

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 Innovation, Industry, and Technology

BILL: SB 1154
INTRODUCER: Senator Baxley
SUBJECT: Community Associations
DATE: January 24, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

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

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;
- Permits associations to make digital copies of specified documents available to members through an application that can be downloaded on a mobile device;
- Permits the association to charge a potential buyer or renter the actual costs associated with a background check or screening;
- Permits units owners to install an electric vehicle charging station on a parking area exclusively designated for use by the unit owner; 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:

- Exempts pools serving an association that has no more than 32 parcels from permitting and inspection requirements; and
- Requires sign-in sheets, voting proxies, ballots, and all other papers related to voting to be maintained as 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.

For condominium and cooperative associations, the bill prohibits associations from requiring an owner to demonstrate a purpose or state a reason in order to inspect official records.

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 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.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's jurisdiction is limited to investigating 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 and associations.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 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.⁶

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.*

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 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 arbitration of recall election disputes.⁷

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."⁸ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁹ 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.¹⁰

A condominium is administered by a board of directors referred to as a "board of administration."¹¹

Cooperative Associations

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

⁷ See s. 720.306(9)(c), F.S.

⁸ Section 718.103(11), F.S.

⁹ Section 718.104(2), F.S.

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

¹¹ Section 718.103(4), F.S.

[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 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.¹²

Homeowners' Associations

Florida law 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.¹³

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."¹⁴ 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.¹⁵

Homeowners' associations are administered by a board of directors whose members are elected.¹⁶ 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 recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.¹⁷ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁸

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,¹⁹ recordkeeping

¹² See ss. 719.106(1)(g) and 719.107, F.S.

¹³ See s. 720.302(1), F.S.

¹⁴ Section 720.301(9), F.S.

¹⁵ Section 720.302(5), F.S.

¹⁶ See ss. 720.303 and 720.307, F.S.

¹⁷ See ss. 720.301 and 720.303, F.S.

¹⁸ Section 720.303(1), F.S.

¹⁹ See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.

requirements, including which records are accessible to the members of the association,²⁰ and financial reporting.²¹ 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:

The bill revises the regulation and governance of condominium, cooperative, and homeowners’ associations under chs. 718, 719, and 720, F.S., respectively.

Swimming Pools Serving Community Associations

Present Situation

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments. In order to operate or continue to operate a public swimming pool, a valid operating permit from the DOH must be obtained. If the DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, the DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied.²²

Pools serving condominiums or cooperatives with no more than 32 units and which are not operated as public lodging establishments are exempt from the DOH’s requirements for public pools.²³ Pools serving homeowners’ associations are not exempt from regulation by the DOH.

Effect of the Proposed Bill

The bill amends s. 514.0115(2)(a), F.S., to exempt pools serving homeowners’ associations (and other property associations) that have no more than 32 parcels and are not being operated as public lodging establishments from permitting and inspection requirements.

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.²⁴

²⁰ See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

²¹ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

²² Section 514.031(1), F.S.

²³ Section 514.0115(2), F.S.

²⁴ Section 718.111(11), F.S.

Insurance coverage for the association must insure the condominium property as originally installed and all alterations or additions made to the condominium property.²⁵

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.²⁶

A condominium unit owner's insurance policy must conform to s. 627.714, F.S.,²⁷ 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.²⁸

An association is not obligated to pay for reconstruction or repairs to an improvement, benefiting a specific unit and installed by a unit owner which was not installed as part of the standard improvements by the developer on all units as part of the original construction.²⁹

Section 718.111(11)(j)1., F.S., provides that the subrogation³⁰ 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 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 unit owner is reimbursed by the association from insurance proceeds.

In 2010, the Legislature repealed a prohibition against an insurance policy issued to an individual unit owner providing rights against the condominium association.³¹

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

²⁵ Section 718.111(11)(f), F.S.

²⁶ Section 718.111(11)(f)3., F.S.

²⁷ Section 718.111(11)g), F.S.

²⁸ Section 627.714(4), F.S.

²⁹ Section 718.111(11)(n), F.S.

