+-The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 630
INTRODUCER:	Rules Committee; Regulated Industries Committee; and Senator Baxley and others
SUBJECT:	Community Associations
DATE:	March 31, 2021 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 630 revises the regulation and governance of condominium, cooperative, and homeowners' associations under chs. 718, 719, and 720, F.S., respectively. The bill authorizes condominium, cooperative, and homeowners' associations to extinguish discriminatory restrictions in recorded title transactions.

For condominium associations, the bill:

- Prohibits a unit owner's insurance policy from including rights of subrogation against the association if the association's policy does not provide subrogation rights against the unit owner;
- Provides for the operation of more than one condominium by a condominium association (multicondominium).
- Reduces the time period an association must maintain official records of bids for work, equipment, or services to be performed from seven years to one year after receipt of the bid;
- Permits associations with 150 or more units to make official records available for inspection through an application that can be downloaded to a mobile device;
- Provides that only a board member's service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit;
- Permits associations to electronically transmit the written notice of a meeting;
- Increases the maximum permissible fee an association may charge for the transfer of a unit from $100 to $150, and provides for the adjustment of the fee every five years to an amount equal to the total annual increases in the Consumer Price Index during that period;

- Removes the prohibition against an association employing or contracting with any service provider that is owned or operated by a board member or person who has a financial relationship with a board member or officer;
- Permits unit owners to install a charging station for an electric vehicle or a natural gas fuel vehicle on a parking area exclusively designated for use by the unit owner. The unit owner is required to be responsible for the costs related to the installation, maintenance, and removal of the charging station for an electric vehicle or a natural gas fuel vehicle;
- Provides that a condominium developer may expend escrow funds to satisfy actual costs of construction and development, but exclude other specified costs, such as marketing costs;
- Repeals the requirement that the condominium ombudsman must maintain his or her office in Leon County.

For cooperative associations, the bill:

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

For homeowners' associations, the bill:

- Permits an association to adopt, by rule, procedures for posting meeting notices and agendas on a website and emailing members meeting notices and agendas;
- Requires sign-in sheets, voting proxies, ballots, and all other papers related to voting to be maintained as official records;
- Makes confidential any information an association obtains in connection to guests visiting homeowners in a gated community;
- Clarifies the situations in which an association is obligated to create or fund association reserve accounts;
- Specifies the types of expenses the developer is not obligated to pay.
- Provides for the prospective application of an amendment to the governing documents that restricts the right to rent a parcel;
- Provides that a change of ownership does not occur for purposes of applying an amendment restricting rental rights when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes a parcel owner; and
- Revises the conditions under which non-developer members of a homeowners' association are entitled to elect the majority of the board, to consistently distinguish between developer members and non-developer members.

For condominium and cooperative associations, the bill:

- Prohibits an association from requiring members to demonstrate any purpose or state any reason for inspecting official records; and
- Provides a process to resolve disputes by initiating presuit mediation as an alternative to mandatory nonbinding arbitration by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation.

For condominium, cooperative, and homeowners' associations, the bill:

- Provides that recall and election disputes are not eligible for mediation and must be arbitrated by the division or filed in court;
- Provides additional emergency powers to respond to injury and to an anticipated declared state of emergency; and
- Clarifies that payment of a fine is due five days after notice of the fine is provided to the unit owner, tenant, or invitee of the unit owner.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Condominium

A condominium is a "form of ownership of real property created under ch. 718, F.S."[1] Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements and members of the condominium association.[2] For unit owners, membership in the association is an unalienable right and required condition of unit ownership.[3] A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.[4] A declaration is similar to a constitution in that it:

> [S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.[5]

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.[6] Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a "board of administration."[7] The board of administrators comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.[8] In litigation, an association's board of directors is in charge of directing attorney actions.[9]

[1] Section 718.103(11), F.S.
[2] *See* s. 718.103, F.S.
[3] *Id.*
[4] Section 718.104(2), F.S.
[5] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[6] Section 718.303(3), F.S.
[7] Section 718.103(4), F.S.
[8] Section 718.103(2), F.S.
[9] Section 718.103(30), F.S.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over condominiums.[10]

Cooperative Associations

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

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

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.[11] The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[12]

The division has limited regulatory authority over cooperatives, including the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.[13]

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.[14]

A "homeowners' association" is defined as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."[15] Unless specifically stated to the contrary in the articles of

[10] *See* s. 718.501, F.S. *See infra*, the *Present Situation* for the proposed revisions to the division's authority set forth in s. 718.501, F.S.
[11] *See Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019), *review denied* 2020 WL 3442763 (Fla. 2020).
[12] *See* ss. 719.106(1)(g) and 719.107, F.S.
[13] Section 719.501(1), F.S.
[14] *See* s. 720.302(1), F.S.
[15] Section 720.301(9), F.S.

incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.[16]

Homeowners' associations are administered by a board of directors whose members are elected.[17] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.[18] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[19]

