HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 623 Community Associations
SPONSOR(S): Commerce Committee, Civil Justice Subcommittee, Business & Professions Subcommittee, Shoaf
TIED BILLS: **IDEN./SIM. BILLS:** SB 1154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice Subcommittee	14 Y, 0 N, As CS	Mawn	Luczynski
3) Commerce Committee	23 Y, 0 N, As CS	Brackett	Hamon

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes, within the Department of Business and Professional Regulation, broadly regulates condominium and cooperative associations and has limited regulatory authority over homeowner's associations (HOA).

The bill:

- Exempts pools within HOA's with 32 parcels or less from certain public pool inspections and regulation.
- Requires associations to maintain bids for work or materials for one year, instead of seven.
- Prohibits associations from requiring owners to state a reason for requesting to inspect official records.
- Provides that condominium board term limits apply to service starting July 1, 2018.
- Prohibits condominium owners' insurance policies from providing subrogation in certain circumstances.
- Increases the transfer fee that condominiums may charge a buyer or renter from $100 to $150.
- Requires condominium associations to maintain official records in a manner determined by DBPR.
- Requires a condominium association to provide an owner who requests to inspect official records, a checklist of all the records that are and are not being made available for inspection.
- Defines "financial issues" and allows DBPR to adopt rules to further define the term.
- Allows DBPR to adopt rules to establish requirements for DBPR training programs.
- Provides that certain notice requirements apply to all unit owner meetings, not just the annual meetings.
- Amends the due date for paying a fine levied by an association.
- Provides that an interest in a cooperative unit is an interest in real property, not in personal property.
- Deletes certain conflict of interest provisions prohibiting a condominium association from contracting with a company in which a board member has a financial interest.
- Allows the office of the Condominium Ombudsman to be located outside of Leon County.
- Permits a condominium unit owner to install, at the owner's expense, a natural gas fuel station.
- Provides that HOA amendments effecting the rent or lease of parcels only applies to certain owners.
- Allows mediation of specified condominium and cooperative disputes in lieu of non-binding arbitration.
- Provides that discriminatory restrictions in deeds and community association documents are unenforceable and extinguished, and creates a process for removal.

The bill is not expected to have a fiscal impact on local government. The bill may have a fiscal impact on state government. *See* Fiscal Comments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over:

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

Condominiums

A condominium is a form of real property ownership created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for common elements operation and maintenance. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The board enacts bylaws which govern the administration of the association.

Cooperatives

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[3] The lease payment amount is the pro-rata share of the cooperative's operational expenses. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical to those regulating condominiums.

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, 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.[4] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in ch. 720, F.S., and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes, but no state agency has direct oversight of HOAs.

[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 719.103(2) and (26), F.S.
[4] S. 720.301(9), F.S.

Cooperatives as Personal and Real Property Interest

Current Situation

The building and land of a cooperative association are owned by a corporation, not the individual unit owners. A person who purchases a cooperative unit does not receive title to the 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 interest in a corporation or cooperative is represented by the ownership of stock in the corporation.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.[5] Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.[6]

Real property is anything that is permanent, fixed, and immovable, such as land or a building. At common law, a leasehold, even for as long as 99 years, 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 courts generally regard long-term leaseholds to be an interest in real property for taxation purposes.[7]

In Florida, a cooperative is treated as real property for some homestead purposes. Even though the legal definition of homestead follows the common law and requires an interest in real property to qualify for the homestead exemption, the Florida Constitution specifically extends the exemption to a cooperative unit.[8] Florida's homestead laws govern the cooperative for purposes of exemption from forced sale by creditors[9] and for purposes of the ad valorem taxation exemption. However, a cooperative is not subject to Florida's homestead protections and is not considered real property for purposes of devise and descent. Devise and descent is the transfer or conveyance of property by will or inheritance.[10]

In contrast, the Condominium Act 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. There is no corresponding statute in the Cooperative Act.[11] Florida courts have recognized that there is some confusion in this area and that there is a need for clarification on whether a cooperative ownership interest is an interest in real property or personal property.[12]

Effect of the Bill

The bill provides that an interest in a cooperative unit is an interest in real property for all purposes including devise and descent.

[5] *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996).
[6] Am. Jur. 2d Property § 18.
[7] *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).
[8] Art. VII, s. 6(a), Fla. Const. ("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.").
[9] Ss. 222.01and 222.05, F.S.
[10] *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); Black's Law Dictionary (11th ed. 2019).
[11] S. 718.106(1), F.S; *See generally* ch. 719, F.S.
[12] *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008).

Official Records

Current Situation

Condominiums, cooperatives, and HOAs are required to maintain official records for at least seven years. The official records must include:

- A copy of the articles of incorporation, declaration, bylaws, and rules of the association;
- Meeting minutes;
- A roster of all owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- The association's accounting records;
- All contracts for work to be performed, including bids for work, materials, and equipment. Cooperatives and HOAs are only required to maintain bids for one year;
- A copy of the plans, permits, warranties, and other items provided by the developer; and
- All other written records which are related to the association's operation.[13]

The official records for condominiums and cooperatives, but not HOAs, must also include all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.[14]

Owners may request to inspect an association's official records, and the association must make the records available for inspection within ten business days of receiving an inspection request.[15] A condominium and cooperative may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An HOA may also adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections, but an HOA may not require an owner to state the reason for the inspection.[16]

Effect of the Bill

The bill:

- Mirrors condominium law to cooperative and HOA law by requiring that condominiums maintain bids for work, materials, and equipment for one year instead of seven years;
- Mirrors condominium and cooperative law to HOA law by prohibiting a condominium or cooperative from requiring a unit owner to state a reason for official records inspection; and
- Mirrors HOA law to condominium and cooperative law by including all ballots, sign-in sheets, voting proxies, and all other papers relating to voting in the HOA's official records.

