HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 867 Community Associations
SPONSOR(S): Judiciary Committee and Civil Justice & Property Rights Subcommittee, Shoaf and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 630

FINAL HOUSE FLOOR ACTION: 114 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 867 passed the House on April 27, 2021, as CS/CS/SB 630.

The Department of Business and Professional Regulation ("DBPR") broadly regulates condominium ("condo") and cooperative ("co-op") associations and has limited regulatory authority over homeowner's associations ("HOA").

The bill:

- Requires condo associations to maintain bids for work for one year, instead of seven.
- Prohibits a condo or co-op association from requiring unit owners to state a reason for wanting to inspect official records and modifies the HOA records inaccessible to HOA members.
- Provides that condo board member term limits apply to service starting July 1, 2018.
- Prohibits condo unit owners' insurance policies from providing a right of subrogation in certain circumstances.
- Modifies specified notice and contract requirements for condo associations.
- Allows condos and HOAs to post certain documents on mobile device applications.
- Modifies a co-op association's quorum requirements to allow a quorum to be achieved by members appearing by video teleconference or other real-time electronic means.
- Increases the transfer fee that condos may charge a buyer or renter from $100 to $150.
- Authorizes mediation of specified condo and co-op disputes in lieu of arbitration with DBPR.
- Allows a condo unit owner to install a natural gas fuel station subject to statutory limitations.
- Allows a condo association to operate an electric vehicle charging station or natural gas fuel station upon the common elements or association property and establish the charges for its use.
- Modifies an association's emergency powers.
- Clarifies that a multi-condo association may adopt a consolidated declaration of condo under specified circumstances and that such adoption does not merge the condos.
- Allows the condo Ombudsman to maintain a principal office outside Leon County, Florida.
- Specifies that an interest in a co-op association is an interest in real property.
- Provides that HOA amendments affecting a parcel's rent or lease only apply to certain owners.
- Allows election and recall disputes to be filed in court in lieu of arbitration with DBPR.
- Allows most condo and co-op disputes to go through pre-suit mediation.
- Modifies provisions relating to HOA developers.
- Specifies that a developer is not an HOA member for certain transition of HOA control purposes.
- Authorizes a developer in control of an HOA to include reserves in the budget and specifies what a developer is not obligated to pay for.
- Authorizes associations to extinguish discriminatory restrictions in a specified manner.

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

The bill was approved by the Governor on June 16, 2021, ch. 2021-99, L.O.F., and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes ("Division"), within the Department of Business and Professional Regulation ("DBPR"), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, alternative dispute resolution, 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 the arbitration of election and recall disputes).

Condominiums

A condominium is a form of real property ownership created under ch. 718, F.S. Persons own condominium units along with an undivided right of access to the condominium's common elements.[1] A condominium is created by recording a declaration of condominium, which governs the relationship between condominium unit owners and the condominium association, in the public records of the county where the condominium is located.[2] All unit owners are members of the condominium association, and the association is responsible for common elements operation and maintenance.[3] The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration," which is responsible for the association's administration.[4]

Cooperatives

A cooperative is a form of property ownership created under ch. 719, F.S., in which the real property is owned by the cooperative association and individual units are leased to the residents, who own shares in the association.[5] The lease payment amount is the pro-rata share of the cooperative's operational expenses. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are largely identical to those regulating condominiums.

Homeowners' Associations

A homeowners' association ("HOA") is an association of residential property owners in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[6] Like a condominium or cooperative, an HOA is administered by an elected board of directors, and an HOA's powers and duties include those powers and duties provided by law and in the governing documents.[7] Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes, but no state agency directly regulates HOAs.[8]

[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 718.103(2), F.S.
[4] S. 718.103(4), F.S.
[5] S. 719.103(2) and (26), F.S.
[6] S. 720.301(9), F.S.
[7] Ss. 720.301(8) and 720.303(1), F.S.
[8] *See generally*, ch. 720, F.S.

Cooperatives as Personal and Real Property Interest

Background

A cooperative association's real property[9] is owned by the cooperative association, not the individual unit owners.[10] Thus, a person who buys into a cooperative does not receive title to a cooperative 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 cooperative is an interest in personal property,[11] not real property.[12] At common law, a leasehold, even for as long as 99 years, was not considered an interest in real property.[13] However, a long-term leasehold interest is taxed in the same manner as a fee interest, so courts generally regard long-term leaseholds to be an interest in real property for taxation purposes.[14]

A cooperative is treated as real property for some homestead purposes. Even though the legal definition of homestead follows the common law and requires an interest in real property to qualify for the homestead exemption, the Florida Constitution specifically extends the exemption to a cooperative unit.[15] Florida's homestead laws govern the cooperative for purposes of exemption from forced sale by creditors[16] and for purposes of the ad valorem taxation exemption. However, a cooperative is not subject to Florida's homestead protections and is not considered real property for purposes of devise and descent.[17]

In contrast, the Condominium Act specifically provides that a condominium parcel created by the declaration is a separate parcel of real property.[18] Thus, Florida law expressly converts an ownership interest in a condominium into an interest in real property. Because there is no corresponding cooperative statute, Florida courts have recognized that there is some confusion in this area and a need for clarification on whether a cooperative ownership interest is an interest in real property or personal property.[19]

Effect of the Bill

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

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[9] Real property is anything that is permanent, fixed, and immovable, such as land or a building.
[10] S. 719.103(12), F.S.
[11] Generally, personal property is any object or right that is not real property, including stocks. Am. Jur. 2d Property s. 18.
[12] *Downey v. Surf Club Apartments, Inc.*, 667 So. 2d 414 (Fla. 1st DCA 1996).
[13] *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).
[14] *Id.*
[15] Art. VII, s. 6(a), Fla. Const. ("The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.").
[16] Ss. 222.01 and 222.05, F.S.
[17] Devise and descent is the transfer or conveyance of property by will or inheritance. *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); *In re Estate of Wartels*, 357 So.2d 708 (Fla. 1978); Black's Law Dictionary (11th ed. 2019).
[18] S. 718.103(11), F.S.
[19] *Phillips*, 958 So. 2d at 425; *Levine v. Hirshon*, 980 So. 2d 1053 (Fla. 2008).