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

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

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

For homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.[20]

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

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community

[16] Section 720.302(5), F.S.
[17] *See* ss. 720.303 and 720.307, F.S.
[18] *See* ss. 720.301 and 720.303, F.S.
[19] Section 720.303(1), F.S.
[20] *See* s. 720.306(9)(c), F.S.

associations. The chapters delineate requirements for notices of meetings,[21] recordkeeping requirements, including which records are accessible to the members of the association,[22] and financial reporting.[23] Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

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

III. Effect of Proposed Changes:

Condominium Unit Insurance

Present Situation

A condominium association is required to use its best efforts to maintain insurance for the association, the association property, the common elements, and the condominium property.[24] Insurance coverage for the association must insure the condominium property as originally installed and all alterations or additions made to the condominium property.[25]

Condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, wall, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments. Such property and insurance is the responsibility of the unit owner.[26]

A condominium unit owner's insurance policy must conform to s. 627.714, F.S.,[27] which requires that an individual unit owner's residential property insurance policy must state that the coverage afforded by the policy is excess coverage over the amount recoverable under any policy covering the same property.[28]

An association is not obligated to pay for reconstruction or repairs to an improvement, benefiting a specific unit and installed by a unit owner.[29]

Alternatively, s. 718.111(11)(j), F.S., provides that any portion of the condominium property that must be insured by the association against property loss under s. 718.111(11)(f), F.S., which is damaged by an insurable event, shall be reconstructed, repaired, or replaced as necessary by the association as a common expense to the association. Under s. 718.111(j)1., F.S., the

[21] *See* ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.
[22] *See* ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.
[23] *See* ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners' associations, respectively.
[24] Section 718.111(11), F.S.
[25] Section 718.111(11)(f), F.S.
[26] Section 718.111(11)(f)3., F.S.
[27] Section 718.111(11)g), F.S.
[28] Section 627.714(4), F.S.
[29] Section 718.111(11)(n), F.S.

subrogation[30] rights of an insurer are not compromised if the unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by an association's insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees.

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

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

Section 718.111(j), F.S., does not provide a condominium unit owner or their insurer a private right of action against another unit owner or their insurer for property damage caused by the latter's intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association.[31]

In 2010, the Legislature repealed a prohibition against an insurance policy issued to an individual unit owner providing rights against the condominium association.[32]

Fannie Mae mortgage lending guidelines require that the insurance policy for a condominium project waive the right of subrogation against unit owners.[33]

Effect of Proposed Changes

The bill amends s. 627.714(4), F.S., to provide that a condominium unit owner's insurance policy may not provide subrogation rights against the association operating the condominium in which the property is located if the association's insurance policy does not provide a subrogation right against the unit owners.

Multicondominiums

Present Situation

Section 718.103(20), F.S., defines the term "multicondominium" to mean ~~a real estate development~~ containing two or more condominiums, all of which are operated by the same association.

[30] The term "subrogation" is described as a legal right held by insurance carriers to legally pursue a third party that caused an insurance loss to the insured. This is done in order to recover the amount of the claim paid by the insurance carrier to the insured for the loss. *See* Investopedia.com, *Subrogation*, at https://www.investopedia.com/terms/s/subrogation.asp (last visited Feb. 3, 2021).
[31] *See Universal Property & Casualty Insurance Company v. Loftus*, 276 So.3d 849 (Fla. 4th DCA 2019)
[32] Chapter 2010-174, s. 9, Laws of Fla. (amending s. 718.111(1)(g), F.S.)
[33] Fannie Mae, Selling Guide, Fannie Mae Single Family, Special Requirements for Condo Projects, p. 903, Dec. 4, 2019, available at https://www.fanniemae.com/content/guide/sel120419.pdf (last visited Feb. 16, 2021).

Section 718.405, F.S., provides for the operation of more than one condominium by a condominium association.

Effect of Proposed Changes

The bill amends s. 718.103(20), F.S., to revise the definition of the term "multicondominium" to provide that the property is "real property" instead of "a real estate development."

The bill creates s. 718.405(5), F.S., to provide that a multicondominium association may adopt a consolidated or combined declaration of condominium if such declaration complies with the requirements for the creation of a condominium, does not merge the condominiums, or change the legal descriptions of the condominium parcels, unless accomplished in accordance with law. The bill provides that this section is intended to clarify existing law and applies to associations existing on July 1, 2021.

Official Records – Condominium, Cooperative, and Homeowners' Associations

Present Situation

Florida law specifies the official records that condominium, cooperative, and homeowners' associations must maintain.[34] Generally, the official records must be maintained in Florida for at least seven years.[35] Certain of these records must be accessible to the members of an association.[36] Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.[37]

Condominium associations with 150 or more units are required to post digital copies of specified documents on their website.[38]

Effect of Proposed Changes

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

For condominium associations, the bill:

- Reduces the time period bids for work performed and bids for materials, equipment, or services must be maintained by associations to one year after receipt. Under current law, such records must be maintained for seven years.[39]

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

- Permits condominium associations with 150 or more to post digital copies of specified documents on an application that can be downloaded on a mobile device.
- Permits a renter of a condominium to inspect and copy the declaration of condominium. Current law only permits a renter to inspect and copy the association's bylaws and rules.
- Clarifies that a renter only has the right to inspect copies of the declaration of condominium, association bylaws, and rules.