Condominium Unit Owner Access to Official Records

A condominium association must maintain its official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the association is located.[17]

Unit owners and renters may request to inspect and make copies of an association's official records, and the condominium association must make the records available for inspection within 10 business days of receiving a written inspection request.[18] Failure to provide an owner or renter the requested official records within 10 business days of receiving a written request creates a rebuttable presumption that the association willfully failed to provide the requested records. A unit owner who is denied access to the official records is entitled to damages and costs.[19]

[13] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.
[14] *Id.*
[15] *Id.*
[16] S. 720.303(5), F.S.
[17] S. 718.111(12)(b), F.S.
[18] S. 718.111(12)(c), F.S.
[19] *Id.*

A condominium association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An association also has the option to make the official records available electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen. Additionally, associations with 150 or more units must maintain a website with digital copies of certain official records such as meeting notices, a copy of the articles of incorporation, declaration, bylaws, and rules of the association.[20]

Current law provides what records a condominium association must maintain, and where the association must maintain the records, but current law does not require associations to maintain the official records in a specific manner or format.[21]

According to DBPR, not having requirements for how associations must maintain official records can be frustrating and time consuming for unit owners. According to DBPR, this is because a unit owner may request to inspect the official records and an association may give them access to a room full of boxes or filing cabinets, and the unit owner may not understand the association's organization of the records.[22]

Effect of the Bill

The bill provides that condominium associations must maintain the official records in a manner and format determined by the Division so that the records are easily accessible for inspection. The bill allows the Division to investigate complaints against condominiums that are related to the maintenance of the official records.

The bill also provides that when a unit owner requests to inspect the official records, the association must provide the owner with a checklist of all the records made available for inspection. The checklist must also include a list of the requested official records not being made available for inspection. The association must provide a sworn affidavit by the person responding to the unit owner's request attesting to the accuracy of the checklist along with the checklist. The association must keep a copy of the checklist and the affidavit for at least seven years.

The bill provides that delivery of the checklist and the sworn affidavit creates a rebuttable presumption that the association complied with the unit owner or renter's request to inspect the official records.

According to DBPR, requiring a checklist ensures that unit owners will receive better access to a condominium association's official records, and it will also provide insurance for associations to show they complied with a unit owner's request to inspect the official records.[23]

Condominium Unit Owner Insurance and Subrogation

Current Situation

A condominium association must use its best efforts to maintain insurance for the association, the association property, and the common elements. If a condominium maintains insurance for the association, it must have coverage for the condominium property as originally installed and all alterations or additions made to the condominium property.[24]

Condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, walls, ceiling coverings, electrical fixtures, appliances, water

[20] S. 718.111(12)(b),(g), F.S.
[21] *See* Ch. 718, F.S.
[22] Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business and Professional Regulation, RE: HB 1257 Community Associations (Jan. 22, 2020).
[23] *Id.*
[24] S. 718.111, F.S.

heaters, water filters, built-in cabinets and countertops, and window treatments. Insurance coverage for such property is the responsibility of the unit owner.[25]

Subrogation is "the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor."[26] In the condominium setting, subrogation allows a unit owner's insurer to stand in the place of the unit owner whose unit has been damaged by a negligent party. The unit owner's insurer pays the unit owner for the damage and stands in the place of the unit owner to seek relief from the party that caused the damage, which may be the condominium association.

Often, a condominium association's declaration may contain a clause requiring a unit owner's insurance policy to prohibit subrogation against the condominium association.[27]

Prior to 2010, Florida law prohibited a condominium unit owner's insurance policy from providing rights of subrogation against the association. That statutory prohibition was repealed in 2010, and subrogation against a condominium association has been permitted since that time.[28]

Effect of the Bill

The bill provides that if a condominium association's insurance policy does not provide rights of subrogation against the unit owners, then a unit owner's insurance policy may not provide rights of subrogation against the association.

Condominium Websites

Current Situation

Condominium associations with 150 or more units that do not manage timeshare units must post certain documents to a website accessible only to unit owners and condominium association employees. The condominium association's website must include:

- The recorded declaration of condominium of each condominium operated by the condominium association and each amendment to each declaration;
- The recorded condominium association bylaws and each amendment to the bylaws;
- The condominium association's articles of incorporation, or other documents creating the condominium association, and each amendment thereto. The copy posted must be a copy of the articles of incorporation filed with the Department of State;
- The condominium association rules;
- Any management agreement, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility;
- Summaries or complete copies of bids for materials, equipment, or services, which must be maintained on the website for one year;
- The annual budget and any proposed budget to be considered at the annual meeting;
- The financial report and any proposed financial report to be considered at a meeting;
- Each director's certification;
- All contracts or transactions between the condominium association and any director, corporation, firm, or condominium association that is not an affiliated condominium association or any other entity in which a condominium association director is also a director or officer and financially interested;
- Any contract or document regarding the conflict of interest or possible conflict of interest of a community association manager or a board member;

[25] *Id.*
[26] *Aurora Loan Services LLC v. Senchuk*, 36 So. 3d 716, 717 (Fla. 1st DCA 2010).
[27] Gary L. Wickert & Kelsey Burazin, *Subrogating Condominium Damage*, Claims Journal June 4, 2015, https://www.claimsjournal.com/news/national/2015/06/04/263728.htm (last visited Jan. 23, 2020).
[28] S. 718.111(11), F.S. (2009); *See also* Senate Analysis of 2010 Senate Bill 1196 and 1222 (April 9, 2010).

- The notice of any unit owner meeting and the meeting's agenda, posted at least 14 days before the meeting. The notice must be posted in plain view on the front page of the website or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked on the front page; and
- Any documents to be considered during a meeting or listed on the meeting's agenda, which must be posted at least seven days before the meeting where the document will be considered.[29]

Effect of the Bill

The bill allows a condominium association to post the required documents on a mobile application downloadable to a mobile device or to a website.

Condominium Term Limits

Current Situation

Condominium association board members serve one-year terms, but a board member may serve a two-year term if allowed by the association's bylaws or articles of incorporation.[30]

In 2017, the Legislature passed a law prohibiting a condominium association board member from serving more than four consecutive two-year terms unless two-thirds of the total voting interests approve his or her continued service or there are not enough eligible candidates to fill board vacancies.[31]

In 2018, the Legislature amended the term limit provision for condominium board members to clarify that a board member could not serve more than eight consecutive years instead of four consecutive two-year terms.[32] Questions from the public remain about whether time served on a board prior to the enactment of the term limit provision counts toward the eight-year maximum.[33]

Effect of the Bill

The bill provides that only board service occurring after July 1, 2018, counts towards a board member's eight-year maximum.