HOA Governing Documents

Background

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.[20]

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.[21] The articles of incorporation establish the HOA's existence, basic structure, and governance.[22] The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.[23]

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.[24] Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.[25]

Effect of the Bill

The bill deletes an HOA's rules and regulations from the definition of "governing documents." This means that provisions regarding governing document amendment would no longer apply to the rules and regulations.

Multicondominiums

Background

A multicondominium is a real estate development with two or more condominiums operated by the same association.[26] For each condominium in a multicondominium, the declaration of condominium must disclose or describe:

- The manner by which the association's assets, liabilities, common surplus, and common expenses will be apportioned among the units within the various condominiums operated by the association;
- Whether unit owners in another condominium will or may have the right to use recreational areas or any other facilities or amenities that are common elements of the condominium and the specific formula by which the other users will share the common expenses related to those facilities or amenities;
- Recreational and other commonly used facilities or amenities which the developer has committed to provide that will be owned, leased, or dedicated by a recorded plat to the association but which are not included within the association's condominium operation; and
- Unit owner voting rights in the election of directors and in other multicondominium association affairs when an owner vote is taken.[27]

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[20] S. 720.301(8), F.S.
[21] Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/ (last visited May 5, 2021).
[22] *Id.*
[23] *Id.*
[24] S. 720.306(1), F.S.
[25] *Id.*
[26] S. 718.103(20), F.S.
[27] S. 718.405(1), F.S.

A multicondominium may be formed by the merger or consolidation of two or more existing condominium associations.[28]

Effect of the Bill

The bill changes the definition of "multicondominium" to specify that the multicondominium is real property, not a real estate development. The bill also clarifies that a multicondominium association may adopt a consolidated or combined declaration of condominium if the declaration complies with applicable law and does not serve to merge the condominiums or change the legal description of the condominium parcels, unless accomplished in accordance with law.

Quorum Requirements

Background

Under the Condominium Act, a board member's participation in a meeting by telephone, real time videoconferencing, or similar real-time electronic or video communication counts towards a quorum, and such member may vote as if he or she is actually present at the meeting.[29] A speaker must be used so that the member's conversations can be heard by members and unit owners physically present at the meeting.[30] However, the Cooperative Act only allows board members appearing by telephone to count towards a quorum.[31] Cooperative association board members appearing by telephone may vote by telephone.[32]

Effect of the Bill

The bill modifies the Cooperative Act's board member quorum requirement to mirror that of the Condominium Act, so that cooperative association board members may attend board meetings by real-time videoconferencing or similar real-time electronic or video communication and have their presence counted towards a quorum.

Association Emergency Powers

Background

Condominium associations, cooperative associations, and HOAs have emergency powers they may exercise in response to damage caused by an event for which the Governor declares a state of emergency in the area in which the condominium, cooperative, or community is located.[33] These powers include:

- Conducting board or membership meetings after notice of the meetings is provided in as practicable a manner as possible;
- Canceling and rescheduling an association meeting;
- Designating assistant officers who are not directors who have the same authority as the executive officer if the executive officer is incapacitated or unavailable;
- Relocating the association's principal office or designating an alternative principal office;
- Entering into agreements with counties and municipalities to assist with debris removal;
- Implementing a disaster plan before or immediately after the event for which a state of emergency is declared, which may include turning on or shutting off elevators; water, sewer, or security systems; or air conditioners;

[28] S. 718.405(4), F.S.
[29] S. 718.112(2)(b)5., F.S.
[30] *Id.*
[31] S. 719.106(1)(b)5., F.S.
[32] *Id.*
[33] Ss. 718.1265(1), 719.128(1), and 720.316(1), F.S.

- Determining whether association property can be safely inhabited, and determining that any portion of the property is unavailable for entry or occupancy by unit or parcel owners or their family members, tenants, guests, agents, or invitees in order to protect their health, safety, or welfare.
    - Any such determination must be based on the advice of emergency management officials or licensed professionals retained by the board of administration.
- Requiring the evacuation of the property in the event of a mandatory evacuation order in the area where the condominium, cooperative, or community is located;
- Mitigating further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the property;
- Levy special assessments without an owner vote; and
- Borrow money and pledge association assets as collateral to fund emergency repairs and carry out association duties if operating funds are insufficient.[34]

Additionally, condominium and cooperative association emergency powers include contracting, on behalf of unit owners, for items or services for which the owner is otherwise individually responsible but which are necessary to prevent further association property damage.[35]