The bill amends s. 718.111(12)(g), F.S., to permit condominium associations managing an association with 150 or more units, which do not contain timeshare units, to make digital copies of specified documents available to members through an application that may be downloaded to a mobile device as an alternative to the requirement posting copies of the documents on a website.

Regarding the official records requirements for condominium and cooperative associations, the bill prohibits condominium and cooperative associations from requiring a unit owner to demonstrate a purpose or state a reason for the inspection.[40]

Regarding homeowners' associations, the bill amends s. 720.303(4), F.S., to:
- Designate as an official record all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by owners in the association's official records.[41] Under the bill, these records must be maintained for one year after the date of the election, vote, or meeting to which the document relates.
- Make confidential any information an association obtains in connection to guests visiting homeowners in a gated community.

Extinguishment of Discriminatory Restrictions

Present Situation

Section 712.065(2), F.S., provides that a discriminatory restriction is not enforceable in this state. All discriminatory restrictions contained in any title transaction recorded in this state are unlawful, are unenforceable, and are declared null and void. Any discriminatory restriction contained in a previously recorded title transaction is extinguished and severed from the recorded title transaction, and the remainder of the title transaction remains enforceable and effective.

Section 712.065(1), F.S., defines the term "discriminatory restriction" to mean:

> a provision in a title transaction recorded in this state which restricts the ownership, occupancy, or use of any real property in this state by any natural person on the basis of a characteristic that has been held, or is held after September 4, 2020, by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability.

[40] Section 720.303(5)(c), F.S., provides a comparable provision for homeowners' associations.
[41] Sections 718.111(12)(a)12. and 719.104(2)(a)10., F.S., provide an identical provision for condominium and cooperative associations, respectively.

A discriminatory restriction appearing in a covenant or restriction affecting the parcel in a property owners' association[42] may be removed by an amendment approved by a majority vote of the board of directors of the respective property owners' association or an owners' association in which all owners may voluntarily join, notwithstanding any other requirements for approval of an amendment of the covenant or restriction.[43]

Effect of Proposed Changes

The bill amends ss. 718.112(1), 719.106(3), and 720.3075, F.S., relating to the bylaws of condominium, cooperative, and homeowners' associations, respectively, to authorize these associations to extinguish a discriminatory restriction in the manner provided under s. 712.065, F.S.

Condominiums Term Limits for Board Members

Present Situation

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

Board members may serve terms longer than one year if permitted by the bylaws or articles of incorporation. A board member may not serve more than eight consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.[44]

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

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

[42] Section 712.01(5), F.S., defines the term "property owners' association" to mean "a homeowners' association as defined in s. 720.301,[F.S.] a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction that is imposed on the parcels."
[43] Section 712.065(3), F.S.
[44] *Id.*

approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election.[45]

Effect of Proposed Changes

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

Condominium Meeting Notices

Present Situation

A condominium association must provide written notice for the annual meeting of the unit owners. The notice must include an agenda. Current law does not specify whether the requirement to include an agenda applies to all meetings of unit owners, including the annual meeting. The notice must be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting. The notice must also be posted in a conspicuous place on the condominium property for at least 14 continuous days before the annual meeting. Instead of posting the notice in a conspicuous place, a condominium may repeatedly broadcast the notice and agenda on a closed-circuit cable television system serving the association.[46]

Effect of Proposed Changes

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

Condominium Voting Process

Present Situation

At least 60 days before a scheduled election, a condominium association must mail, deliver, or electronically transmit to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda for the unit owner meeting, the association must mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates.[47]

Effect of Proposed Changes

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

[45] *In re: Petition for Declaratory Statement, Apollo Condominium Association, Inc.,* DS 2018-035, Division of Florida Condominiums, Timeshares, and Mobile Homes, September 12, 2018.
[46] Section 718.112(2)(d)3., F.S.
[47] Section 718.112(2)(d)4., F.S.

Condominium Transfer Fees

Present Situation

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

- The fee is limited to $100 or less;
- The fee is authorized in the association's governing documents; and
- The association is required to approve the transfer.[48]

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

Also, condominium associations may require a potential renter to provide the association with a security deposit equivalent to one month of rent. The association must place the security deposit in an escrow account maintained by the association.[49]

Effect of Proposed Changes

The bill amends s. 718.112(2)(i), F.S., to increase the maximum permissible transfer fee from $100 to $150. The bill provides that spouses, or a parent or parents and any dependent children, are considered one applicant for transfer purposes. The bill requires that a transfer fee must be adjusted every five years in an amount equal to the total annual increases occurring in the Consumer Price Index during that five-year period. Under the bill, the DBPR must periodically calculate the fees, rounded to the nearest dollar, and publish the adjusted amounts on its website.