Condominium Transfer Costs

Current Situation

A condominium association may not charge a potential buyer or renter costs or fees in connection with the sale, lease, sublease, or other transfer of a unit unless:

- The fee is limited to $100 or less;
- The fee is provided for in the association's governing documents; and
- The association approves the sale, lease, sublease, or transfer.[34]

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.[35]

Effect of the Bill

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[29] S. 718.111(12)(g), F.S.
[30] S. 718.112(2)(d), F.S.
[31] *See* House Analysis of 2017 House Bill 1237 (July 5, 2017).
[32] *See* House Analysis of 2018 House Bill 841 (Mar. 27, 2018).
[33] David G. Muller, *Is new term limit restriction retroactive*, Naples Daily News (Sept. 15, 2018) https://www.naplesnews.com/story/money/real-estate/2018/09/15/new-term-limit-restriction-retroactive/1259991002/ (last visited Jan. 23, 2020).
[34] S. 718.112(2)(i), F.S.
35 *Id.*

The bill increases the fee a condominium association may charge a potential buyer or renter in connection with the sale, lease, sublease, or other transfer of a unit from $100 to $150.

The bill also provides that the transfer fee is to be adjusted every five years equal to the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. DBPR must calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.

Condominium Service Providers Conflicts of Interest

Current Situation

Prior to 2017, a condominium association could sign a contract for maintenance or management services with an entity in which a member of the association's board of directors had a financial interest. The contract had to disclose the board member's financial interest, and a discussion of the financial interest had to be in the minutes of the meeting at which the vote to authorize the contract was held. Any contract that failed to disclose such interest was unenforceable.[36] The contract also had to be affirmed by a two-thirds vote of the members of the board of directors present. The board member with a financial interest in the entity could not participate in the vote.[37]

In 2017, the Legislature passed a law prohibiting a condominium association from employing or contracting with any service provider in which a board member, or a relative of a board member within the third degree of consanguinity by blood or marriage, has a financial interest. This restriction does not apply if the board member or relative owns less than one percent of the equity shares of the service provider or to timeshare condominiums.[38]

Effect of the Bill

The bill repeals the provision prohibiting a condominium association from employing or contracting with any service provider in which a board member or a relative of a board member has a financial relationship. However, the bill maintains the provision requiring a board member's financial interest be disclosed in the contract with the association and in the minutes of the meeting at which the board votes on the contract. Any contract that fails to disclose such interest is unenforceable. The contract also requires an affirmative vote of two-thirds of the board of directors present and prohibits a board member with a financial interest from participating in the vote. This restores the law applicable to board member conflicts of interest to its pre-2017 state.

36 S. 718.3026(3), F.S.
37 *Id.*
38 *See* House Analysis, *supra* note 31.

Condominium Electric Vehicle Charging and Natural Gas Fuel Stations

Condominium Electric Vehicle Charging Stations – Current Situation

In 2018, the Legislature passed a law prohibiting a condominium association from preventing 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 by the unit owner.[39]

The installation may not cause irreparable damage to the condominium property, and the association may require the unit owner to:[40]

- Comply with bona fide safety requirements, consistent with applicable building code or recognized safety standards;
- Comply with reasonable architectural standards adopted by the association so long as such standards do not prohibit the installation of such station or substantially increase the cost;
- Engage the services of a duly licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station;
- Provide a certificate of insurance naming the association as an additional insured on the owner's insurance policy; and
- Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station.

The costs of installation, operation, maintenance, repair, and removal are the responsibility of the unit owner or the owner's successor and the association may use their assessment powers to enforce the payment of such costs.[41]

A condominium association must grant an implied easement across common elements to a unit owner for installation of electric vehicle charging stations and any necessary equipment for the furnishing of electrical power to electric vehicle charging stations. A lien may not be filed against an association for any labor performed or materials furnished for the installation of a charging station; however, a lien may be filed against the unit owner installing a charging station.[42]

Natural Gas Fuel – Current Situation

Natural gas fuel is any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle.[43] The term includes all forms of fuel commonly or commercial 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.[44] 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 electric generation.[45]

Condominium Electric Vehicle Charging and Natural Gas Fuel Stations – Effect of the Bill

The bill provides that a condominium association is prohibited from preventing a unit owner from installing a natural gas fuel station or electric vehicle charging station within the boundaries of the unit owner's limited common element or exclusively designated parking area.

The bill gives "natural gas fuel" the same meaning as s. 206.9951, F.S., and defines natural gas fuel vehicle to mean a motor vehicle powered by natural gas fuel.

39 *See* House Analysis, *supra* note 32.
40 S. 718.113(8), F.S.
41 *Id.*
42 *Id.*; 718.121(2), F.S.
43 S. 206.9951(2), F.S.
44 *Id.*
45 *Id.*

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 also responsible for the supply and storage of the natural gas fuel.

The bill allows a unit owner to use an embedded meter to meter the electricity used by an electric vehicle charging or natural gas fuel station or to have the station separately metered.

The bill also provides that the unit owner is responsible for complying with all federal, state, or local laws or regulations applicable to the installation, maintenance, or removal of electric vehicle charging or natural gas fuel stations.

The bill requires a condominium association to grant an implied easement across the common elements to the unit owner for the installation of an electric vehicle charging station or natural gas fuel station and any necessary equipment for the furnishing of electrical power to the station. A lien may not be filed against the association for any labor performed or materials furnished for the installation of the charging or fuel station; however, a lien may be filed against the unit owner installing the charging or fuel station.

Sale of Condominium Parcels by a Developer

Current Situation

If a developer of a condominium contracts to sell a condominium parcel[46] that is part of a condominium that has not been substantially completed, the developer must deposit all payments into an escrow account up to ten percent of the sales price. The escrow account must be controlled by an escrow agent until closing or termination of the contract. All payments received by the developer that are in excess of ten percent of the sale price must be held in a special escrow account controlled by an escrow agent until closing or termination. The special escrow account may be the same escrow account with the payments of up to ten percent of the sales price, or it may be a separate account.[47]

If the contract for the sale of a condominium parcel provides for it, a developer may withdraw funds in excess of ten percent of the purchase price from the special escrow account when construction of improvements has begun. The funds may be used for **the actual construction and development of the condominium property**. However, no funds may be used for salaries, commissions, or expenses of salespersons or for advertising purposes.[48]

Effect of the Bill

The bill further clarifies how a developer may spend funds in the special escrow account. A developer may withdraw funds from the special escrow account for **the actual costs incurred by the developer in the construction and development of the condominium property**.

