

By the Committee on Community Affairs; and Senator Pizzo

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1                   A bill to be entitled  
2           An act relating to investments by condominium  
3           associations; amending s. 718.111, F.S.; requiring  
4           condominium associations to maintain a copy of their  
5           investment policy statement as an official record;  
6           requiring associations that make certain investments  
7           to prepare financial statements in a specified manner;  
8           authorizing associations to invest funds in specified  
9           investment products; requiring certain association  
10          boards to obtain prior approval before investing funds  
11          in certain investment products, annually develop an  
12          investment policy statement, and select an investment  
13          adviser who meets specified requirements; authorizing  
14          investment fees and commissions to be paid from  
15          invested reserve funds or operating funds; requiring  
16          investment advisers to invest certain operating or  
17          reserve funds in compliance with a specified rule;  
18          requiring investment advisers to act as association  
19          fiduciaries; providing construction; requiring that  
20          certain funds be held in specified accounts; requiring  
21          associations to provide their investment adviser with  
22          certain documents at least annually; requiring  
23          investment advisers to annually review such documents  
24          and provide the association with a portfolio  
25          allocation model that meets specified requirements;  
26          providing that portfolios may not contain certain  
27          investments; requiring investment advisers to annually  
28          provide to the association a certain certification and  
29          to periodically submit certain reports; requiring that

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30 certain funds be made available to associations within  
31 a certain timeframe after they submit a written or  
32 electronic request; amending s. 718.3026, F.S.;  
33 exempting registered investment advisers from certain  
34 provisions relating to contracts for products and  
35 services; providing an effective date.

36  
37 Be It Enacted by the Legislature of the State of Florida:

38  
39 Section 1. Paragraph (a) of subsection (12) and subsection  
40 (13) of section 718.111, Florida Statutes, are amended, and  
41 subsection (16) is added to that section, to read:

42 718.111 The association.—

43 (12) OFFICIAL RECORDS.—

44 (a) From the inception of the association, the association  
45 shall maintain each of the following items, if applicable, which  
46 constitutes the official records of the association:

47 1. A copy of the plans, permits, warranties, and other  
48 items provided by the developer pursuant to s. 718.301(4).

49 2. A photocopy of the recorded declaration of condominium  
50 of each condominium operated by the association and each  
51 amendment to each declaration.

52 3. A photocopy of the recorded bylaws of the association  
53 and each amendment to the bylaws.

54 4. A certified copy of the articles of incorporation of the  
55 association, or other documents creating the association, and  
56 each amendment thereto.

57 5. A copy of the current rules of the association.

58 6. A book or books that contain the minutes of all meetings

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59 of the association, the board of administration, and the unit  
60 owners.

61 7. A current roster of all unit owners and their mailing  
62 addresses, unit identifications, voting certifications, and, if  
63 known, telephone numbers. The association shall also maintain  
64 the e-mail addresses and facsimile numbers of unit owners  
65 consenting to receive notice by electronic transmission. The e-  
66 mail addresses and facsimile numbers are not accessible to unit  
67 owners if consent to receive notice by electronic transmission  
68 is not provided in accordance with sub-subparagraph (c)3.e.  
69 However, the association is not liable for an inadvertent  
70 disclosure of the e-mail address or facsimile number for  
71 receiving electronic transmission of notices.

72 8. All current insurance policies of the association and  
73 condominiums operated by the association.

74 9. A current copy of any management agreement, lease, or  
75 other contract to which the association is a party or under  
76 which the association or the unit owners have an obligation or  
77 responsibility.

78 10. Bills of sale or transfer for all property owned by the  
79 association.

80 11. Accounting records for the association and separate  
81 accounting records for each condominium that the association  
82 operates. Any person who knowingly or intentionally defaces or  
83 destroys such records, or who knowingly or intentionally fails  
84 to create or maintain such records, with the intent of causing  
85 harm to the association or one or more of its members, is  
86 personally subject to a civil penalty pursuant to s.  
87 718.501(1)(d). The accounting records must include, but are not

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88 limited to:

89 a. Accurate, itemized, and detailed records of all receipts  
90 and expenditures.

91 b. A current account and a monthly, bimonthly, or quarterly  
92 statement of the account for each unit designating the name of  
93 the unit owner, the due date and amount of each assessment, the  
94 amount paid on the account, and the balance due.

95 c. All audits, reviews, accounting statements, and  
96 financial reports of the association or condominium.

97 d. All contracts for work to be performed. Bids for work to  
98 be performed are also considered official records and must be  
99 maintained by the association.

100 12. Ballots, sign-in sheets, voting proxies, and all other  
101 papers and electronic records relating to voting by unit owners,  
102 which must be maintained for 1 year from the date of the  
103 election, vote, or meeting to which the document relates,  
104 notwithstanding paragraph (b).