Condominium Boards and Conflicts of Interest

Present Situation

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

Section 718.112(2)(p), F.S., also prohibits an association (that is not a timeshare condominium association) from employing or contracting with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity[50] by blood or marriage of a board member or officer. This prohibition does not apply to a service provider in which a board

[48] Section 718.112(2)(i), F.S.
[49] *Id.*
[50] Relatives of the third degree of consanguinity include great grandparent, aunt/uncle, niece/nephew, and great grandchild. *See*: https://www.uab.edu/humanresources/home/images/M_images/Relations/PDFS/FAMILY%20MEMBER%20CHART.pdf (last visited Feb. 11, 2021).

member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.

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

Effect of Proposed Changes

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

Condominium Alternative Fuel Charging Station

Present Situation

A condominium association may not prohibit a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The electricity charges for the station must be separately metered and payable by the unit owner.[51] Current law does not expressly permit a unit owner to install a natural gas fuel station.

Natural gas fuel is any liquefied petroleum gas product, compressed natural gas product, or a combination of these products used in a motor vehicle.[52] The term includes all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.[53] However, the term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electricity generation.[54]

Effect of Proposed Changes

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

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

[51] Section 718.113(8), F.S.
[52] Section 206.9951(2), F.S.
[53] *Id.*
[54] *Id.*

her successor, who installs a natural gas fuel station, is responsible for the cost for the supply and storage of the natural gas fuel station.

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

The bill also amends s. 718.121, F.S., to include a natural gas stations in the prohibition against filing a lien against a condominium association for labor or materials related to the installation of an electric vehicle charging station.

Alternative Dispute Resolution

Present Situation

Condominiums

Section 718.1255, F.S., provides an alternative dispute resolution process for certain disputes between unit owners and condominium associations. The division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration. Section 718.1255, F.S., states that the purpose of mandatory nonbinding arbitration is to provide efficient, equitable, and inexpensive decisions when disputes arise between owners and associations. An arbitrator's final order is not binding unless the parties agree to be bound, or the parties fail to file a petition for a trial de novo in the circuit court within 30 days after the mailing of the arbitrator's final order. A petition for arbitration tolls any applicable statute of limitations for the dispute, and, if there is a trial de novo, an arbitrator's decision is admissible as evidence.[55]

Non-binding arbitration is required for disagreements that involve the authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements.[56] Additionally, disputes pertaining to the board of directors' failure to properly conduct elections, give adequate notice of meetings, properly conduct meetings and provide access to association books and records must also be litigated in non-binding arbitration before Florida law grants unit owners access to the court system.[57] These types of disputes can be characterized as enforcement actions because they involve enforcing the terms and conditions of the condominium governing documents.

The division does not have jurisdiction to arbitrate the following disputes between a unit owner and an association that involve: [58]

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or another removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or

[55] Section 718.1225(4), F.S.
[56] *Id.*
[57] *Id.*
[58] *Id.*

- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

The filing fee for an arbitration petition is $50.[59]

As a component of mandatory non-binding arbitration, any party may petition the arbitrator to refer the case to mediation.[60] The purpose of mediation is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.[61] The dispute remains in arbitration, but the parties can select a mediator from a list of paid and volunteer mediators provided by the arbitrator.[62] The parties must share equally in the cost of the mediation.[63] If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates unless all parties agree in writing to continuing the arbitration proceedings, in which case the arbitrator's decision will be binding or nonbinding as the parties have agreed.[64]

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

Cooperatives

In cooperative associations, disputes, including recall election disputes, are subject the alternative dispute resolution requirements and procedures applicable to condominiums in s. 718.1255, F.S.[65]

Homeowners' Associations

Section 720.311, F.S., provides an alternative dispute resolution program for certain homeowner association disputes. An aggrieved party in a homeowners' association dispute initiates the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in s. 720.311, F.S., and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.[66]

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees.

[59] Section 718.1255(4)(a), F.S.
[60] Section 718.1255(4)(e), F.S.
[61] Section 718.1255(4)(g), F.S.
[62] Section 718.1255(4)(e), F.S.
[63] Section 718.1255(4)(h), F.S.
[64] *Id.*
[65] Sections 719.1255 and 719.106(1)(f), F.S.
[66] *Id.*

Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.[67]

If mediation is not successful in resolving all the disputed issues between the parties, the parties may proceed to civil court or may elect to enter into binding or non-binding arbitration.[68]

Effect of Proposed Changes

The bill amends s. 718.1255(4)(a), F.S., to provide that prior to court litigation, a party to a condominium dispute may either initiate presuit mediation as provided above or may petition the division for nonbinding arbitration. This provision also states that arbitration shall be binding on the parties if all parties agree in a writing filed in arbitration.