[46] S. 718.103(12), F.S. A "condominium parcel" is a unit, together with the undivided share in the common elements appurtenant to the unit.
[47] S. 718.202(1), (2), and (11), F.S.
[48] S. 718.202(3), F.S.

Actual costs include, but are not limited to:

- Expenditures for demolition;
- Site clearing;
- Permit fees;
- Impact fees;
- Utility reservation fees; and
- Architectural, engineering, and surveying fees that directly relate to construction and development.

The bill further limits the prohibition from using such funds for salaries, commissions, or expenses of salespersons or for advertising purposes to include, marketing, promotional purposes, loan fees, costs, interest, attorney fees, accounting fees, or insurance.

Alternative Dispute Resolution

Current Situation

Condominiums and Cooperatives

The Condominium and Cooperative Acts provide for an arbitration program within the Division for certain disputes between unit owners and associations. The Division employs full time arbitrators and certifies private attorneys for mandatory nonbinding arbitration. An arbitrator's final decision is not binding, and any party may further pursue a matter in civil court. However, the parties may agree to be bound by the arbitrator's decision.[49]

The Condominium and Cooperative Acts require a party to petition for arbitration with the Division before filing a complaint in civil court for the following disputes between an association and a unit owner:[50]

- Termination of an association.
- Recall of a board member.
- Disputes where the board:
    - Requires an owner to take an action or refrain from any action involving the owner's unit.
    - Alters or adds to a common element.
    - Fails to provide proper notice for meetings or other actions.
    - Fails to properly conduct elections.
    - Fails to properly notice meetings.
    - Fails to allow inspection of the association's records.

The Division does not have jurisdiction for arbitration for the following disputes between a unit owner and an association:

- Disagreements regarding the interpretation or enforcement of a warranty;
- The charging of a fee or assessment;
- The eviction or other removal of a tenant from unit;
- Alleged breaches of fiduciary duty by one or more board members; and
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.[51]

The cost to petition the Division for arbitration is a $50 filing fee. The petition must include the specific nature of the dispute, demand for relief, and include proof that the petitioner provided the opposing party a notice of intent to petition for arbitration. Upon receipt of a petition for arbitration, the Division must determine if the dispute qualifies for arbitration. If the dispute does qualify for arbitration then the

[49] S. 718.1225, and 719.1255, F.S; DBPR *Condominium Unit-Owner Rights and Responsibilities*, http://www.myfloridalicense.com/dbpr/lsc/documents/LSC4.pdf (last visited Mar. 27, 2019).
[50] *Id.*
[51] *Id.*

arbitrator must conduct the arbitration within 30 days.[52] The arbitrator must render his or her decision within 30 days of the arbitration.[53]

Either party in an arbitration proceeding may petition the arbitrator to have the proceeding sent to mediation. Upon the request for mediation, the arbitrator must contact all parties in the proceeding to determine if mediation is agreeable. An arbitrator may refer a proceeding to mediation even if all parties do not agree to mediation.[54]

If a matter is referred to mediation, the parties must select a mutually agreeable mediator. The arbitrator may provide a list of available mediators. Mediation is conducted in accordance with the Florida Rules of Civil Procedure. The parties in a mediation are required to equally share the costs of mediation.[55]

HOAs

Instead of arbitration, the HOA Act provides for a presuit mediation program for certain disputes between parcel owners and HOAs. The HOA act does not require mandatory arbitration by the Division unless the dispute involves elections or recalls of board members.

The following disputes between parcel owners and HOAs must go to presuit mediation before a party can file suit in civil court:

- Disputes involving the use of or changes to an owner's parcel or the common areas;
- Covenant disputes;
- Disputes regarding meetings of the board or committees of the board;
- Disputes involving the meeting of owners that do not involve elections;
- Access to the official records disputes; and
- Disputes regarding amendments to the governing documents.[56]

The following disputes are not subject to presuit mediation:

- Disputes involving the collection of assessments or other financial obligations; and
- Actions to enforce a prior mediation agreement.[57]

An aggrieved party initiates the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in statute 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. If emergency relief is required then a temporary injunction may be sought in court prior to the mediation.[58]

The opposing party has 20 days to respond. If the opposing party fails to respond or refuses to mediate then the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days of the petition being 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 may not attend the mediation.[59]

If mediation is not successful in resolving all the issues between the parties, the parties may proceed to civil court or may elect to enter into binding or non-binding arbitration by the Division. All parties to the dispute must agree to enter into arbitration by the Division.[60]

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[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] S. 720.311, F.S; Peter M. Dunbar & Charles F. Dudley, *The Law of Florida Homeowners Associations*, 77-78 (9th ed. 2013).
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*

Effect of the Bill

The bill authorizes a party to a condominium or cooperative dispute to petition for presuit mediation in accordance with the HOA Act in lieu of arbitration prior to filing in civil court. However, the bill provides that election and recall disputes are not eligible for mediation in lieu of arbitration. Instead, condominium, cooperative, and HOA election and recall disputes must be arbitrated by the Division or filed directly with a court of competent jurisdiction.

Condominium and HOA Fines and Suspensions

Current Situation

Condominium associations and HOAs may levy fines against or suspend the right of an owner, occupant, or an owner or occupant's guest, to use the common elements for failing to comply with any provision in the association's declaration, bylaws, or rules.[61]

A board may not impose a fine or suspension without giving at least 14 days' written notice of the fine or suspension and the opportunity for a hearing. The hearing must be held before a committee of unit or parcel 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.[62]

A fine approved by the committee must be paid to the association five days after the committee meeting. The condominium or HOA 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.[63]

Effect of the Bill

The bill provides that if a fine is approved by the committee, it must be paid to the association five days after notice of the approved fine is sent to the unit or parcel owner and, if applicable, to any tenant, licensee, or invitee of the owner, instead of five days after the meeting approving the fine.

Notice of Elections for Condominium Associations

Current Situation

Condominium Associations must mail, deliver, or electronically transmit notice of an election to unit owners at least 60 days before the election. Condominium associations must also mail, deliver, or electronically transmit a second notice of election to the unit owners along with a ballot listing all the candidates. However, no exact time is currently specified for the provision of the second notice.[64]

Effect of the Bill

The bill provides that the second notice must be mailed, delivered, or electronically transmitted to unit owners not less than 14 days or more than 34 days prior to the election.