³⁰ The term "subrogation" is describes 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 Apr. 3, 2019).

³¹ Ch. 2010-174, s. 9, Laws of Fla. (amending s. 718.111(1)(g), F.S.)

which the property is located if the association's insurance policy does not provide a subrogation right against the unit owners.

Official Records – Condominium, Cooperative, and Homeowners' Associations

Present Situation

Florida law specifies the official records that condominium, cooperative, and homeowners' associations must maintain.³² Generally, the official records must be maintained in Florida for at least seven years.³³ Certain of these records must be accessible to the members of an association.³⁴ Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.³⁵

Condominium associations are required to post digital copies of specified documents on its website.³⁶

Effect of Proposed Changes

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

Regarding condominium associations, the bill requires bids for work performed, and bids for materials, equipment, or services to be maintained for one year as an official accounting record. Under current law, such records must be maintained for seven years.³⁷

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.³⁸

Regarding homeowners' associations, the bill designates as an official record all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by owners in the association's

³² See ss. 718.111(12), 719.104(2), 720.303(5), F.S., relating to condominium, cooperative, and homeowners' associations, respectively.

³³ See ss. 718.111(12)(b), 719.104(2)(b), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners' associations, respectively.

³⁴ See ss. 718.111(12)(a), 719.104(2)(a), and 720.303(5), F.S., , relating to condominium, cooperative, and homeowners' associations, respectively.

³⁵ See ss. 718.111(12)(c), 719.104(2)(c), and 720.303(5), F.S., , relating to condominium, cooperative, and homeowners' associations, respectively.

³⁶ Section 718.111(12)(g), F.S.

³⁷ Sections 719.104(2)(a)9.d. and 720.303(4)(i), F.S., provide an identical provision for cooperative and homeowners' associations, respectively.

³⁸ Section 720.303(5)(c), F.S., provides a comparable provision for homeowners' associations.

official records.³⁹ 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.

Discriminatory Real Estate Restrictions

Present Situation

Federal and state law prohibit discrimination on the basis of race and several other characteristics in the sale, lease, or use of real property. The Fourteenth to the United States Constitution grants equal civil and legal rights, including due process and equal protections 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.⁴⁰ 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 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.⁴¹ 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,⁴² 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 set forth 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

³⁹ Sections 718.111(12)(a)12. and 719.104(2)(a)10., F.S., provide an identical provision for condominium and cooperative associations, respectively.

⁴⁰ FLA. CONST. art. I, s. 9.

⁴¹ 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).

⁴² See 42 U.S.C. §§ 3601-19.

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 to 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 act's prohibitions on discrimination on the basis of 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 any opportunity for a homeowner to obtain a written determination that a discriminatory restriction on his or her own property is extinguished by the act or any other law. 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.

Other States and Unenforceable Discriminatory Provisions in Public Records

At least a few states—California, Washington, and Ohio—have enacted statutes to address discriminatory real estate restrictions that, though they have long been unenforceable, linger in the public records.

California's statutes address these discriminatory provisions in several ways. For instance, California requires a real estate agent, title insurance company, or country recorder, among others, to place a notice on each deed, declaration, or governing document provided to a person. The notice advises the recipient that any discriminatory provision in the document "violates state and federal housing laws and is void," and that the recipient may file a "modification document" with the "county recorder," along with a copy of the document containing the restriction, with the restriction stricken.⁴³ If the county counsel agrees that the stricken provision is illegal and

⁴³ CAL. GOV'T CODE § 12956.1.

void, the modification document must be filed in the county records, and must include a book and page reference to the original document.⁴⁴

California also authorizes the expedited removal, by amendment, of any unlawful and void discriminatory provision from the governing documents of a condominium association or other “common interest development.”⁴⁵ Under this statute, the association must remove the provision notwithstanding “any other provision of law or provision of the governing documents.”⁴⁶

Washington’s statutes contain a similar procedure, but also give a property owner, as well as an occupant or tenant, the option to file a declaratory action to have the provision “stricken.”⁴⁷ Additionally, Washington’s statutes contain a provision declaring a long list of discriminatory real estate provisions to be “void.”⁴⁸