On March 20, 2020, Governor DeSantis issued executive order 20-52, declaring a state of emergency due to COVID-19.[36] After Governor DeSantis issued executive order 20-52, legal experts questioned whether COVID-19 constituted "damage" for purposes of granting emergency powers for community association boards.[37] On March 27, 2020, the DBPR Secretary issued an emergency order suspending the requirement that a board's emergency powers be conditioned on "damage caused by an event" and giving associations the ability to exercise most of their emergency powers in response to the pandemic.[38]

Effect of the Bill

The bill expands an association's emergency powers by:

- Specifying that the association holds emergency powers in response to either damage or injury, and that such damage or injury may be caused or anticipated in connection with an emergency for which the Governor declares a state of emergency;
- Defining "emergency" to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or peace, which results or may result in substantial injury or harm to the population or substantial damage or property loss; and
- Authorizing the association to:
    - Conduct elections and board, committee, and membership meetings by telephone, real-time video teleconferencing, or similar real-time electronic or video communication;
    - Implement an emergency plan before, during, or after the event;
    - Base determinations about access to or use of the association's common areas or facilities on the advice of emergency management, public health officials, or licensed professionals retained by or otherwise available to the board; and

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[34] *Id.*
[35] Ss. 718.1265(1) and 719.128(1), F.S.
[36] Fla. Exec. Order 20-52 (Mar. 20, 2020).
[37] Ryan Poliakoff, *Does HOA have power to restrict access in response to coronavirus emergency?* Florida Today March 21, 2020 https://www.floridatoday.com/story/money/2020/03/21/does-hoa-have-power-restrict-access-response-coronavirus-emergency/2880085001/ (last visited May 5, 2021); Donna Berger, *Legal advice for HOAs: Take coronavirus seriously, but don't panic*, Miami Herald March 14, 2020 https://www.miamiherald.com/news/business/real-estate-news/article240916146.html (last visited May 5, 2021).
[38] DBPR. Emer. Order 20-04 (Mar. 27, 2020), http://www.myfloridalicense.com/dbpr/os/documents/EO_2020-04.pdf (last visited May 5, 2021); *see also* Ryan Poliakoff, *Homeowners Associations May Use Emergency Powers During COVID-19 Pandemic*, Florida Today (Apr. 2, 2020), https://www.floridatoday.com/story/money/2020/04/02/covid-19-pandemic-homeowners-associations-may-use-emergency-powers/5102124002/ (last visited May 5, 2021).

- Mitigate further injury or contagion, which may include sanitizing the association's common areas or facilities.

However, the bill does not allow an association to prohibit unit or parcel owners or their tenants, guests, agents, or invitees from accessing association common areas and facilities for the purpose of ingress to and egress from the unit or parcel when access is necessary in connection with the unit or parcel's:

- Sale, lease, or other title transfer; or
- Habitability or for the health and safety of such persons unless a governmental order or determination, or a public health directive from the CDC, has been issued prohibiting such access to the unit or parcel. Any such access is subject to reasonable restrictions adopted by the association.

Official Records

Background

Condominiums, cooperatives, and HOAs must maintain official association records for at least seven years, including:

- The articles of incorporation, declaration, bylaws, and rules of the association;
- Meeting minutes;
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners or members consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- The association's accounting records;
- All contracts for work to be performed, including bids for work, materials, and equipment, except that cooperatives and HOAs are only required to maintain bids for one year;
- A copy of the plans, permits, warranties, and other items provided by the developer; and
- All other written records which are related to the association's operation.[39]

The official records for condominiums and cooperatives, but not for HOAs, must also include all ballots, sign-in sheets, voting proxies, and all other documents relating to unit owner voting.[40]

Owners may inspect and copy an association's official records, and the association must make the records available for inspection within ten business days of receiving an inspection request.[41] A condominium unit renter may inspect and copy the association's bylaws and rules. However, a renter may not copy and inspect the declaration of condominium.[42] An association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections, but an HOA may not require an owner to state a reason for inspecting the records.[43]

Effect of the Bill

The bill:

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

[39] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.
[40] *Id.*
[41] *Id.*
[42] S. 718.111(12)(c)1., F.S.
[43] S. 720.303(5), F.S.

- Authorizes a condominium unit renter to inspect and copy the declaration of condominium.
- Specifies that information an HOA obtains in a gated community relating to guests visiting parcel owners or community residents is inaccessible to members.

Condominium Unit Owner Access to Official Records

Background

A condominium association must maintain its official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the condominium is located.[44] An association also has the option to make the official records available electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen.[45] Additionally, condominium associations with 150 or more units that do not manage timeshare units must post certain documents to a website accessible only to unit owners and condominium association employees.[46] The website must include:

- The recorded declaration of condominium of each condominium operated by the condominium association and each amendment thereto;
- The recorded condominium association bylaws and each amendment to the bylaws;
- The condominium association's articles of incorporation, or other documents creating the condominium association, and each amendment thereto. The copy posted must be a copy of the articles of incorporation filed with the Department of State;
- The condominium association rules;
- Any management agreement, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility;
- Summaries or complete copies of bids for materials, equipment, or services, which must be maintained on the website for one year;
- The annual budget to be considered at the annual meeting;
- The financial report to be considered at a meeting;
- Each director's certification;
- All contracts or transactions between the condominium association and any director, corporation, firm, or condominium association that is not an affiliated condominium association or any other entity in which a condominium association director is also a director or officer and financially interested;
- Any contract or document regarding the conflict of interest or possible conflict of interest of a community association manager or a board member;
- The notice of any unit owner meeting and the meeting's agenda, posted at least 14 days before the meeting in plain view on the front page of the website or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked on the front page; and
- Any documents to be considered during a meeting or listed on the meeting's agenda, which must be posted at least seven days before the meeting where the document will be considered.[47]

Effect of the Bill

The bill authorizes a condominium association with 150 or more units that do not manage timeshare units to make documents that must currently be posted to a website available through an application that can be downloaded onto a mobile device in lieu of posting the documents to the website.