[61] Ss. 718.303(3) and 720.305(2)(a), F.S.
[62] *Id.*
[63] *Id.*
[64] S. 718.112(2)(d), F.S.

Notice of Meetings for Condominium Associations

Current Situation

A condominium association must provide written notice of the association's annual meeting. The notice must include an agenda, and 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 condominium property for at least 14 continuous days before the annual meeting or repeatedly broadcast with the agenda on a closed-circuit cable television system serving the association.[65]

Effect of the Bill

The bill provides that the requirements to provide written notice to each owner and conspicuously post such notice applies to all unit owner meetings, not just the annual meeting.

The bill also provides that except for the annual meeting, the time-period that a condominium association must serve notice of meetings to the owners and conspicuously post such notice is determined by the association's bylaws. If the bylaws are silent, the notice must be sent to the unit owners and conspicuously posted at least 14 days before the meeting.

Condominium Association Financial Issues

Current Situation

The Division is charged with ensuring that condominium associations comply with the requirements of the Condominium Act. The Division also handles complaints alleging violations of the Condominium Act. The Division has complete jurisdiction to investigate complaints and enforce compliance with the Condominium Act for associations that are controlled by a developer, a bulk buyer, or a bulk assignee.[66] Once a developer has turned control of the condominium to the association the Division only has jurisdiction to investigate complaints related to **financial issues**, elections, and unit owner access to official records.[67]

The term "financial issues" is not defined in the Condominium Act. According to DBPR, this can result in confusion for unit owners and associations for purposes of determining what types of complaints the Division can investigate. Defining "financial issues" will give unit owners and associations a better understanding of the types of financial issues that the Division may investigate.[68]

Effect of the Bill

The bill defines "financial issues" to mean an issue related to:

- operating budgets;
- reserve schedules;
- accounting records;
- notices of meetings;
- minutes of meetings discussing budget or financial issues;
- assessments for common expenses, fees, or fines;
- the commingling of funds; and
- any other record necessary to determine the revenues and expenses of the association.

The bill also provides that the Division may adopt rules to further define "financial issues."

[65] S. 718.112(d), F.S.
[66] A bulk assignee is a person who buys more than seven units in a single condominium and receives assignment of any of the developer's rights. A bulk buyer is a person who buys more than seven units in a single condominium but does not receive any of the developer's rights. S. 718.703, F.S.
[67] Ss. 718.117, and 718.501, F.S.
[68] Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business and Professional Regulation, RE: HB 1257 Community Associations (Jan. 22, 2020).

Condominium Educational Material Published by DBPR

Background

The Division provides training and educational programs for condominium association board directors and unit owners such as publishing educational brochures and holding seminars for board directors and unit owners, and maintains a toll-free hotline to assist unit owners. The Division may also approve board director and unit owner education and training programs offered by third party providers. The Division must maintain a current list of all approved programs and third party providers, and make the list available to board directors and unit owners.[69]

Effect of the Bill

The bill provides that the Division may adopt rules to establish requirements for the training and educational programs provided by the Division.

Condominium Ombudsman

Current Situation

Within the Division is housed the Office of the Condominium Ombudsman (Ombudsman). The Ombudsman is an attorney appointed by the Governor to serve as 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.[70]

The Ombudsman also acts as a liaison between the Division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[71]

The Ombudsman is required to keep his or her principal office in Leon County, Florida, on Division premises or, if suitable space cannot be provided on such premises, in a place convenient to the Division. However, the Ombudsman may establish branch offices elsewhere in the state with the Governor's approval.

Effect of the Bill

The bill deletes the requirement that the Ombudsman keep his or her principal office in Leon County, Florida, but maintains the requirement that the Ombudsman's office be in a place convenient to the Division.

[69] S. 718.501(1)(j), F.S.
[70] Ss. 718.5011 and 718.5012, F.S.
[71] *Id.*

Notice of Meetings for HOAs

Current Situation

HOAs must notice all board meetings by posting notice in a conspicuous place on the HOA's property for at least 48 hours. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding parcel use is considered.[72]

HOAs are required to notice all member meetings by mailing, hand delivering, or electronically transmitting notice before the meeting and posting the notice in a conspicuous place before the meeting. If an HOA opts to broadcast notice in lieu of posting notice, it must do so at least four times during every broadcast hour of each day.[73] Additionally, when notice of an HOA meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the owner's parcel is located.[74]

In 2018, the Legislature passed a law allowing condominium and cooperatives to adopt rules for noticing all board and owner meetings on a website if the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must require the association to send an electronic notice providing a hyperlink to the website where the notice is posted to all unit owners whose email addresses are part of the official records in the same manner as notice for a member meeting. Notice by website does not remove the requirement to comply with the other notice requirements.[75]

Effect of the Bill

The bill amends HOA law to mirror condominium and cooperative law by allowing HOAs to adopt rules for noticing all board and owner meetings on a website or mobile application if the time requirements for physically posting the notices are met. Any rule adopted for website or mobile application notice must include a requirement that the association send an electronic notice providing a hyperlink to the website or mobile application where the notice is posted to all parcel owners whose email addresses are part of the official records in the same manner as notice for a member meeting. Notice by website or mobile application must be in addition to the other notice requirements.

The bill also provides that when notice of a meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address in the HOA's official records, instead of the address identified as the parcel's owner's mailing address on the property appraiser's website.

Cooperative Associations Video Conferencing

Current Situation

Cooperative association board members and committee members may attend meetings by telephone. If a board or committee member attends a meeting by telephone, a speaker must be used so the member may be heard by the rest of the board or committee and by any unit owners in attendance.[76]

Effect of the Bill

The bill provides that cooperative association board members and committee members may attend meetings by telephone, real time video conferencing, or by using a similar real-time electronic or video communication. If a board or committee member attends a meeting by telephone, video, or electronic

[72] Ss. 718.112(2), 719.106(1), & 720.303(2)(c), F.S.
[73] *Id.*
[74] S. 720.306(1)(g), F.S.
[75] *See* House Analysis, *supra* note 25.
[76] S. 719.106(1)(b), F.S.

or video communication, a speaker must be used so the member may be heard by the rest of the board or committee and by any unit owners in attendance.