105 13. All rental records if the association is acting as  
106 agent for the rental of condominium units.

107 14. A copy of the current question and answer sheet as  
108 described in s. 718.504.

109 ~~15. All other written records of the association not~~  
110 ~~specifically included in the foregoing which are related to the~~  
111 ~~operation of the association.~~

112 ~~16.~~ A copy of the inspection report as described in s.  
113 718.301(4) (p).

114 16.~~17.~~ Bids for materials, equipment, or services.

115 17. A copy of the investment policy statement adopted  
116 pursuant to sub-subparagraph (16) (b)2.

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117 18. All other written records of the association not  
118 specifically included in the foregoing which are related to the  
119 operation of the association.

120 (13) FINANCIAL REPORTING.—Within 90 days after the end of  
121 the fiscal year, or annually on a date provided in the bylaws,  
122 the association shall prepare and complete, or contract for the  
123 preparation and completion of, a financial report for the  
124 preceding fiscal year. Within 21 days after the final financial  
125 report is completed by the association or received from the  
126 third party, but not later than 120 days after the end of the  
127 fiscal year or other date as provided in the bylaws, the  
128 association shall mail to each unit owner at the address last  
129 furnished to the association by the unit owner, or hand deliver  
130 to each unit owner, a copy of the most recent financial report  
131 or a notice that a copy of the most recent financial report will  
132 be mailed or hand delivered to the unit owner, without charge,  
133 within 5 business days after receipt of a written request from  
134 the unit owner. The division shall adopt rules setting forth  
135 uniform accounting principles and standards to be used by all  
136 associations and addressing the financial reporting requirements  
137 for multicondominium associations. The rules must include, but  
138 not be limited to, standards for presenting a summary of  
139 association reserves, including a good faith estimate disclosing  
140 the annual amount of reserve funds that would be necessary for  
141 the association to fully fund reserves for each reserve item  
142 based on the straight-line accounting method. This disclosure is  
143 not applicable to reserves funded via the pooling method. In  
144 adopting such rules, the division shall consider the number of  
145 members and annual revenues of an association. Financial reports

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146 shall be prepared as follows:

147 (a) An association that meets the criteria of this  
148 paragraph shall prepare a complete set of financial statements  
149 in accordance with generally accepted accounting principles. The  
150 financial statements must be based upon the association's total  
151 annual revenues, as follows:

152 1. An association with total annual revenues of \$150,000 or  
153 more, but less than \$300,000, shall prepare compiled financial  
154 statements.

155 2. An association with total annual revenues of at least  
156 \$300,000, but less than \$500,000, shall prepare reviewed  
157 financial statements.

158 3. An association with total annual revenues of \$500,000 or  
159 more shall prepare audited financial statements.

160 (b)1. An association with total annual revenues of less  
161 than \$150,000 shall prepare a report of cash receipts and  
162 expenditures.

163 2. A report of cash receipts and disbursements must  
164 disclose the amount of receipts by accounts and receipt  
165 classifications and the amount of expenses by accounts and  
166 expense classifications, including, but not limited to, the  
167 following, as applicable: costs for security, professional and  
168 management fees and expenses, taxes, costs for recreation  
169 facilities, expenses for refuse collection and utility services,  
170 expenses for lawn care, costs for building maintenance and  
171 repair, insurance costs, administration and salary expenses, and  
172 reserves accumulated and expended for capital expenditures,  
173 deferred maintenance, and any other category for which the  
174 association maintains reserves.

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175 (c) An association may prepare, without a meeting of or  
176 approval by the unit owners:

177 1. Compiled, reviewed, or audited financial statements, if  
178 the association is required to prepare a report of cash receipts  
179 and expenditures;

180 2. Reviewed or audited financial statements, if the  
181 association is required to prepare compiled financial  
182 statements; or

183 3. Audited financial statements if the association is  
184 required to prepare reviewed financial statements.

185 (d) Unless an association invests funds pursuant to  
186 paragraph (16) (b), and only if approved by a majority of the  
187 voting interests present at a properly called meeting of the  
188 association, an association may prepare:

189 1. A report of cash receipts and expenditures in lieu of a  
190 compiled, reviewed, or audited financial statement;

191 2. A report of cash receipts and expenditures or a compiled  
192 financial statement in lieu of a reviewed or audited financial  
193 statement; or

194 3. A report of cash receipts and expenditures, a compiled  
195 financial statement, or a reviewed financial statement in lieu  
196 of an audited financial statement.