The bill also creates s. 718.1255(5), F.S., to require a party to a condominium dispute to initiate either arbitration or presuit mediation following the procedure for the mediation of homeowners' association disputes in s. 720.311, F.S., before beginning court litigation. Under the bill, parties in a condominium dispute may use the mediation process to resolve a dispute without first initiating the arbitration process.

Under the bill, recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for presuit mediation and must be arbitrated by the division or filed directly with a court of competent jurisdiction.

The bill amends ss. 718.112(2)(k) and 719.106(1)(l)., F.S., to require that a condominium association's bylaws provide for mandatory dispute resolution. It deletes the requirement that an association's bylaws must provide for mandatory nonbinding arbitration.

Emergency Powers – Condominiums and Cooperatives

Present Situation

Unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, ss. 718.1265(1), 719.128(1), and 720.316(10, F.S., provide the emergency powers of condominium, cooperative, and homeowners' association boards, respectively, in response to damage for which a state of emergency declared pursuant to s. 252.36, F.S.,[69] in the locale in which the community association is located. The emergency powers include the authority to give meeting notices by any practical means, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on association property.

The current emergency authority does not apply to a condominium, cooperative, and homeowners' association board's response to injury or to an anticipated declared state of emergency.

[67] Section 720.311(2)(b), F.S.
[68] Section 720.311(2)(c), F.S.
[69] Section 252.36, F.S., provides the Governor's emergency management powers, including the power to issue executive orders and proclamations.

Condominium, cooperative, and homeowners' association boards are also authorized to implement a disaster plan, determine whether any portions of the condominium property are unavailable for entry or occupancy, and to consult with emergency management officials. The associations are also authorized to mitigate damages.

Effect of Proposed Changes

The bill amends ss. 718.1265(1), 719.128(1), and 720.316(10, F.S., to the extent that a condominium, cooperative, and homeowners' association board's emergency authority, respectively, to apply its response to injury and to an anticipated declared state of emergency. The bill also authorizes these boards to conduct board meetings, committee meetings, membership meetings, and elections, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication. The bill also authorizes these associations to give meeting notices by electronic transmission.

The bill also clarifies the term "emergency" to have the same meaning as in s. 252.34(4), F.S., which defines emergency to mean "any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."

The bill authorizes condominium and cooperative associations to consult with public health officials when determining whether any portions of the condominium property are unavailable for entry or occupancy.

The bill creates ss. 718.1265(3), 719.128(3), and 720.306(3), F.S., to provide that condominium, cooperative, or homeowners' associations, respectively, may not during a declared state of emergency prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements for the purposes of ingress to and egress from the unit. In addition, these associations may not prohibit access that is necessary for the sale, lease, or other transfer of title of a unit; or the habitability of the unit or for the health and safety of such persons.

However, these associations may deny access based on a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention prohibiting access to the unit. Any access is subject to reasonable restrictions adopted by the association.

Pre-Closing Sales and Reservation Deposits

Present Situation

Under s. 718.202(3), F.S., if the contract for sale of the condominium unit provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the escrow account for use in the actual construction and development of the condominium property. However, the escrow funds may not be used for salaries, commissions, or expenses of salespersons, or for advertising purposes.

Effect of Proposed Changes

The bill amends s. 718.202(3), F.S., to provide that escrow funds may be used for the actual costs incurred by the developer in construction and development of the condominium property. The bill defines the term "actual costs" to include, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property. The bill prohibits the use of the escrow funds for marketing or promotional purposes, loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs.

Condominium and Homeowners' Associations Fines

Present Situation

Condominium, cooperative, and homeowners' associations may levy fines against an owner, occupant, or a guest of an owner for failing to comply with any provision in the association's declaration, bylaws, or rules. A fine imposed by a condominium or cooperative association may not exceed $100 per violation, and the total amount of a fine may not exceed $1,000.[70] However, a fine imposed by a homeowners' association may exceed $1,000 in the aggregate if the association's governing documents authorize the fine.[71] A fine imposed by a condominium or cooperative may not become a lien against the unit.[72] A fine by a homeowners' association of less than $1,000 may not become a lien against the parcel.[73]

An association's board may not impose a fine or suspension unless it gives at least 14 days written notice of the fine or suspension, and an opportunity for a hearing. The hearing must be held before a committee of unit owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension.[74]

A fine approved by the committee is due five days after the date of the committee meeting. The condominium or cooperative must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.[75]

Effect of Proposed Changes

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

[70] Sections 718.303(3) and 719.303(3), F.S.
[71] Section 720.305(2), F.S.
[72] Sections 718.303(3) and 719.303(3), F.S.
[73] Sections 720.305(2), F.S.
[74] Sections 718.303(3)(b)and (c), 719.303(3)(b) and (c), and 720.305(2)(b) and (c), F.S.
[75] *Id.*

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

Division of Florida Condominiums, Timeshares, and Mobile Homes

Present Situation

The division administers the provisions of ch. 718, for condominium associations. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control.[76] The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.[77] After control of the condominium is transferred from the developer to the unit owners, the division has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to association records.[78]

Section 718.501(1)(j), F.S., requires the division to provide training and educational programs to condominium association board members and unit owners. The division may review and approve education and training programs offered by providers and is required to maintain a current list of approved programs and providers and make the list available to board members and unit owners in a reasonable and cost-effective manner.