HOA Swimming Pools

Current Situation

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. If DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, 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. DOH is authorized to establish a schedule of fees for plan approval and permitting.[77] Operating permits must be renewed annually and may be transferred from one name or owner to another.[78]

DOH may, at any reasonable time, enter any and all parts of a public swimming pool to examine and investigate the pool's sanitary and safety conditions.[79] County health departments are responsible for the routine surveillance of water quality in all public swimming pools.[80]

Pools that are used by condominiums or cooperatives with 32 units or less and which are not being operated as public lodging establishments are exempt from DOH's public pools requirements, except for maintaining water quality standards.[81] HOA pools are not exempt from DOH regulation even where the HOA has 32 homes or less.

Effect of the Bill

The bill provides that pools for HOAs and other property associations that have 32 parcels or less and are not being operated as public lodging establishments are also exempt from DOH's public pools requirements, except for maintaining water quality standards.

HOA Developers and Reserve Accounts

Current Situation

HOAs are required to prepare an annual budget that sets out the annual operating expenses and reflects the estimated revenues, expenses, and surplus or deficit that HOAs anticipate for the fiscal year. The annual budget must also set out separately all fees or charges paid for by the HOA for recreational amenities. The association must provide members with a copy of the annual budget.[82]

In addition to annual operating expenses, the budget may include reserve accounts. A reserve account is in effect a savings account whereby an HOA collects periodic advance payments to cover future anticipated capital expenditures and deferred maintenance items. Monies in a reserve account, including interest, must be spent for maintenance, repair and replacement of the reserve item.[83]

If reserve accounts are not funded adequately and the HOA 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.[84]

[77] S. 514.033, F.S.
[78] Ss. 514.031(2) and (3), F.S.
[79] S. 514.04, F.S.
[80] S. 514.025, F.S.
[81] S. 514.0115(2), F.S.
[82] S. 720. 303(6), F.S.
[83] *Id.*
[84] *Id.*

If a developer who controls an HOA or an HOA provides a reserve account, the developer or the HOA **must** maintain or fund the reserve account until the developer or the HOA votes to waive or reduce funding.[85]

If the annual budget does not provide for reserve accounts, the developer or the HOA must include a conspicuous statement in the annual budget report and each financial report that the budget does not provide for reserve accounts, which may result in a special assessment imposed on members.[86]

During the development of an HOA, the developer may be obligated to pay operating expenses and HOA assessments on lots the developer owns when the developer controls the association board. However, current law allows a developer to avoid paying these expenses and assessments if the developer elects to fund the difference between assessments received from other parcel owners and the HOA's operating expenses incurred that exceed the assessments received. This is referred to as deficit funding.[87]

In a 2016 case, *MacKenzie v. Centex Homes*, Florida's Fifth District Court of Appeal ruled that a developer that has opted for deficit funding is not excused from paying its share of any required reserved funds.[88]

The case involved an HOA, made up of 692 residential lots divided into two subdivisions, one of which is a fifty-five and older community. In 2007, the developer initially established reserve accounts and made an initial contribution to the HOA's reserve accounts in the amount of $32,300. However, the developer later stopped contributing funding to the reserve accounts even though the developer continued to include a line item for reserve funds in the budget, and collected reserve funds on the non-developer owned properties. The developer opted for deficit funding in lieu of making any contributions to the reserve accounts. The developer did not vote to waive or reduce reserve funding and did not include the required statement in the annual budget report and each financial report. In 2015, the developer turned the HOA over to the members.[89]

The Court ruled the developer was liable for funding the reserve accounts of the HOA because the developer initially established a reserve account, provided a contribution to the reserve accounts, and did not hold the necessary vote to defund or waive the reserve accounts. The Court determined that a developer, including a developer opting for deficit funding, who does not fund the provided reserve accounts must vote to waive reserve funding and include a statement noting the absence of reserve funds in the financial reports and annual budget.[90]

Effect of the Bill

The bill removes the presumption that deems an HOA to have provided for reserve accounts if the developer initially establishes the accounts. Thus removing the requirement for a developer who initially establishes reserve accounts to maintain or fund them.

The bill clarifies that if the governing documents of an HOA do not obligate a developer to create reserve accounts, the annual budget report and each financial report must include a conspicuous statement about the lack of reserve funding.

The bill does not change the HOA's ability to vote to provide for reserve accounts nor does it change the requirement that notice be provided in the annual budget and other financial reports that the budget does not provide for reserves.

Displays of Flags by Owners in HOAs

[85] *Id.*
[86] *Id.*
[87] S. 720.308(1)(b), F.S.
[88] *Mackenzie v. Centex Homes*, 208 So.3d 790, 796 (Fla. 5th DCA 2016).
[89] *Id.* at 791-96.
[90] *Id.*

Current Situation

HOAs may not prohibit parcel owners from respectfully displaying the United States flag or the official flag of Florida, and an official flag of a branch of the United States military or a POW-MIA flag.[91]

HOAs may also not prohibit a parcel owner from erecting a flagpole that is 20 feet or less in height and respectfully displaying from such flagpole one United States Flag, and one official flag of Florida, a branch of the United States military, or a POW-MIA flag.[92]

Effect of the Bill

The bill provides that an HOA may also not prohibit parcel owners from respectfully displaying an official flag of any other state, district, commonwealth[93], or U.S. territory.[94] An HOA may also not prohibit parcel owners from displaying such flag on an authorized flagpole.

HOA Amendments and Rental Restrictions

Current Situation

The powers and duties of an HOA include the powers and duties provided in current law, and in the association's governing documents, which include the recorded covenants and restrictions, bylaws, and articles of incorporation.[95] Current law allows HOA's to amend their governing documents. The process to amend governing documents are set forth in the governing documents; however, if no such process is provided in the governing documents, an HOA may amend its governing documents by a two-thirds vote of association members.[96]

Amendments to governing documents generally apply to all owners in the HOA. However, HOAs with 15 or fewer parcels can only enforce restrictions against a parcel owner that were in place at the time the owner acquired his or her parcel.[97]

Condominium associations that approve amendments to association governing documents that restrict or regulate the rental of a unit only apply to the unit owners who consent to the amendment or owners who acquire a unit after the effective date of the amendment. However, no such provision exists for HOAs.[98]

Effect of the Bill

The bill provides that an amendment to an HOA's governing documents enacted after July 1, 2020, prohibiting a parcel owner from renting their parcel or altering or limiting an owner's ability to rent only applies to a parcel owner who acquires title after the effective date of the amendment or to a parcel owner who consents to the amendment.