In Ohio, when a county recorder processes a transfer of “registered land,” he or she is required to delete from the sectional indexes all references to any discriminatory restrictive covenant affecting the land.⁴⁹

Effect of Proposed Changes

The bill amends ss. 718.112(1)(c), 719.106(3), and 720.3075(6), F.S., to provide that any provision of a declaration, reasonable rules, or regulations of a condominium, cooperative, or homeowners’ association, respectively, which diminishes or infringes upon any right protected under the Fourteenth Amendment to the United States Constitution or Art. II of the State Constitution is void and unenforceable without further action of the association.

These provisions incorrectly reference Article II of the State Constitution, which provides the general provisions of state government, including the state boundaries and the seat of government. The basic rights of persons under the state’s jurisdiction are set forth in Article I of the Florida Constitution.

The bill authorizes an association to record a notice in the public records of the county in which the association is located evidencing its intention not to enforce such a provision. If an association fails to record a notice in the public record, such failure does not form a basis for liability or evidence of discrimination or a discriminatory intention.

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

⁴⁴ CAL. GOV’T CODE § 12956.2.

⁴⁵ CAL. CIVIL CODE § 6606.

⁴⁶ *Id.*

⁴⁷ WASH. REV. CODE § 49.60.227.

⁴⁸ WASH. REV. CODE § 49.60.224.

⁴⁹ OHIO REV. CODE § 317.20(E)(2).

- All members' terms would otherwise expire but there are no candidates.⁵⁰

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.⁵¹

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 approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election.⁵²

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. In lieu 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.⁵³

⁵⁰ 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.

⁵¹ *Id.*

⁵² *In re: Petition for Declaratory Statement, Apollo Condominium Association, Inc.*, DS 2018-035, Division of Florida Condominiums, Timeshares, and Mobile Homes, September 12, 2018.

⁵³ Section 718.112(d), F.S.

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.

Voting Process – Condominiums***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 shall 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.⁵⁴

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.

Condominium Transfer Fees***Present Situation***

A condominium association may charge a potential buyer or renter costs or fees in connection with the sale, lease, or sublease, or other transfer of a 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.⁵⁵

A condominium association may require a potential renter to provide the association a security deposit equivalent to one month of rent. The association must place the security deposit in an escrow account maintained by the association.⁵⁶

Effect of Proposed Changes

The bill amends s. 718.112(2)(i), F.S., to permit a condominium association to charge an applicant for transfer of a unit a fee for the actual costs of any background check or screening performed by the association. The association does not have to be authorized 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 \$100 per applicant. A husband and wife, or parent and dependent child, are considered one applicant.

⁵⁴ Section 718.112(2)(d)4., F.S.

⁵⁵ Section 718.112(2)(i), F.S.

⁵⁶ *Id.*

Conflicts of Interest – Condominium and Homeowners’ Associations

Present Situation

Sections 718.3027 and 720.3033, F.S., require an officer or director of a condominium association (that is not a timeshare condominium association) and a homeowners’ association, respectively, 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 transaction by an affirmative vote of two-thirds of all other directors present.

Section 720.3033(1), F.S., also requires the approval of the contract or other transaction by a two-thirds vote of a homeowners’ association board, but does not require that such transaction be approved by a two-thirds vote of the members present who do not have a financial interest in the contract.

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 consanguinity⁵⁷ 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 which 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.

Electric Vehicle Charging Station – Condominium Associations

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.

⁵⁷ 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).

The electricity charges for the station must be separately metered and payable by the unit owner.⁵⁸

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 allows a unit owner to use an embedded meter on an electric vehicle charging station.

Fines – Condominium and Homeowners’ Associations

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 \$1,000.⁵⁹ However, a fine imposed by a homeowners’ association may exceed \$1,000 in the aggregate if the association’s governing documents authorize the fine.⁶⁰ A fine imposed by a condominium may not become a lien against the unit.⁶¹ A fine by a homeowners’ association of less than \$1000 may not become a lien against the parcel.⁶²

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 member’s household. The role of the committee is to determine whether to confirm or reject the fine or suspension.⁶³

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.⁶⁴

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

⁵⁸ Section 718.113(8), F.S.