197  
198 Such meeting and approval must occur before the end of the  
199 fiscal year and is effective only for the fiscal year in which  
200 the vote is taken, except that the approval may also be  
201 effective for the following fiscal year. If the developer has  
202 not turned over control of the association, all unit owners,  
203 including the developer, may vote on issues related to the

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204 preparation of the association's financial reports, from the  
205 date of incorporation of the association through the end of the  
206 second fiscal year after the fiscal year in which the  
207 certificate of a surveyor and mapper is recorded pursuant to s.  
208 718.104(4) (e) or an instrument that transfers title to a unit in  
209 the condominium which is not accompanied by a recorded  
210 assignment of developer rights in favor of the grantee of such  
211 unit is recorded, whichever occurs first. Thereafter, all unit  
212 owners except the developer may vote on such issues until  
213 control is turned over to the association by the developer. Any  
214 audit or review prepared under this section shall be paid for by  
215 the developer if done before turnover of control of the  
216 association.

217 (e) If an association invests funds pursuant to paragraph  
218 (16) (b), the association must prepare financial statements  
219 pursuant to paragraphs (a) and (b).

220 (16) INVESTMENT OF ASSOCIATION FUNDS.-

221 (a) Unless otherwise prohibited in the declaration, and in  
222 accordance with s. 718.112(2) (f), an association, including a  
223 multicondominium association, may invest any funds in one or any  
224 combination of investment products described in this subsection.

225 (b) If an association invests funds in any type of  
226 investment product other than a depository account described in  
227 s. 215.47(1) (h), the association must meet all of the following  
228 requirements:

229 1. The board must obtain prior approval by a majority vote  
230 of the unit owners or all nondeveloper voting interests at a  
231 duly called meeting of the association before investing funds in  
232 investment products other than a depository account described in



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233 s. 215.47(1)(h).

234 2. The board must develop a written investment policy  
235 statement and such statement must be annually approved during a  
236 budget meeting. An investment policy statement must, at minimum,  
237 address:

238 a. Liquidity;

239 b. Safety;

240 c. Yield;

241 d. Short-term and long-term goals;

242 e. Authorized investments;

243 f. The mix of investments allowed; and

244 g. The limits of authority relative to investment  
245 transactions.

246 3. The board must select an investment adviser who is  
247 registered under s. 517.12 and who is not related by affinity or  
248 consanguinity to any board member or unit owner. Any investment  
249 fees and commissions may be paid from the invested reserve funds  
250 or operating funds. The investment adviser selected by the board  
251 shall invest any funds not deposited into a depository account  
252 described in s. 215.47(1)(h) by the board and shall comply with  
253 the prudent investor rule in s. 518.11. The investment adviser  
254 shall act as a fiduciary to the association in compliance with  
255 the standards set forth in the Employee Retirement Income  
256 Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case  
257 of conflict with other provisions of law authorizing  
258 investments, the investment and fiduciary standards set forth in  
259 this subparagraph shall prevail.

260 4. At least once each calendar year, the association shall  
261 provide the investment adviser with the association's investment

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262 policy statement, the most recent reserve study report or a good  
263 faith estimate disclosing the annual amount of reserve funds  
264 which would be necessary for the association to fully fund  
265 reserves for each reserve item, and the financial reports  
266 prepared pursuant to subsection (13). The investment adviser  
267 shall annually review these documents and provide the  
268 association with a portfolio allocation model that is suitably  
269 structured to match projected reserve fund and liability  
270 liquidity requirements. There must be at least 36 months of  
271 projected reserves in cash or cash equivalents available to the  
272 association at all times.

273 (c) Portfolios managed by the investment adviser may  
274 contain any type of investment necessary to meet the objectives  
275 in the investment policy statement; however, portfolios may not  
276 contain stocks, securities, or other obligations that the State  
277 Board of Administration is prohibited from investing in under  
278 ss. 215.471, 215.4725, and 215.473 or that state agencies are  
279 prohibited from investing in under s. 215.472, as determined by  
280 the investment adviser.

281 (d) The investment adviser shall:

282 1. Annually provide the association with a written  
283 certification of compliance with this section; and

284 2. Submit monthly, quarterly, and annual reports to the  
285 association which are prepared in accordance with investment  
286 industry standards.

287 (e) Any principal, earnings, or interest managed under this  
288 subsection must be available at no cost or charge to the  
289 association within 15 business days after delivery of the  
290 association's written or electronic request.

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291 Section 2. Paragraph (a) of subsection (2) of section  
292 718.3026, Florida Statutes, is amended to read:

293 718.3026 Contracts for products and services; in writing;  
294 bids; exceptions.—Associations with 10 or fewer units may opt  
295 out of the provisions of this section if two-thirds of the unit  
296 owners vote to do so, which opt-out may be accomplished by a  
297 proxy specifically setting forth the exception from this  
298 section.

299 (2) (a) Notwithstanding the foregoing, contracts with  
300 employees of the association, and contracts for attorney,  
301 accountant, architect, community association manager, timeshare  
302 management firm, engineering, registered investment adviser, and  
303 landscape architect services are not subject to the provisions  
304 of this section.

305 Section 3. This act shall take effect July 1, 2021.