Discriminatory Restrictions

[44] S. 718.111(12)(b), F.S.
[45] *Id.*
[46] S. 718.111(12)(g), F.S.
[47] *Id.*

Background

A "discriminatory restriction" is 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 held by the United States Supreme Court or Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or Article I, section 2 of the State Constitution, including race, color, national origin, religion, gender, or physical disability.[48] Florida law provides that a discriminatory restriction is not enforceable in the state, and all such restrictions contained in any title transaction recorded in Florida are unlawful, unenforceable, and null and void.[49]

Under s. 712.065, F.S., upon request of a parcel owner, a discriminatory restriction appearing in a covenant or restriction affecting the parcel may be removed from the covenant or restriction 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 amendment approval.[50] Unless the amendment also changes other covenant or restriction provisions, the recording of the amendment is not a title transaction occurring after the root of title for Marketable Record Title Act purposes.[51]

Effect of the Bill

The bill authorizes condominiums, cooperatives, and HOAs to extinguish a discriminatory restriction in the same manner a property owners' association may do so under s. 712.065, F.S.

[48] S. 712.065(1), F.S.
[49] S. 712.065(2), F.S.
[50] S. 712.065(3), F.S.
[51] *Id.*

Condominium Unit Owner Insurance and Subrogation

Background

A condominium association must use its best efforts to maintain insurance for the association, the association property, and the common elements.[52] If a condominium maintains insurance for the association, it must have coverage for the condominium property as originally installed and all alterations or additions made to the condominium property. However, condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, walls, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments. Insurance coverage for such property is the unit owner's responsibility.[53]

Subrogation is "the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor."[54] In the condominium setting, subrogation allows a unit owner's insurer to stand in the place of the unit owner whose unit has been damaged by a negligent party. The unit owner's insurer pays the unit owner for the damage and stands in the place of the unit owner to seek relief from the party that caused the damage, which may be the condominium association.

Often, a condominium association's declaration requires a unit owner's insurance policy to prohibit subrogation against the condominium association.[55] Prior to 2010, Florida law prohibited a condominium unit owner's insurance policy from providing rights of subrogation against the association, but the prohibition was repealed in and subrogation against a condominium association has been authorized since 2010.[56]

Effect of the Bill

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

Condominium Term Limits

Background

Condominium association board members serve one-year terms, but a board member may serve a two-year term if allowed by the association's bylaws or articles of incorporation.[57] In 2017, the Legislature prohibited a condominium association board member from serving more than four consecutive two-year terms unless two-thirds of the total voting interests approve his or her continued service or there are not enough eligible candidates to fill board vacancies.[58] In 2018, the Legislature amended the term limit provision for condominium board members to clarify that a board member could not serve more than eight consecutive years.[59] Uncertainty remains about whether time served on a board prior to the enactment of the term limit provision counts toward the eight-year maximum.[60]

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[52] S. 718.111(11), F.S.
[53] *Id.*
[54] *Aurora Loan Services LLC v. Senchuk*, 36 So. 3d 716, 717 (Fla. 1st DCA 2010).
[55] Gary L. Wickert & Kelsey Burazin, *Subrogating Condominium Damage*, Claims Journal (June 4, 2015), https://www.claimsjournal.com/news/national/2015/06/04/263728.htm (last visited May 5, 2021).
[56] S. 718.111(11), F.S. (2009); *see also* Senate Analysis of 2010 Senate Bill 1196 and 1222 (April 9, 2010).
[57] S. 718.112(2)(d), F.S.
[58] *See* House Analysis of 2017 House Bill 1237 (July 5, 2017).
[59] *See* House Analysis of 2018 House Bill 841 (Mar. 27, 2018).
[60] David G. Muller, *Is new term limit restriction retroactive*, Naples Daily News (Sept. 15, 2018), https://www.naplesnews.com/story/money/real-estate/2018/09/15/new-term-limit-restriction-retroactive/1259991002/ (last visited May 5, 2021).

Effect of the Bill

The bill clarifies that only board service occurring on or after July 1, 2018, counts towards a board member's term limits.

Condominium Transfer Fees

Background

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

- The fee is $100 or less;
- The fee is provided for in the association's governing documents; and
- The association approves the sale, lease, sublease, or transfer.[61]

A condominium association may require a potential renter to provide the association a security deposit equivalent to one month's rent.[62] The association must place the security deposit in an escrow account maintained by the association.[63]

Effect of the Bill

The bill increases the fee a condominium association may charge a potential buyer or renter from $100 to $150 and specifies that such fee may be adjusted every five years in an amount equal to the total of the annual increases occurring in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items during the five-year period. The bill charges DBPR with calculating the fees and publishing the amounts, as adjusted, on its website.

