

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 Fiscal Policy

BILL: CS/SB 1114

INTRODUCER: Regulated Industries Committee and Senator Rodriguez

SUBJECT: Homeowners' Associations

DATE: April 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Oxamendi</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>
3.	_____	_____	_____	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1114, which the bill provides may be cited as “Homeowners’ Association Bill of Rights,” revises the requirements for the governance and regulation of homeowners’ associations to:

- Provide that an officer or director must be removed from office, and their access to official records denied, if charged with the crimes of forgery of a ballot envelope or voting certificate used in a homeowners' association election, theft or embezzlement of association funds, destruction of or refusing to allow inspection of association records, if such records are accessible by association members, in furtherance of any crime; or obstruction of justice;
- Revise the requirements for the association’s use of a member’s e-mail to send notices, including allowing a member to designate an address different than the property address for all required notices;
- Require that, if an homeowners’ association collects a deposit from a member to pay for expenses that may be incurred as a result of construction on a member's parcel, or other reason for such deposit, such funds must not be comingled with any other association funds, the member may request an accounting of such funds, and the association must remit payment of unused funds within 30 days after completion;
- Provide criminal and civil penalties for an officer, director, or manager who accepts kickbacks;
- Require directors and officers of an association, including a developer-controlled association, to disclose specified activities which may pose a conflict of interest;
- Revise the notice requirements for imposing and collecting fines, including providing members notice of how to cure a violation, if applicable;

- Provide criminal prohibitions related to fraudulent voting activities that are punishable as first degree misdemeanors, including preventing members from voting, and menacing, threatening, or using bribery to directly or indirectly influence or deter a member from voting.

The bill takes effect October 1, 2023.

The bill may have a negative fiscal impact on the Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business the Professional Regulation. See Section V. Fiscal Impact Statement, C. Government Sector Impact.

II. Present Situation:

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.¹

A "homeowners' association" is defined as a:²

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.

Unless specifically stated to the contrary in the articles of 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.³

Homeowners' associations are administered by a board of directors whose members are elected.⁴ 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.⁵ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.⁶

¹ See s. 720.302(1), F.S.

² Section 720.301(9), F.S.

³ Section 720.302(5), F.S.

⁴ See ss. 720.303 and 720.307, F.S.

⁵ See ss. 720.301 and 720.303, F.S.

⁶ Section 720.303(1), F.S.

Unlike condominium 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.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.⁷

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:

Section 1 of the bill provides that the act may be cited as the "Homeowners' Association Bill of Rights."

Director and Officer Fiduciary Duty and Prohibited Acts

Present Situation

General Standards for Directors

Section 617.0830(1), F.S., requires a director, including as a member of a committee, to discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.

⁷ See s. 720.306(9)(c), F.S.

Director Conflicts of Interest

Section 617.0832, F.S., provides for the process for the disclosure and approval of conflicts of interest related to contracts between the board of a not-for-profit corporation and a member or members of the board. Section 617.0832(1), F.S., provides that such a contract is not void or voidable if:

- The relationship is disclosed to the board or committee that approves or ratifies the contract or transaction by a vote or consent that does not count the interested director or directors;
- The fact of such relationship or interest is disclosed or known to the members of the board or committee entitled to vote on such contract or transaction, if any, and they authorize, approve, or ratify it by vote or written consent; or
- The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the members.

Sections 617.0832(2) and (3), F.S., require an affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no relationship or interest in the transaction or contract. The contract or transaction may not be approved or ratified by a single director. A quorum is present for the purpose of taking action if a majority of the directors who have no relationship or interest in the transaction vote to authorize, approve, or ratify the transaction. The presence of, or a vote cast by, a director having a relationship or interest in the transaction does not invalidate the approval or ratification if the transaction is otherwise authorized, approved, or ratified as provided in s. 617.0832(1), F.S.

Civil Liability - Officers and Directors

Section 617.0834, F.S., relates to the provisions for the civil liability of officers and director of not-for-profit corporations and associations.⁸ Section 617.0834(1), F.S., provides that officers and directors of certain not-for-profit corporations and associations are not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless the officer or director:

- Breached or failed to perform his or her duties as an officer or director; and
- Breached or failed to perform his or her duties, and the breach constitutes:
 - A criminal violation, unless he or she had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful.⁹
 - A transaction from which he or she derived an improper personal benefit, directly or indirectly; or
 - A recklessness or an act or omission committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

⁸ Corporations that operate residential homeowners' associations are governed by ch. 720, F.S., relating to homeowners' associations, and are subject to part I of ch. 607, F.S., the Florida Business Corporation Act, or ch. 617, F.S., relating to corporations not for profit.