Effect of Proposed Changes

The bill amends s. 718.501, F.S., to expand the division's authority to include the maintenance of the association's official records. The division's current authority is limited to issues related to the unit owner's access to records.

Condominium Ombudsman

Present Situation

The office of the ombudsman within the division is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. Also, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.[79]

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.[80]

The ombudsman is required to maintain his or her principal office in Leon County.[81]

[76] Sections 718.501(1), F.S.
[77] *Id.*
[78] *Id.*
[79] Sections 718.5011 and 718.5012, F.S.
[80] *Id.*
[81] Section 718.5014, F.S.

Effect of Proposed Changes

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

Cooperative Property

Present Situation

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

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.[82] Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.[83] Real property is anything permanent, fixed, and immovable, such as land or a building. At common law, a 99-year leasehold was not considered an interest in real property. However, a long-term leasehold interest is taxed in the same manner as a fee interest, so case law commonly declares long-term leaseholds to be an interest in real property for taxation purposes.[84]

In Florida, a cooperative is treated as real property for some homestead purposes. Although the general definition of a homestead, including for taxation purposes, follows the common-law rule that requires an interest in real property, the Florida Constitution specifically extends the exemption to a cooperative unit.[85] Florida's homestead laws apply to a cooperative the exemption from forced sale by creditors[86] and the exemption from ad valorem taxation. However, a cooperative is not subject to Florida's homestead protections on devise and descent.[87]

The Condominium Act in ch. 718, F.S., specifically provides that "[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold." Thus, an ownership interest in a condominium is expressly converted by statute into an interest in real property, but there is no corresponding provision in the Cooperative Act.[88] The Third District Court of Appeal has recognized a need for clarification of this type of ownership interest.[89] In 2019, the Third District Court of Appeal certified a question of great public importance to the Florida Supreme Court concerning homestead protections for

[82] *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996)
[83] Am. Jur. 2d Property § 18.
[84] *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).
[85] FLA. CONST. art. VII, s. 6(a) provides: "The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years."
[86] Sections 222.01, and 222.05, F.S.
[87] *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).
[88] Section 718.106(1), F.S.
[89] *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008)

devise and descent of cooperative property. However, the Florida Supreme Court denied the appeal because the lower court had not declared invalid a state statute or a provision of the State Constitution.[90]

Effect of the Proposed Changes

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

Cooperative Association Meetings

Present Situation

When a board or committee member of a cooperative association participates in a meeting by telephone conference, that board or committee member's participation by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by unit owners present at a meeting.[91]

Effect of Proposed Changes

The bill amends s. 719.106(1)(b)5., F.S., to provide that a cooperative association board member or committee member who attends a meeting by telephone, real time video conferencing, or similar real-time electronic or video communication counts toward a quorum and may vote as if physically present.[92]

Governing Documents – Homeowners' Associations

Present Situation

Section 720.301(8), F.S., defines the term "governing documents" to mean:

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto;
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

Effect of Proposed Changes

The bill amends s. 720.301(8), to revise the definition of the term "governing documents" to remove rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

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[90] *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019), *review denied* 2020 WL 3442763 (Fla. 2020).
[91] Section 719.106(1)(b)5., F.S.
[92] Section 718.112(2)(b)5., F.S., provides a comparable provision for condominium associations.

Homeowners' Associations Electronic Meeting Notices

Present Situation

A homeowners' association is required to notify all board members at least 48 hours before the meeting by posting a meeting notice in a conspicuous place on the association's property. Alternatively, the notice may be mailed, hand-delivered, or electronically transmitted at least seven days before the meeting.[93]

Meeting notices must be posted 14 days before any meeting where a nonemergency special assessment or an amendment to the rules regarding unit use is to be considered.[94]

Instead of posting or mailing notices, a homeowners' association with more than 100 members may broadcast notices on a closed-circuit cable television system for at least four times every broadcast hour of each day that a posted notice is otherwise required.[95]

Effect of Proposed Changes

The bill amends s. 720.303(2), F.S., to authorize an additional method for homeowners' associations with more than 100 members to provide meeting notices by authorizing the board to adopt, by rule, a procedure for conspicuously posting a meeting notice and agenda on a website serving the association or an application on a mobile device. The rule must:

- Require the association to send an electronic notice to members with a hypertext link to the website where the notice is posted or the mobile device application; and
- Require the notice on the association's website or mobile device application to be posted for at least as long as the physical posting of a meeting notice is required.[96]

Homeowners' Association Developers and Reserve Accounts

Present Situation

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

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

[93] Section 720.303(2)(c), F.S. Sections 718.112(2) and 719.106(1), F.S., provide comparable notice requirements for condominium and cooperative associations.
[94] *Id.*
[95] *Id.*
[96] Sections 718.112(2)(c) and 719.106(1)(c), F.S., provide comparable notice requirements for meetings in condominium and cooperative associations, respectively.
[97] Section 720. 303(6)(a), F.S.

result in a special assessment imposed on members.[98] A statement in conspicuous type must be included in each financial state indicating that budget does not provide for reserve accounts.