Condominium Service Providers Conflicts of Interest

Background

Before 2017, a condominium association could sign a contract for maintenance or management services with an entity in which a board member had a financial interest. The contract had to disclose the board member's financial interest, and a discussion of the financial interest had to be in the minutes of the meeting at which the vote to authorize the contract was held. Any contract that failed to disclose such interest was unenforceable.[64] The contract also had to be affirmed by a two-thirds vote of board members present at the meeting at which the vote was taken, but the interested board member could not participate in the vote.[65]

In 2017, the Legislature passed a law prohibiting a condominium association from employing or contracting with any service provider in which a board member, or a relative of a board member within the third degree of consanguinity by blood or marriage, has a financial interest. This restriction does not apply if the board member or relative owns less than one percent of the equity shares of the service provider or to timeshare condominiums.[66]

Effect of the Bill

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[61] S. 718.112(2)(i), F.S.
[62] *Id.*
[63] *Id.*
[64] S. 718.3026(3), F.S.
[65] *Id.*
[66] *See* House Analysis, *supra* note 31.

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

Condominium and HOA Fines and Suspensions

Background

A condominium association and an HOA may levy reasonable fines for failing to comply with the association's governing documents.[67] A fine may not exceed $100 per violation or $1,000 in the aggregate.[68] A condominium association and an HOA may also suspend, for a reasonable time period, the right of a unit or parcel owner or his or her tenant, guest, licensee, or invitee to use common areas and facilities for failure to comply with the governing documents.[69]

A fine or suspension may not be imposed unless the board first gives at least 14 days' notice to the unit or parcel owner and, if applicable, the parcel owner's occupant, licensee, or invitee sought to be fined or suspended and a chance for a hearing before a committee of at least three members appointed by the board who are not association officers, directors, or employees. If the committee approves a proposed fine, the fine is due five days after the fine approval date. The association must give written notice of an approved fine or suspension to the unit or parcel owner and, if applicable, the unit or parcel owner's tenant, licensee, or invitee.[70]

Effect of the Bill

The bill changes when a condominium association or HOA fine is due from five days after the fine approval date to five days after notice of the approved fine is given to the unit or parcel owner and, if applicable, to the unit or parcel owner's tenant, licensee, or invitee.

Condominium Sales or Reservation Deposits

Background

If a developer contracts to sell a condominium unit and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed, the developer must pay into an escrow account all payments up to ten percent of the sale price received by the developer from the buyer.[71] All payments in excess of the ten percent of the sale price described above which have been received by the developer before construction completion must be held in a special escrow account controlled by an escrow agent and may not generally be used by the developer before closing the transaction, except to refund the buyer.[72]

However, if the sale contract so provides, the developer may withdraw escrow funds in excess of ten percent of the purchase price from the special account when construction of improvements has begun, and may use the funds in the actual construction and development of condominium property in which

[67] Ss. 718.303(3) and 720.305(2), F.S.
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] S. 718.202(1), F.S.
[72] S. 718.202(2), F.S.

the unit sold is located.[73] No part of the funds may be used for salaries, commissions, salesperson expenses, or advertising purposes.[74]

Effect of the Bill

The bill clarifies that, if the developer withdraws escrow funds in excess of ten percent of the purchase price from the special account as authorized by law, the developer may use the funds for the actual costs he or she incurred in the construction and development of the condominium property in which the unit sold is located.

The bill defines "actual costs" to include expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees directly relating to condominium property construction and development. The bill also specifies that no part of the funds may be used for marketing or promotional purposes, loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs.

Condominium Electric Vehicle Charging and Natural Gas Fuel Stations

Background

In 2018, the Legislature prohibited a condominium association from preventing a unit owner from installing an electric vehicle charging station within the boundaries of his or her limited common element parking area.[75] Such installation may not cause irreparable damage to the condominium property, and the association may require the unit owner to:

- Comply with bona fide safety requirements, consistent with applicable building code or recognized safety standards;
- Comply with reasonable architectural standards adopted by the association so long as such standards do not prohibit charging station installation or substantially increase installation costs;
- Engage the services of a duly licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station;
- Provide a certificate of insurance naming the association as an additional insured on the policy; and
- Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station.[76]

The costs of installation, operation, maintenance, repair, and removal are the unit owner's responsibility and the association may use its assessment powers to enforce the payment of such costs. Additionally, the unit owner or his or her successor must separately meter and pay the associated electricity charges.[77]

A condominium association must grant an implied easement across common elements to a unit owner for electric vehicle charging station installation and any equipment necessary to furnish electrical power to the electric vehicle charging station.[78] A lien may not be filed against an association for any labor performed or materials furnished for charging station installation, but a lien may be filed against the unit owner installing the charging station.[79]

Unit owners are not statutorily-authorized to install a natural gas fuel station anywhere on condominium property or his or her limited common element parking area. Natural gas fuel is any liquefied petroleum

[73] S. 718.202(3), F.S.
[74] *Id.*
[75] S. 718.113(8), F.S.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*; 718.121(2), F.S.

gas product, compressed natural gas product, or combination thereof used in a motor vehicle.[80] 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. However, the term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.[81]

Effect of the Bill

The bill prohibits a condominium association from preventing a unit owner from installing:

- A natural gas fuel station within the boundaries of the unit owner's limited common element or exclusively designated parking area, subject to the same restrictions and requirements as an electric vehicle charging station.
- An electric vehicle charging station within the boundaries of the unit owner's exclusively designated parking area.

The bill also provides that the:

- Costs for natural gas fuel supply and storage must be paid by the unit owner installing the natural gas fuel station or his or her successor.
- The unit owner installing, maintaining, or removing the electric vehicle charging or natural gas fuel station must comply with all applicable federal, state, or local laws and regulations.
- Labor performed on or materials furnished for natural gas fuel station installation cannot be the basis for a lien against the association but a lien may be filed against the unit owner installing the natural gas fuel station.
- Association may make available, install, or operate an electric vehicle charging station or natural gas fuel station upon the common elements or association property and establish the charges or the manner of payments for those who use the charging or fuel station.