⁹ Section 617.0834, F.S., does not provide criminal penalties or reference the criminal law that is violated by the officer's or director's breach or failure to perform his or her duties.

Fiduciary Duties in Homeowners' Associations

Officers and directors of a homeowners' association have a fiduciary relationship to the unit owners, and may be sanctioned for breach of their fiduciary duty.¹⁰

Section 720.3033(2), F.S., requires homeowners' associations, if they enter into a contract or other transaction with any of their directors or a corporation, firm, or association that is not an affiliated homeowners' association, or other entity in which an association director is also a director or officer or is financially interested, to:

- Comply with conflict of interest procedures outlined in s. 617.0832, F.S.;
- Comply with disclosure requirements outlined in s. 617.0832, F.S.;
- Approve the contract or transaction by a two-thirds vote of the directors present; and
- Disclose the contract or transaction at the next regular or special meeting of the members.

If any member makes a motion to cancel the contract or transaction at the next regular or special meeting of the members, the contract may be canceled by a majority vote of the members present. If the contract is canceled, the association is only liable for the reasonable value of goods and services previously provided and is not liable for any fees or damages connected to the cancellation.¹¹

Section 720.3033(3), F.S., prohibits officers, directors, and managers of a homeowners' association from soliciting or accepting anything of value for his or her benefit, or the benefit of any member of his or her immediate family, from any person providing or offering to provide goods or services to the association. The board must immediately remove from office any officer or director upon a finding by the board that the officer or director has violated this subsection. This prohibition does not apply to accepting food to be consumed at a business meeting with a value of less than \$25 per individual or services or items in connection to trade fairs or education programs.

Section 720.3033(4), F.S., requires a board to immediately remove from office any officer or director who is charged with felony theft or embezzlement involving association funds. If the charges are resolved without a finding of guilt or without acceptance of a plea of guilt or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office.

Section 720.3033(5), F.S., requires homeowners' associations to maintain insurance or fidelity bonding for anyone who controls or disburses association funds, which includes persons authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association must bear the cost of the bond or insurance.

Effect of Proposed Changes

The bill amends s. 720.303(1)(b), F.S., to provide that an officer or director charged by information or indictment with one of the following crimes must be removed from office, and the

¹⁰ Section 720.303(1), F.S.

¹¹ Section 720.3033(2), F.S.

vacancy must be filled as provided by s. 720.306(9), F.S., until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first:

- Forgery of a ballot envelope or voting certificate used in a homeowners' association election punishable as a felony crime as provided in s. 831.01, F.S.;¹²
- Theft or embezzlement of funds of a homeowners' association punishable as provided in s. 812.014, F.S.;¹³ and
- Destruction of or refusal to allow inspection or copying of an official record of a homeowners' association that is accessible to parcel owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13, F.S.,¹⁴ or as obstruction of justice as provided in ch. 843, F.S.

If a criminal charge is pending against an officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. An officer or director must be reinstated for the remainder of his or her term of office if the charges are resolved without a finding of guilt.

The revisions in the bill to s. 720.303(1), F.S., are substantially the same as the requirements in s. 720.3033(4), F.S., for the removal from office of a director or officer charged by information or indictment with fraud or embezzlement.

The bill amends s. 720.3033(3), F.S., to provide that an officer, director, or manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association is subject to a civil penalty under s. 718.501(1)(d), F.S.,¹⁵ and, if applicable, a criminal penalty as provided in s. 718.111(1)(d), F.S.¹⁶

The bill creates s. 720.3033(6), F.S., to require directors and officers of an association who are appointed by the developer to disclose to the association their relationship to the developer each calendar year in which they serve as a director or an officer. Developer-appointed directors and

¹² Section 831.01, F.S., relates to the crime of forgery. A forgery violation is a felony of the third degree. Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years.

Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

¹³ Section 812.014, F.S., relates to the crime of theft and provides penalties, including terms of incarceration and fines, based on the value of the stolen property, or the type of property.