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

In the 2016 case, *Mackenzie v. Centex Homes*,[99] Florida's Fifth District Court of Appeal (Fifth DCA) ruled that it was unclear whether s. 720.308(1)(b), F.S., excuses a developer from paying only its share of association operating expenses and assessments or excuses the developer from paying all other contributions including reserve funds. Although the governing documents of an association may specify whether reserve funds are included in operating expenses and assessment, the Fifth DCA found that the developer's governing documents were ambiguous on the matter.

Relying on canons of statutory interpretation, the Fifth DCA ruled that Centex (the developer) was liable for funding the reserve accounts of the association because the developer-controlled association initially established a reserve account and did not defund or waive the reserve accounts according to the procedure outlined in s. 720.303(6), F.S. To comply with s. 720.303(6), F.S., a developer choosing to provide deficit funding to an association, instead of funding reserve accounts, must waive reserve funding at a properly noticed meeting of the homeowners' association and note the absence of reserve funds in a conspicuous location in the financial reports and annual budgets provided to homeowners and prospective buyers.

Effect of Proposed Changes

The bill amends ss. 720.303(6)(c) and (d), F.S., to clarify the conditions in which a developer is obligated to fund the reserve accounts of a homeowners' association.

The bill revises the requirement that the statement that must be included in each financial report if the budget does not fund reserve accounts to also state that the budget does not "fully fund" reserve accounts.

The bill includes the declaration of covenants, articles, or bylaws of an association as one of the basis for the funding of reserve accounts.

The bill also removes language that deems an association to have provided for reserve accounts funds if the developer initially establishes the accounts. The bill provides that the developer is not obligated to establish reserve accounts while in control of the association. If the developer includes reserves in the budget, the developer may determine the amount of reserves included.

[98] *Id.* at (b)
[99] *Mackenzie v. Centex Homes*, 208 So.3d 790 (Fla. 5th DCA 2016).

Under the bill, the developer is not obligated to pay the following:

- Contributions to reserve accounts for capital expenditures and deferred maintenance other reserves the association is required to fund pursuant to any state, municipal, county, or other governmental statute or ordinance;
- Operating expenses; and
- Assessments related to the developer's parcels for any period of time the declaration requires the developer to only pay the deficit, if any, between the total amount of the assessments receivable from other members plus any other association income and the lesser of the budgeted or actual expenses incurred by the association during such fiscal year.

The provisions in the bill specifying the obligations of the developer to establish and fund reserve account and specifying the expenses the developer is obligated to pay apply to all homeowners' associations existing on or created after July 1, 2021.

Homeowners' Associations Governing Document Amendments

Present Situation

Amendment Notices

Section 720.306(1)(b), F.S., requires that, unless otherwise provided in the governing documents or required by law, the governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. The association is required to provide copies of the amendment to the members within 30 days after recording an amendment to the governing documents. If a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted.[100]

A written notice must also be sent to certain mortgage holders or assignees to obtain consent or joinder for the proposed amendment.[101]

Notices related to amendments to the governing documents must be mailed or delivered to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the parcel is located.[102]

Amendment Affecting Rental Rights

Current law does not prevent a homeowners' association from adopting an amendment to its governing documents to restrict members from renting parcels. If such a provision was adopted by an association, the restriction would apply to all parcel owners regardless of when they obtained title to their property or whether they voted against the restriction. This differs from current law relating to rental restrictions in condominium associations. In a condominium association, a prohibition against the rental of units or that alters the duration of the rental term, or specifies or limits the number of times a unit owner is entitled to rent their unit during a

[100] *See* s. 720.306(1)(b), F.S. The consent of mortgage holder and assignees is required for any mortgage recorded before July 1, 2013.
[101] *See* s. 720.306(1)(d), F.S.
[102] Section 720.306(1)(g), F.S.

specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the restrictions' effective date.[103]

Effect of Proposed Changes

Amendment Notices

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

Amendment Affecting Rental Rights

The bill amends s. 720.306(1)(g), F.S., to provide that an amendment to the governing documents, rule, or regulation enacted after July 1, 2021 prohibiting a parcel owner from renting the parcel, altering the authorized duration of a rental term, or specifying or limiting the number of times a parcel owner may rent his or her parcel during a specified term applies only to a parcel owner who acquires title to the parcel after the amendment's effective date or to a parcel owner who consents to the amendment.