Alternative Dispute Resolution: Condominiums and Cooperatives

Background

The Condominium and Cooperative Acts provide an alternative dispute resolution mechanism for certain disputes between unit owners and associations, requiring a party to petition for non-binding arbitration[82] with the Division of Condominiums, Timeshares, and Mobile Homes before filing a complaint in civil court for disputes involving:

- Condominium termination;
- Board member recall;
- The board requiring an owner to take action or refrain from any action involving the owner's unit.
- The board altering or adding to a common element; and
- The board's failure to:
    - Give proper notice of meetings or other actions;
    - Properly conduct elections; or
    - Allow inspection of the association's records.[83]

The Division lacks jurisdiction to arbitrate:

- Disagreements about a warranty's interpretation or enforcement;
- The charging of a fee or assessment;
- The eviction or other removal of a tenant from a unit;
- A board member's alleged breach of fiduciary duty; and

[80] S. 206.9951(2), F.S.
[81] *Id.*
[82] Arbitration becomes binding on the parties if they agree in writing to be bound.
[83] S. 718.1255, F.S.

- Claims for damages to a unit based upon the association's alleged failure to maintain the common elements or condominium property.[84]

An arbitration petition must include the specific nature of the dispute, a demand for relief, and proof that the petitioner provided the opposing party a notice of intent to petition for arbitration before filing the petition. If the dispute qualifies for arbitration, the arbitrator must conduct the arbitration within 30 days of petition receipt and render a decision within 30 days of the arbitration.[85]

If a party to arbitration requests mediation of the dispute, the arbitrator must contact all parties in the proceeding to determine if they agree to mediation. However, an arbitrator may refer a proceeding to mediation even if all parties do not agree to mediation. If a matter is referred to mediation, the parties must select a mutually agreeable mediator, and the costs are shared equally among the parties.[86]

Effect of the Bill

The bill allows condominium and cooperative disputes currently resolvable through nonbinding arbitration to be resolved through pre-suit mediation in the same manner of an HOA dispute in lieu of arbitration with the Division, with the exception of election and recall disputes. The bill specifies that condominium and cooperative election and recall disputes may instead be filed in a court of competent jurisdiction in lieu of submitting the dispute to the Division for arbitration. However, arbitration with the Division remains an option for such disputes.

Alternative Dispute Resolution: HOAs

Background

Under the HOA Act, all recall and election disputes must be submitted to mandatory binding arbitration with the Division.[87] Additionally, certain disputes between parcel owners and HOAs must go to pre-suit mediation before a party can file a complaint in civil court, including disputes involving:

- The use of or changes to an owner's parcel or the common areas;
- Covenants;
- Board or board committee meetings;
- Owner meetings not involving elections;
- Access to official records; and
- Governing document amendments.[88]

HOA disputes involving the collection of assessments or other financial obligations and actions to enforce a prior mediation agreement are not subject to the mandatory pre-suit mediation requirement.[89]

Pre-suit mediation is initiated by service of a written petition for mediation on the opposing party. The petition must be in the statutorily-required format, identify the specific nature of the dispute and the basis for the alleged violations, and list five certified, neutral mediators from which the opposing party will select a mediator. If emergency relief is required, a temporary injunction may be sought in court.[90]

The opposing party has 20 days to respond to the petition for pre-suit mediation. If the opposing party fails to respond or refuses to mediate then the aggrieved party may proceed to civil court. However, if the parties agree to mediation, the mediator must hold the mediation within 90 days of the petition's

[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] Ss. 720.306(9)(c) and 720.311(1), F.S.
[88] S. 720.311, F.S; Peter M. Dunbar & Charles F. Dudley, *The Law of Florida Homeowners Associations*, 77-78 (9th ed. 2013).
[89] *Id.*
[90] *Id.*

service on the opposing party and the parties share the costs of mediation, except for the cost of attorney's fees. If pre-suit mediation is unsuccessful, the parties may proceed to civil court.[91]

Effect of the Bill

The bill authorizes HOA recall and election disputes to be filed with a court of competent jurisdiction in lieu of being submitted to the Division for binding arbitration. However, arbitration with the Division remains an option for such disputes.

Condominium Association Notices of Meeting

Background

A condominium association's bylaws specify the method of calling unit owner meetings, including annual meetings.[92] Notice of the association's annual meeting must:

- Be in writing;
- Include an agenda;
- Be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; and
- Be posted in a conspicuous place on condominium property for at least 14 continuous days before the annual meeting or repeatedly broadcast with the agenda on a closed-circuit cable television system serving the association.[93]

There are no statutory requirements for notices of unit owner meetings that are not annual meetings.

Effect of the Bill

The bill provides that notice of a meeting other than an annual meeting must:

- Be in writing;
- Include an agenda;
- Be mailed, hand delivered, or electronically transmitted to each unit owner; and
- Be posted in a conspicuous place on the condominium property within the timeframe specified in the bylaws.

If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting.