⁵⁹ Sections 718.303(3), F.S. An identical provision in s. 719.303(3), F.S., applies to fines in cooperative associations.

⁶⁰ Section 720.305(2), F.S.

⁶¹ Section 718.303(3), F.S. An identical provision in s. 719.303(3), F.S., applies to fines imposed by cooperative associations.

⁶² Section 720.305(2), F.S.

⁶³ 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.

⁶⁴ *Id.*

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.”

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. In addition, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.⁶⁵

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.⁶⁶

The ombudsman is required to maintain his or her principal office in Leon County.⁶⁷

Effect of Proposed Changes

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

Cooperative Property

Present Situation

The building and land comprising a cooperative are owned by a corporation. 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.⁶⁸ Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.⁶⁹ Real property is anything that is 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

⁶⁵ Sections 718.5011 and 718.5012, F.S.

⁶⁶ *Id.*

⁶⁷ Section 718.5014, F.S.

⁶⁸ *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996)

⁶⁹ Am. Jur. 2d Property § 18.

as a fee interest, so case law commonly declares long-term leaseholds to be an interest in real property for taxation purposes.⁷⁰

In Florida, a cooperative is treated as real property for some homestead purposes. Although the general definition of homestead, including for taxation purposes, follows the common-law rule that requires an interest in real property, the Florida Constitution specifically extends the exemption to a cooperative unit.⁷¹ Florida's homestead laws apply to a cooperative the exemption from forced sale by creditors⁷² and the exemption from ad valorem taxation. However, a cooperative is not subject to Florida's homestead protections on devise and descent.⁷³

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.⁷⁴ The Third District Court of Appeal has recognized a need for clarification of this type of ownership interest.⁷⁵

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.⁷⁶

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

⁷⁰ *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).

⁷¹ 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.”

⁷² Sections 222.01, and 222.05, F.S.

⁷³ *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).

⁷⁴ Section 718.106(1), F.S.

⁷⁵ *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008)

⁷⁶ Section 719.106(1)(b)5., F.S.

similar real-time electronic or video communication counts toward a quorum and may vote as if physically present.⁷⁷

Homeowners' Associations – Electronic Meeting Notices

Present Situation

A homeowners' association is required to notice all board meetings 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.⁷⁸

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.⁷⁹

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.⁸⁰

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.⁸¹

Homeowners' Associations – 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

⁷⁷ Section 718.112(2)(b)5., F.S., provides a comparable provision for condominium associations.

⁷⁸ 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.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Sections 718.112(2)(c) and 719.106(1)(c), F.S., provide comparable notice requirements for meetings in condominium and cooperative associations, respectively.

association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted.⁸²

A written notice must also be sent to certain mortgage holders or assignees for the purpose of obtaining consent or joinder for the proposed amendment.⁸³

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.⁸⁴

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.

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.

⁸² 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.

⁸³ See s. 720.306(1)(d), F.S.

⁸⁴ Section 720.306(1)(g), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill amends ss. 718.112(1)(c), 719.106(3), and 720.3075(6), F.S., to provide that any provision of a declaration, reasonable rules, or regulations of a condominium, cooperative, or homeowners' association, respectively, which diminishes or infringes upon any right protected under the Fourteenth Amendment to the United States Constitution or Art. II of the State Constitution is void and unenforceable without further action of the association. These provisions incorrectly reference Article II of the State Constitution, which provides the general provisions of state government, including the state boundaries and the seat of government. The basic rights of persons under the state's jurisdiction are set forth in Article I of the Florida Constitution.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 514.0115, 627.714, 718.111, 718.112, 718.113, 718.303, 718.5014, 719.103, 719.104, 719.106, 720.303, 720.305, 720.306, and 720.3075.

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

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

None.

B. Amendments:

None.