The bill creates s. 720.306(1)(h), F.S., to permit an association to adopt an amendment prohibiting or regulating rentals for less than six months or prohibiting rentals more than three times in a calendar year applies to all parcel owners, regardless of when the parcel owner acquired title to their parcel or whether they consented to the amendment.

The bill exempts homeowners' associations with 15 or fewer parcel owners from the provisions in the bill related to an amendment affecting the rental of parcels.[104]

The bill also provides that a change of ownership does not occur for purposes of applying an amendment restricting rental rights when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes a parcel owner.

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

For a conveyance to be recognized as being made to an affiliated entity, the entity must give the homeowners' association a document certifying that the exception applies and any organizational documents for the parcel owner and the affiliated entity supporting the representations in the certificate.

[103] Section 718.110(13), F.S.

[104] Section 720.303(1), F.S., provides that an association with 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner.

Transition of Homeowners' Association Control

Present Situation

Section 720.307, F.S., details when the parcel owners other than the developer are entitled to elect at least a majority of the members of the board of directors:

- Three months after 90 percent of the parcels that will be operated ultimately by the association have been conveyed to purchasers;
- When such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity for the mortgage financing of parcels;
- When the developer has abandoned or deserted his or her responsibility to maintain and complete the amenities or infrastructure disclosed in the governing documents. There is a rebuttable presumption that the developer has abandoned and deserted the property if the developer has unpaid assessments or guaranteed amounts under s. 720.308, F.S., for a period of more than two years;
- When the developer files a petition seeking protection in bankruptcy under chapter 7 of the federal Bankruptcy Code;
- When the developer loses title to the property either through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment; or
- When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members.

Section 720.307(2), F.S., provides that non-developer parcel owners are entitled to elect at least one member of the board of directors when 50 percent of the parcels in all phases of the community have been conveyed to members.

Builders, contractors, or others who purchase a parcel for the purpose of constructing improvements on the parcel for resale are not considered to be members other than the developer.[105]

Effect of Proposed Changes

The bill amends s. 720.307, F.S., to revise the conditions under which the non-developer members of a homeowners' association are entitled to elect the majority of the board by adding the term "other than the developer" in order to consistently distinguish between developer members and non-developer members.

Effective Date

The bill provides an effective date of July 1, 2021.

[105] Section 720.307(1), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill Increases the maximum permissible fee an association may charge for the transfer of a unit from $100 to $150, and provides for the adjustment of the fee every five years to an amount equal to the total annual increases in the Consumer Price Index during that period.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Business and Professional Regulation noted:

Arbitration is an efficient and cost-effective option to mediation and court litigation. When the parties do not both elect arbitration, the first to file with either the [Division of Condominiums, Timeshares, and Mobile Homes] arbitration unit or with circuit court would determine the course

of action for both parties. The proposal appears to contradict the legislative findings in s. 718.1255(3)(a), F.S., which 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.[106]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.714, 718.103, 718.111, 718.112, 718.113, 718.117, 718.121, 718.1255, 718.1265, 718.202, 718.303, 718.405, 718.501, 718.5014, 719.103, 719.104, 719.106, 719.128, 720.301, 720.303, 720.305, 720.306, 720.307, 720.311, 720.3075, and 720.316.

IX. Additional Information:

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

CS/CS by Rules on March 31, 2021:
The committee substitute amends s. 720.303(6)(d), F.S., revise the financial obligations of the developer in a homeowners' association by:

- Providing that the developer is not obligated to establish reserve accounts while in control of the association.
- Providing that the developer may determine the amount of reserves if the developer includes reserves in the budget.
- Specifying the types of expenses the developer is not obligated to pay.

CS by Regulated Industries on February 16, 2021:
The committee substitute removes provisions from the bill:

- Requiring condominium associations to maintain all official records in the manner and format determined by rules of the Florida Division of Condominium, Timeshares, and Timeshares, and Mobile Homes.
- Requiring condominium associations provide an itemized list of all records made available for inspection and copying in response to a written request, and requiring that the list be accompanied by a sworn affidavit attesting to the accuracy of the list.
- Expanding the division's regulatory authority over financial issues and defining the term "financial issues."
- Authorizing the division to adopt rules to establish requirements for the training and education programs for condominium board members and unit owners.

The committee substitute also:

- Makes confidential any information an association obtains in connection to guests visiting homeowners in a gated community.
- Provides that a change of ownership affecting rental rights does not occur when an heir becomes the parcel owner.

[106] Department of Business & Professional Regulation, *2021 Agency Legislative Bill Analysis for SB 630*, at page 8, (Feb. 4, 2021).

- Revises the conditions under which the non-developer members of a homeowners' association are entitled to elect the majority of the board by adding the term "other than the developer" in order to consistently distinguish between developer members and non-developer members.

B. Amendments:

None.