Condominium Association Notices of Election

Background

A condominium association must mail, deliver, or electronically transmit notice of an election to unit owners at least 60 days before the election.[94] The association must also mail, deliver, or electronically transmit a second notice of election to the unit owners, along with a ballot listing all the candidates.[95]

Current law does not specify a timeframe for the provision of the second notice. However, DBPR has adopted a rule providing that an association must mail or deliver the second notice not less than 14 days or more than 34 days before the election.[96]

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[91] *Id.*
[92] S. 718.112(2)(d)3., F.S.
[93] *Id*.
[94] S. 718.112(2)(d), F.S.
[95] *Id.*
[96] Rule 61B-23.0021(8), F.A.C.

Effect of the Bill

The bill codifies DBPR's rule and specifies that the second notice of election must be mailed, delivered, or electronically transmitted to the unit owners not less than 14 days or more than 34 days before the election.

HOA Notices of Meeting

Background

HOAs must notice all board meetings by posting notice in a conspicuous place on the HOA's property for at least 48 hours.[97] Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to parcel use rules is considered. HOAs must also, before the meeting, notice all member meetings by mailing, hand delivering, or electronically transmitting notice and posting the notice in a conspicuous place. If an HOA opts to broadcast notice in lieu of posting notice, it must do so at least four times during every broadcast hour of each day.[98] Additionally, when notice of an HOA meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the owner's parcel is located.[99]

However, condominium and cooperative associations may adopt rules for noticing all board meetings on a website if the time requirements for physically posting the board meetings are met.[100] Any rule adopted for website notice must require the association to send an electronic notice providing a hyperlink to the website where the notice is posted to all unit owners whose email addresses are part of the official records in the same manner as notice of member meeting.[101] No such authorization exists for HOAs in current law.

[97] S. 720.303(2), F.S.
[98] *Id.*
[99] S. 720.306(1)(g), F.S.
[100] Ss. 718.112(2)(c) and 719.106(1)(c), F.S.
[101] *Id.*

Effect of the Bill

The bill authorizes an HOA to adopt a procedure for conspicuously posting board meeting notices and agendas on the HOA's website or an application that can be downloaded on a mobile device for at least the minimum time period for which the notice must be physically posted on association property. Any such procedure must require that the association send an electronic notice to members whose e-mail addresses are included in the HOA's official records in the same manner as is required for a notice of member meeting, which notice must include a hyperlink to the website or mobile application on which the notice is posted. The bill also changes where a notice of meeting must be mailed from the owner's mailing address on the property appraiser's website to the mailing address listed in the HOA's official records.

HOA Budgets

Background

An HOA must prepare an annual budget setting out the annual operating expenses, which budget must reflect the HOA's estimated revenues and expenses for that year and the estimated surplus or deficit as of the current year's end.[102] In addition to the annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the HOA is responsible. An HOA is deemed to have provided for reserve accounts if reserve accounts have been initially established by the developer or if a majority of the HOA's members affirmatively elect to provide for reserves by a membership vote at a duly called membership meeting or written consent.[103]

If the HOA's budget does not provide for reserve accounts and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year must contain the following statement:

> The budget of the association does not provide for reserve accounts for capital expenditures and deferred maintenance that may result in special assessments. Owners may elect to provide for reserve accounts pursuant to section 720.303(6), Florida Statutes, upon obtaining the approval of a majority of the total voting interests of the association by vote of the members at a meeting or by written consent.[104]

If the HOA's budget does provide for funding accounts for deferred expenditure including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established as reserve accounts, each financial report for the preceding fiscal year must contain the following statement:

> The budget of the association provides for limited voluntary deferred expenditure accounts, including capital expenditures and deferred maintenance, subject to limits on funding contained in our governing documents. Because the owners have not elected to provide for reserve accounts pursuant to section 720.303(6), Florida Statutes, these funds are not subject to the restrictions on use of such funds set forth in statute, nor are reserves calculated in accordance with that statute.[105]

Effect of the Bill

[102] S. 720.303(6), F.S.
[103] *Id.*
[104] *Id.*
[105] *Id.*

The bill clarifies that an HOA without established reserve accounts that is not required to create such accounts by the governing documents and is responsible for the repair and maintenance of capital improvements that may result in a special assessment must include in each financial report for the preceding financial year a notice stating:

> The budget of the association does not provide for fully funded reserve accounts for capital expenditures and deferred maintenance that may result in special assessments regarding those items. Owners may elect to provide for fully funded reserve accounts under section 720.303(6), Florida Statutes, upon obtaining the approval of a majority of the total voting interests of the association by vote of the members at a meeting or by written consent.

Further, the bill specifies that an association is deemed to have provided for reserve accounts only upon the affirmative approval of a majority of the HOA's total voting interests. The bill deletes the provision indicating that an HOA is deemed to have provided for reserve accounts if such accounts are initially established by the developer.

Finally, the bill specifies that, while a developer is still in control of an HOA, the developer may include reserves in the budget and determine the amount of reserves included. However, the bill provides that the developer is not obligated to pay for:

- Contributions to reserve accounts for capital expenditures and deferred maintenance, as well as any other reserves that the HOA or the developer may be required to fund pursuant to any state, municipal, county, or other governmental statute or ordinance;
- Operating expenses; or
- Any other assessments related to the developer's parcels for any period of time for which the developer has provided in the declaration that in lieu of paying any assessments imposed on any parcel owned by the developer, the developer need only pay the deficit, if any, in any fiscal year of the asosciaiton, between the total amount of the assessments receivable from other members plus any other association income and the lesser of of the budgeted or actual expenses incurred by the association during such fiscal year.