However, an association may amend its governing documents to prohibit or regulate rental durations that are for terms of less than six months, and prohibit a parcel owner from renting his or parcel more

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[91] S. 720.304(2), F.S.
[92] *Id.*
[93] Four U.S. States are commonwealths: Kentucky, Massachusetts, Pennsylvania, and Virginia. Two U.S territories are also commonwealths: Puerto Rico and the Northern Mariana Islands. Merriam-Webster, *What's the difference between a commonwealth and a state?*, https://www.merriam-webster.com/words-at-play/whats-the-difference-between-a-commonwealth-and-a-state (last visited Feb. 27, 2020).
[94] The U.S. has 14 territories. Five of the fourteen territories are permanently inhabited: American Samoa, Puerto Rico, Guam, U.S. Virgin Islands, and the Northern Mariana Islands. Worldatlas, *What Are The US Territories?*, https://www.worldatlas.com/articles/the-territories-of-the-united-states.html (last visited Feb. 27, 2020).
[95] S. 720.303, F.S.
[96] S. 720.306(1), F.S.
[97] S. 720.303(1), F.S.
[98] S. 718.110(13), F.S.

than three times in a calendar year. Any such amendments apply to all parcel owners unless the HOA has 15 or fewer parcels.

For purposes of this provision, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity or when the beneficial ownership of the parcel does not change. In order for this conveyance to be recognized, the entity must furnish the association with a certificate certifying that this conveyance applies, along with any documents supporting the conveyance.

The bill defines "affiliated entity" as an entity which controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests.

The Fourteenth Amendment of the U.S. Constitution and Article II of the Florida Constitution

Current Situation

In the early 20th century, cities used zoning ordinances to segregate people into neighborhoods by race and ethnicity, but in 1917, the U.S. Supreme Court declared the practice unconstitutional.[99] After this ruling, restrictive covenants became a method of segregation based on membership in a protected class. As private contracts, restrictive covenants did not fall under existing laws prohibiting discrimination by the federal government or the state, and in 1926, the U.S. Supreme Court declared discriminatory restrictions enforceable.[100] Discriminatory restrictions became such a common way of segregating neighborhoods that in 1934, the Federal Housing Administration ("FHA") recommended that all FHA-insured homes include such restrictions in their deeds, finding that, "if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes."[101]

However, in 1948, the United States Supreme Court ruled that a racially restrictive private covenant in a land deed violates the Fourteenth Amendment. The Fourteenth Amendment only applies to the states, not private parties, but the Supreme Court determined that even though a restrictive covenant is between private parties, because a state court was the entity that had to enforce the covenant, the covenant violated the Fourteenth Amendment.[102]

According to news articles, residents in Florida and across the country have discovered these old restrictions and covenants in deeds and community association governing documents prohibiting minorities from owning or renting property in the neighborhood. These restrictions cannot be enforced because they violate the Fourteenth Amendment as well as the Federal Fair Housing Act and the Florida Fair Housing Act, which applies if the property is in Florida.[103] However, these restrictions and covenants can be difficult and costly to remove.[104]

Article I, section 2, of the Florida Constitution is similar to the Fourteenth Amendment in the U.S. Constitution, establishing the basic rights of all natural persons in Florida and providing that all such persons:[105]

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[99] *Buchanan v. Warley*, 245 U.S. 60 (1917).
[100] *Corrigan v. Buckley*, 271 U.S. 323 (1926).
[101] National Association of Realtors ("NAR"), You Can't Live Here: The Enduring Impacts of Restrictive Covenants (Feb. 2018), https://www.nar.realtor/sites/default/files/documents/2018-February-Fair-Housing-Story.pdf (last visited Feb. 27, 2020).
[102] *Shelley v. Kramer*, 68 S.Ct. 836 (U.S. 1948).
[103] The Federal Fair Housing Act and the Florida Fair Housing Act prohibit discrimination in home sales, financing, and rentals based on race, color, sex, pregnancy, disability, nationality, religion, and familial status. *See* 42 U.S.C. § 3601-189; *See* Ch. 760, part II, F.S.
[104] TaMaryn Waters, *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. 23, 2020); *Judy L. Thomas, 'Curse of covenant' persists — restrictive rules, while unenforceable, have lingering legacy*, The Kansas City Star (July 27, 2016), https://www.kansascity.com/news/local/article92156112.html (last visited Jan. 23, 2020); Rachel Spacek, *'No persons other than persons of the White race': Racist language remains in older Idaho homes' documents*, Idaho Press (Nov. 5, 2019), https://www.idahopress.com/news/local/no-persons-other-than-persons-of-the-white-race-racist/article_167d13e1-59ce-5f03-b1e1-771709da5e4b.html (last visited Jan. 23, 2020).
[105] Art. I, s. 2, Fla. Const.

- Are equal before the law;
- Have inalienable rights, including the right to:
    - Enjoy and defend life and liberty;
    - Pursue happiness;
    - Be rewarded for industry; and
    - To acquire, possess, and protect property; and
- May not be deprived of any right because of race, religion, national origin, or physical disability.

Effect of the Bill

The bill defines "discriminatory restriction" as any provision in a title transaction recorded in the state which restricts ownership, occupancy, or use of any real property in the state by any natural person on the basis of a characteristic that is determined to be protected against discrimination under the Fourteenth Amendment or article I, section 2 of the Florida Constitution.

The bill restates that any discriminatory provision in a community association's declaration, bylaws, or rules is void and unenforceable.

The bill provides that a discriminatory restriction is extinguished from any recorded title transaction, and filing a notice to preserve such a restriction has no effect. The bill also provides that a community association may remove a discriminatory restriction in a covenant affecting a parcel or unit in the association by a majority vote of the association's board of directors upon request by the owner of the affected parcel or unit.

B. SECTION DIRECTORY:

Section 1: Amends s. 514.0115, F.S., relating to exemptions from supervision or regulation; variances.

Section 2: Amends s. 627.714, F.S., relating to residential condominium unit owner coverage; loss assessment coverage required.

Section 3: Creates s. 712.065, F.S., relating to extinguishment of discriminatory restrictions.

Section 4: Amends s. 718.111, F.S., relating to the association.

Section 5: Amends s. 718.112, F.S, relating to bylaws.

Section 6: Amends s. 718.113, F.S., relating to maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.

Section 7: Amends s. 718.117, F.S., relating to termination of a condominium.

