association, instead of funding reserve accounts, must waive reserve funding at a proper meeting of homeowners and note the absence of reserve funds in a conspicuous location in the financial reports and annual budgets provided to homeowners and prospective buyers. Here, the intent of the s. 720.303(6) procedural requirements are to keep homeowners aware of association reserve funds and to avoid developers and association boards imposing unexpected assessments on homeowners.

Effect of Proposed Changes

The bill amends ss. 720.303(6)(c) and (d), F.S., to clarify the conditions in which a developer is obligated to fund the reserve accounts of a homeowners' association. The bill removes language that deems an association to have provided for reserve accounts funds if the developer initially establishes the accounts. The bill specifies that if the declaration of covenants, articles, or bylaws of an association do not obligate a developer to create reserve accounts or an association has not provided for reserve accounts by majority vote, the association must include a conspicuous statement about the lack of reserve funding on its financial reports.

Condominium and Homeowners' Associations Fines

Present Situation

Condominium and homeowners' associations may levy fines against an owner, occupant, or a guest of an owner for failing to comply with any provision in the association's declaration, bylaws, or rules. A fine imposed by a condominium association may not exceed $100 per violation, and the total amount of a fine may not exceed $1,000.[100] However, a fine imposed by a homeowners' association may exceed $1,000 in the aggregate if the association's governing documents authorize the fine.[101] A fine imposed by a condominium may not become a lien against the unit.[102] A fine by a homeowners' association of less than $1,000 may not become a lien against the parcel.[103]

An association's board may not impose a fine or suspension unless it gives at least 14 days written notice of the fine or suspension, and an opportunity for a hearing. The hearing must be held before a committee of unit owners who are not board members or residing in a board

[100] Sections 718.303(3), F.S. An identical provision in s. 719.303(3), F.S., applies to fines in cooperative associations.
[101] Section 720.305(2), F.S.
[102] Section 718.303(3), F.S. An identical provision in s. 719.303(3), F.S., applies to fines imposed by cooperative associations.
[103] Section 720.305(2), F.S.

member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension.[104]

A fine approved by the committee is due five days after the date of the committee meeting. The condominium or cooperative must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.[105]

Effect of Proposed Changes

The bill amends ss. 718.303(3) and 720.305(2), F.S., to provide that a fine imposed by a condominium or homeowners' associations, respectively, is due five days after notice of an approved fine is sent to the unit or parcel owner and if applicable, to any tenant, licensee, or invitee of the owner. Current law provides that payment of the fine is due five days after the committee meeting at which the fine is approved.

The bill also changes the term "occupant" to "tenant."

Effective Date

The effective date of the bill is July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

[104] Section 718.303(3)(b)and (c), F.S., and s. 720.305(2)(b) and (c) , F.S. An identical provision in ss. 719.303(3)(b) and (c), F.S., applies to fines and suspensions imposed by cooperative associations.
[105] *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a fiscal impact on insurance companies that provide coverage for condominium associations and unit owners. Although the extent of this fiscal impact is unknown, the removal of subrogation rights for unit owner insurers may increase the risk of providing coverage to unit owners because an insurer may not file subrogation claims against an association insurer to recoup money paid to unit owners, even if property elements owned by the association causes unit owner property loss (e.g., an association's water pipe leaks and damages a unit owner's kitchen cabinets). In turn, this may increase insurance rates for condominium owners.

Condominium unit owners who sell, mortgage, lease, sublease, or transfer property may realize a negative fiscal impact in proportion to the actual costs an association expends performing background checks or screening.

C. Government Sector Impact:

The DBPR Division of Florida Condominiums, Timeshares, and Mobile Homes, may incur additional costs in adopting rules and requirements for condominium official records checklists.

VI. Technical Deficiencies:

There is a technical error on line 1245. The statutory reference should read "s. 718. 111(12)(c)1."

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.714, 718.111, 718.112, 718.113, 718.1255, 718.202, 718.303, 718.501, 718.5014, 719.103, 719.104, 719.106, 720.303, 720.305, 720.306, and 720.3075.

This bill creates section 712.065 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on February 10, 2020:

The committee substitute:

- Removes the section amending s. 514.0115, F.S., to exempt homeowners' associations and other associations with no more than 32 units or parcels from the Department of Health supervision for public swimming pools, under ch. 514, F.S.
- Introduces amendment to s. 718.111(12)(c)1., F.S., to require the DBPR Division of Condominiums, Timeshares, and Mobile Homes to have additional oversight responsibilities over the manner and format official records of a condominium association are maintained to provide unit owners easy access to these documents for inspection. The amendment includes requirements for condominium associations to create and maintain a checklist of official records that are reviewed by DBPR and must be made available to a unit owner upon request.
- Revises amendments to s. 718.112(2)(i), F.S., to require the actual costs of any background check or screening charged to a unit owner for transfer of a condo unit via sale, mortgage, lease, sublease, or other transfer be supported by an invoice from an independent third party background investigation company used by the association or its agent.
    - Clarifies that an association or its agent may not charge an administrative fee associated with a background check or screening.
- Introduces amendment to s. 718.202(3), F.S., to clarify that the 10% a developer may withdraw from an escrow account in the sale of a unit may be used for actual costs incurred by the developer including, but not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and survey fees that directly relate to construction and development.
    - Clarifies that no part of the 10% developers may take from escrow may be used for marketing, or promotional purposes, or loan fees, costs of interest, attorney fees, accounting fees, or insurance.
- Introduces amendment to s. 720.303, F.S., to provide that if the declaration of covenants, articles, or bylaws do not obligate the developer to create reserve accounts, the association may deem budgeted reserve accounts approved upon the affirmative vote of a majority of the total voting interests of the association. This amendment also removes language concerning reserve accounts initially established by a developer.

CS by Innovation, Industry, and Technology on January 27, 2020:

The committee substitute:

- Creates s. 712.065, F.S., to provide a process for the extinguishment of a discriminatory restriction in a recorded title transaction.
- Revises the provisions in ss. 718.112(1)(c), 719.106(3), 720.3075(6), F.S., to authorize condominium, cooperative, and homeowners' associations, respectively, to extinguish a discriminatory restriction pursuant to s. 712.065, F.S.
- Revises s. 718.111(12)(a)17., F.S., which requires a condominium association to keep all records not specifically listed in paragraph (a), to specify that the records required to be kept are written records.
- Amends s. 718.112(8), F.S., to permit a condominium unit owner to install a natural gas fuel station within the boundaries of the owner's limited common element or

exclusive parking area and provides conditions for the installation, maintenance, and removal of the natural gas fuel charging station.

- Amends s. 718.112(2)(k), F.S., to require that a condominium association's bylaws provide for mandatory dispute resolution rather than mandatory nonbinding arbitration.
- Amends s. 718.1255, F.S., to provide a process to allow the parties in a condominium dispute to initiate presuit mediation as an alternative to initiating nonbinding arbitration with the Division of Condominiums, Timeshares, and Mobile Homes.
- Amends s. 718.1255(4)(a), F.S., to permit the parties to agree that the arbitration is binding if all parties to the dispute agree in writing to be bound by the arbitration decision.

B. Amendments:

None.