Condominium Ombudsman

Background

Within the Division of Condominiums, Timeshares, and Mobile Homes is housed the Office of the Condominium Ombudsman (Ombudsman).[106] The Ombudsman is an attorney appointed by the Governor to serve as a neutral resource for unit owners and condominium associations who is authorized to prepare and issue reports and recommendations to the Governor, the Division, and the Legislature on any matter or subject within the Division's jurisdiction.[107] 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.[108] The Ombudsman must keep his or her principal office in Leon County, Florida, on Division premises or, if suitable space cannot be provided on such premises, in a place convenient to the Division's offices.[109] However, the Ombudsman may establish branch offices elsewhere in the state with the Governor's approval.[110]

Effect of the Bill

[106] S. 718.5011, F.S.
[107] Ss. 718.5011 and 718.5012, F.S.
[108] *Id.*
[109] S. 718.5014, F.S.
[110] *Id.*

The bill deletes the requirement that the Ombudsman must keep his or her principal office in Leon County, Florida, requiring instead that such office be kept in a place convenient to the Division's offices. The Ombudsman may still establish branch offices elsewhere in the state with the Governor's approval.

HOA Amendments and Rental Restrictions

Background

An HOA's powers and duties include the powers and duties provided in current law and in the association's governing documents, which include the recorded covenants and restrictions, bylaws, and articles of incorporation.[111] Current law allows HOAs to amend their governing documents in the manner set forth in the governing documents, but if no such process is provided therein, an HOA may amend its governing documents by a two-thirds vote of association members.[112]

Amendments to governing documents generally apply to all parcel owners in the HOA. However, HOAs with 15 or fewer parcels can only enforce restrictions against a parcel owner that were in place at the time the owner acquired his or her parcel.[113]

An amendment to condominium association governing documents that restricts or regulates the rental of a unit only applies to unit owners who consent to the amendment or owners who acquire a unit after the amendment's effective date. No such provision exists for similar HOA amendments.[114]

Effect of the Bill

The bill provides that any HOA governing document or governing document amendment enacted after July 1, 2021, that prohibits or regulates rental agreements applies only to a parcel owner who consents to the governing document or amendment and or acquires title to the parcel[115] after the governing document or amendment's effective date. However, the bill authorizes an HOA to amend its governing documents to prohibit or regulate rental agreements for terms of less than six months and to prohibit a parcel owner from renting his or her parcel more than three times in a calendar year; such amendments apply to all parcel owners.

For purposes of this provision, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity, when the beneficial ownership of the parcel does not change, or when an heir becomes the parcel owner. In order for the conveyance to be recognized as one to an affiliated entity, the entity must furnish the association with a document certifying that the exception applies, along with any organizational documents supporting the representations in the certificate. The bill defines "affiliated entity" as an entity which controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests.

However, a change of ownership does occur 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 governing document or amendment's enactment conveys their interest in the real property to an unaffiliated entity.

Transition of HOA Control

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[111] S. 720.303, F.S.
[112] S. 720.306(1), F.S.
[113] S. 720.303(1), F.S.
[114] S. 718.110(13), F.S.
[115] Under the bill, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity or when beneficial ownership of the parcel does not change. An "affiliated entity" is one 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.

Background

HOA members other than the developer may elect at least a majority of the HOA's board members at the earliest of:

- Three months after 90 percent of the parcels in all phases the HOA will ultimately operate have been conveyed to members;
- Such other percentage of the parcels being conveyed to members, or when such other date or event has occurred, as specified in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to parcel mortgage financing;
- The developer abandoning or deserting its responsibility to maintain and complete the HOA's amenities or infrastructure as disclosed in the governing documents;
- The developer filing a petition seeking Chapter 7 bankruptcy protection;
- The developer losing title to the property through a foreclosure action or the transfer of a deed in lieu of foreclosure unless specified conditions are met; or
- A receiver being appointed by a circuit court and not being discharged within 30 days after appointment, unless specified conditions are met.[116]

Members other than the developer may elect at least one HOA board member if 50 percent of the parcels in all phases of the community which will ultimately be operated by the association have been conveyed to the members.[117] The developer is entitled to elect at least one HOA board member as long as the developer holds for sale in the ordinary course of business at least five percent of the parcels in all phases.[118] After the developer relinquishes HOA control, the developer:

- May exercise the right to vote any developer-owned voting interests in the same manner as any other member, except for the purposes of reacquiring HOA control or selecting a majority of board members.[119]
- Must deliver specified documents to the HOA board within 90 days.[120]

Effect of the Bill

The bill clarifies that a developer is not a member for HOA control transition purposes when control is transferred three months after 90 percent of the parcels have been conveyed to members.

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

[116] S. 720.307(1), F.S.
[117] S. 720.307(2), F.S.
[118] S. 720.307(3), F.S.
[119] *Id.*
[120] S. 720.307(4), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The change in classification of cooperatives from personal to real property for the purpose of estate taxes or laws related to devise and descent may have an indeterminate impact on state revenue.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Prohibiting a condominium owner's insurance policy from providing rights of subrogation against the association may increase or decrease an insurance policy's cost to an unknown degree.

According to a statement offered by DBPR on a previous bill with a similar provision, "The proposal regarding pre-suit mediation as an option to arbitration will raise costs to unit owners involved in a dispute with their association."[121]

D. FISCAL COMMENTS:

None.

[121] Florida Department of Business and Professional Regulation, Agency Analysis of 2020 House Bill 623, p. 6 (February 7, 2020).