Section 8: Amends s. 718.121, F.S., relating to liens.

Section 9: Amends s. 718.1255, F.S., relating to alternative dispute resolution; voluntary mediation, mandatory nonbinding arbitration; legislative findings.

Section 10: Amends s. 718.202, F.S., relating to sales or reservations deposits prior to closing.

Section 11: Amends s. 718.303, F.S., relating to obligations of owners and occupants; remedies.

Section 12: Amends s. 718.501, F.S., relating to authority, responsibility, and duties of the Division.

Section 13: Amends s. 718.5014, F.S., relating to ombudsman location.

Section 14: Amends s. 719.103, F.S., relating to definitions.

Section 15: Amends s. 719.104, F.S., cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 16: Amends s. 719.106, F.S., relating to bylaws; cooperative ownership.

Section 17: Amends s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 18: Amends s. 720.304, F.S., relating to rights of owners to peaceably assemble; display of flag; SLAPP suits prohibited.

Section 19: Amends s. 720.305, F.S., relating to obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.

Section 20: Amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 21: Amends s. 720.3075, F.S., relating to prohibited clauses in association documents.

Section 22: Amends s. 720.311, F.S., relating to dispute resolution.

Section 23: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is unknown if prohibiting condominium owners' insurance policies from providing rights of subrogation against the association will increase or decrease the cost of condominium unit owners' insurance policies.

According to DBPR, "The proposal regarding presuit mediation as an option to arbitration will raise costs to unit owners involved in a dispute with their association."[106]

D. FISCAL COMMENTS:

It is unknown whether the change in classification of cooperatives from personal to real property for the purpose of estate taxes or laws related to devise and descent will have an impact on state revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to effect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DBPR,[107]

"Benefits of current situation regarding Arbitration:

- Section 718.1255(3)(a), F.S., provides that the Legislature finds that unit owners are frequently at a disadvantage when litigating against an association as the association is better able to bear the costs and expenses of litigation than a unit owner who must rely their own financial resources.
- More efficient and cost-effective option to court litigation as the filing fee is only $50.
- Speedier than court which will have a significant delay.
- Awarding of attorney fees to the prevailing party is determined by the division.
- No cost mediation currently offered by the division.
- Since 2006, less than 1% of arbitration cases are challenged by a Trial De Novo.
- Since 2009, 88% of the cases filed with arbitration are concluded by arbitration, with only 12% concluded by mediation.

Disadvantages and costs associated to unit owners with the proposal [provisions contained in the bill]:

- Pursuant to s. 720.311(2)(a), F.S., an average mediation may require three to four hours of a mediator's time, plus preparation time.
- Private mediators typically charge $300 to $500 hundred per hour. Four hours of mediation and two hours of preparation time at $300 per hour would result in a $1,800 cost. The unit owner in the dispute would owe $900 in addition to the unit owner's cost to obtain an attorney.
- Currently, only 12% of all arbitration cases are referred to mediation. Of the 12%, there is only a 37% success rate for mediation.

[106] Florida Department of Business and Professional Regulation, Agency Analysis of 2020 House Bill 623, p. 6 (February 7, 2020).
[107] *Id.* at 7.

- Allow the parties to bypass arbitration for condominium recall and election disputes and requiring civil court action. However, court trials of condominium recalls and election disputes will not be completed prior to next annual election.
- Comparing a condominium association to a homeowners' association as disputes in each are currently handled differently.
- The proposal appears to contradict the legislative findings in s. 718.1255(3)(a), F.S."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 11, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Corrects a scrivener's error by correcting a reference to the Florida Constitution, from article II, to article I, section 2.
- Permits a unit owner in a condominium association to install an alternative fuel station for an alternative fuel motor vehicle within the boundaries of the owner's limited common element or exclusively designated parking area.

On January 22, 2020, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarified that the records a condominium association must maintain are written records related to the association's obligation.
- Required condominium association bylaws to provide for mandatory alternative dispute resolution, not just mandatory non-binding arbitration.
- Changes references from "alternative fuel station" to "natural gas fuel station," providing that a condominium association may not prevent a unit owner from installing a natural gas fuel station within his or her exclusively-designated or limited common element parking space.
- Required either mandatory non-binding arbitration or presuit mediation of condominium disputes prior to initiating litigation of the dispute in court, with the exception of election and recall disputes, which must be arbitrated by the Division or filed with a court of competent jurisdiction.

On February 27, 2020, the Commerce Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Increases the fee for transfer of a condominium from $100 to $150, and the fees shall be adjusted every 5 years for inflation.
- Provides that any provision in any title transaction that violates any right under the 14th Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution is unenforceable, and any such provision in a previously recorded title transaction is extinguished and severed from the recorded title transaction.
- Provides that an association board may, at the request of an owner, remove a restriction that violates any right under the 14th Amendment of the U.S. Constitution or article I, section 2 of the Florida Constitution.
- Allows a condominium developer to withdraw escrow funds from the sale of a condominium unit for the costs incurred by the developer instead of the actual construction costs to develop the condominium.
- Provides that if the governing documents of an HOA do not obligate a developer to create reserve accounts or the HOA has not provided for reserve accounts by majority vote, the HOA must include a statement on its financial reports.
- Repeals current law providing that if a developer initially funds a reserve account for an HOA, the developer has created a reserve account, which must be funded unless waived by the members.
- Requires condominiums to maintain official records in a manner determined by DBPR, and allows DBPR to investigate complaints related to the maintenance of official records.
- Requires condominiums to provide a checklist to a unit owner who is requesting official records.
- Defines the term "financial issue" and authorizes DBPR to investigate complaints related to the financial issues of a condominium.
- Allows DBPR to adopt rules to establish requirements for certain training programs.

- Provides that the installation of a natural gas fuel station may not be the basis for filing a lien against a condominium association, but it may be the basis for filing a lien against the unit owner installing the station.
- Makes conforming changes to the Condominium Act, Cooperative Act, and the HOA Act related to arbitration and mediation and DBPR's arbitration program.
- Provides that amendments to an HOA's governing documents related to the prohibition or regulation of rentals only applies to owners consenting to the amendment or owners who acquire a parcel after the effective date of the amendment. However, amendments prohibiting or regulating rentals that are for less than six months or prohibiting parcels from being rented more than three times in a calendar year apply to all parcel owners.

This analysis is drafted to the committee substitute as passed by the Commerce Committee.