

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 665 Homeowners' Association Rental Agreements

**SPONSOR(S):** Commerce Committee, McClure

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	15 Y, 0 N	Thompson	Anstead
2) Civil Justice & Property Rights Subcommittee	17 Y, 1 N	Mawn	Jones
3) Commerce Committee	21 Y, 0 N, As CS	Thompson	Hamon

### SUMMARY ANALYSIS

Chapter 720, F.S., also known as the "Homeowners' Association Act," governs homeowners' associations (HOAs) in Florida. The powers and duties of an HOA include the powers and duties provided in ch. 720, F.S., and in the HOA governing documents and amendments thereto, which generally apply to all owners.

When an HOA adopts an amendment to its governing documents to restrict members from renting parcels, such restriction applies to all parcel owners, regardless of when they acquired title to their parcels. However, when a condominium (condo) association adopts a rental restriction, the restriction applies only to condo unit owners who consent to the amendment or who acquire title to their unit after the restriction is imposed. As a result, this "grandfathering" provision allows certain condo unit owners to rent their units without the burden of rental restrictions that are imposed prospectively. A similar "grandfathering" provision does not exist for HOAs.

HB 665 provides that, for an HOA with more than 15 parcels, a governing document or a governing document amendment enacted after July 1, 2021, prohibiting or regulating rental agreements for a term of six months or more only applies to an owner who:

- Acquires title to his or her parcel after the governing document or amendment's effective date; or
- Consents to such governing document or amendment.

However, the bill allows an HOA with more than 15 parcels to amend its governing documents to prohibit or regulate rental agreements for terms of less than six months and parcel rental for more than three times a year. Such amendments would apply to all parcel owners.

The bill also specifies that a change of ownership for the purposes of the application of an HOA rental provision does not occur 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 the parcel owner.

The bill specifies that ownership does change when, with respect to a parcel owner that is a business entity, every person that owned an interest in the real property at the time of the enactment of the amendment or rule conveys their interest in the real property to an unaffiliated entity.

The bill does not appear to have a fiscal impact on state or local government.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Community Associations

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

- Condominium associations;
- Cooperative associations;
- Florida mobile home parks and related associations;
- Vacation units and timeshares;
- Yacht and ship brokers and related business entities; and
- Homeowners' associations (limited to arbitration of election and recall disputes).<sup>1</sup>

##### Homeowners' Associations (HOAs)

Chapter 720, F.S., also known as the "Homeowners' Association Act," governs certain types of Florida homeowners' associations (HOAs), protecting the rights of HOA members without unduly impairing an HOA's ability to perform its functions.<sup>2</sup> Chapter 720, F.S., provides requirements for notices of meetings,<sup>3</sup> recordkeeping, including which records are accessible to HOA members,<sup>4</sup> and financial reporting.<sup>5</sup>

An HOA is defined as an association of residential property owners in which voting membership is comprised of "parcel owners," membership is a mandatory condition of parcel ownership, and the HOA is authorized to impose assessments that, if unpaid, may become a lien on the parcel.<sup>6</sup>

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S.<sup>7</sup> Like a condominium or cooperative, an HOA is administered by an elected board of directors.<sup>8</sup> The powers and duties of an HOA include the powers and duties provided in ch. 720, F.S., and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments thereto.<sup>9</sup>

Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes,<sup>10</sup> but no state agency directly regulates HOAs.

##### HOA Rental Restrictions

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<sup>1</sup> Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes Complaints/Investigations*, [http://myfloridalicense.custhelp.com/app/answers/detail/a\\_id/2220/~division-of-florida-condominiums%2C-timeshares%2C-and-mobile-homes](http://myfloridalicense.custhelp.com/app/answers/detail/a_id/2220/~/division-of-florida-condominiums%2C-timeshares%2C-and-mobile-homes) (last visited Mar. 12, 2021).

<sup>2</sup> S. 720.302(1), F.S.

<sup>3</sup> S. 720.303(2), F.S.

<sup>4</sup> S. 720.303(4), F.S.

<sup>5</sup> S. 720.303(7), F.S.

<sup>6</sup> S. 720.301(9), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Ss. 720.303 and 720.307, F.S.

<sup>9</sup> Ss. 720.301 and 720.303, F.S.

<sup>10</sup> S. 720.306(9)(c), F.S.

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.<sup>11</sup> Governing document amendments generally apply to all owners in the HOA, except that HOAs with 15 or fewer parcels may only enforce restrictions against a parcel owner that were in place at the time the owner acquired his or her parcel.<sup>12</sup>

Current law does not prevent an HOA from adopting an amendment to its governing documents to restrict members from renting parcels. If an HOA adopts such a provision, the restriction applies to all parcel owners regardless of when they obtained title to their parcels or whether they voted against the restriction.

Conversely, in a condominium association, a rental restriction amendment that alters the duration of the permissible rental term or limits the number of times a unit owner may rent his or her unit during a specified period applies only to a unit owner who:

- Consents to the amendment; or
- Acquires title to his or her unit after the amendment's effective date.<sup>13</sup>

Such a provision does not exist for HOA parcel owners.

### **Effect of Proposed Changes**

HB 665 provides that, for an HOA with more than 15 parcels, a governing document or a governing document amendment enacted after July 1, 2021, prohibiting or regulating rental agreements for a term of six months or more only applies to an owner who:

- Acquires title to his or her parcel after the governing document or amendment's effective date; or
- Consents to such governing document or amendment.

However, the bill allows an HOA with more than 15 parcels to amend its governing documents to prohibit or regulate rental agreements for terms of less than six months and parcel rental for more than three times a year. Such amendments would apply to all parcel owners.

The bill also specifies that a change of ownership for the purposes of the application of an HOA rental provision does not occur when a parcel owner conveys the parcel to an affiliated entity,<sup>14</sup> when beneficial ownership<sup>15</sup> of the parcel does not change, or when an heir becomes the parcel owner. For a conveyance to be recognized as one made to an affiliated entity, the entity must give the HOA a document certifying that the affiliated entity provisions apply and, if requested by the HOA, any organizational documents for the parcel owner and the affiliated entity supporting the certificate's representations. Ownership does change when, with respect to a parcel owner that is a business entity, every person that owned an interest in the real property at the time of the enactment of the amendment or rule conveys their interest in the real property to an unaffiliated entity.

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<sup>11</sup> S. 720.306(1), F.S.

<sup>12</sup> S. 720.303(1), F.S.

<sup>13</sup> S. 718.110(13), F.S.

<sup>14</sup> "Affiliated entity" means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests.

<sup>15</sup> "Beneficial ownership" means the natural person who ultimately owns or controls a legal entity or arrangement, such as a corporation or a trust. Inter-American Development Bank, *A Beneficial Ownership Implementation Toolkit*, <https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf> (last visited Mar.12, 2021).

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

**Section 2:** Provides an effective date of July 1, 2021.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may ensure that HOA parcel owners who acquire title to their parcels before the enactment of a long-term rental restriction would not be subject to the restriction unless they consent to it.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2021, the Commerce Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Specifies that a change of ownership does not occur when an heir becomes the parcel owner.
- Clarifies that a change of ownership does occur with regard to a business entity, when every person that owned an interest in the real property at the time of the enactment of the amendment or rule conveys their interest in the real property to an unaffiliated entity.

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