¹⁴ Section 718.306(9), F.S., relates to elections and vacancies on a board. It also prohibits convicted felons, including persons who've been convicted in another jurisdiction which would be considered a felony crime in Florida, of serving on a board for at least five years as of the date the person seeks election to the board, unless their civil rights have been restored.

¹⁵ Section 718.501(1)(d), F.S., relating to condominium associations and the powers and duties of the division, authorizes the Division of Condominiums, Timeshares, and Mobile Homes to impose civil penalties on developers, bulk assignees, associations, and directors and officers of condominium associations. Before initiating formal agency action under ch. 120, F.S., the division must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed \$5,000.

¹⁶ Section 718.111(1)(d), F.S., does not provide criminal penalties. In relevant part, this provision provides An officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834, F.S.

officers must disclose any other activity that may reasonably be construed to be a conflict of interest.

Under the bill, all directors and officers must disclose to the association any activity that may be reasonably construed to be a conflict of interest at least 14 days before voting on an issue or entering into a contract that is the subject of the conflict. The bill provides a rebuttable presumption of a conflict of interest exists if a director or officer performs any of the following acts without prior disclosure to the association:

- Entering into a contract for goods or services with the association.
- Holding an interest in a corporation, limited liability company, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

Official Records – Homeowners’ Associations

Present Situation

Florida law specifies the official records that homeowners’ associations must maintain.¹⁷ Generally, the official records must be maintained in Florida for at least seven years.¹⁸ Certain of these records must be accessible to the members of an association.¹⁹ 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.²⁰

The secretary of a corporation, such as a homeowners’ association, is the corporate officer to whom the board of directors has delegated responsibility to maintain the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.²¹

Effect of Proposed Changes

The bill amends s. 720.303(4)(g), F.S., to provide that a member’s designated mailing address is the member’s property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices. The bill does not specify that the “property address” means the address of the member’s parcel.

The bill changes the term “electronic mailing address” to “e-mail” throughout ss. 720.303(4) and (5), F.S. The bill requires associations to also maintain a member’s facsimile numbers, if provided, as one of the forms of electronic communication.

¹⁷ See s. 720.303(5), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ See s. 607.01401(65), F.S., defining the term “secretary.”

Association Funds - Commingling

Present Situation

All homeowners' association funds held by a developer must be maintained separately in the association's name. Association reserve and operating funds must not be commingled prior to turnover except the association may jointly invest reserve funds if the funds are accounted for separately.²²

A developer in control of a homeowners' association may not commingle any of the association's funds with the developer's funds or with the funds of any other homeowners' association or community association.²³

Homeowners' association funds may not be used by a developer to defend a civil or criminal action, administrative proceeding, or arbitration proceeding that has been filed against the developer or directors appointed to the association's board by the developer, even when the subject of the action or proceeding concerns the operation of the developer-controlled association.²⁴

Effect of Proposed Changes

The bill amends s. 720.303(8), F.S., to provide that, if a homeowners' association collects a deposit from a member to pay for expenses that may be incurred as a result of construction on a member's parcel, or other reason for such deposit, such funds must be maintained separately and may not be comingled with any other association funds. Upon completion of the member's construction project, or any other reason for such deposit, the member may request an accounting from the association of such funds that were deposited and the association must provide an accounting to the member within seven days after the member's request. An association must remit payment of any and all unused funds to the member within 30 days after receiving notice that the member's construction project, or any other reason for which a deposit was collected, is complete.

Homeowners' Association Fines

Present Situation

Homeowners' associations may levy fines against a member or any member's tenant, guest, or invitee failing to comply with any provision in the association's declaration, bylaws, or rules. A fine by a homeowners' association of less than \$1,000 may not become a lien against the parcel.²⁵ A fine imposed by a homeowners' association may exceed \$1,000 in the aggregate if the association's governing documents authorize the fine.²⁶

²² Section 720.303(8)(a), F.S.

²³ Section 720.303(8)(b), F.S.

²⁴ Section 720.303(8)(c), F.S.

²⁵ Section 720.305(2), F.S.

²⁶ *Id.*

In comparison, 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 \$1,000.²⁷ A fine imposed by a condominium or cooperative association may not become a lien against the unit.²⁸

A homeowners' 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 (review committee). The role of the committee is to determine whether to confirm or reject the fine or suspension.²⁹

Payment of a fine approved by the committee is due five days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner.³⁰

Effect of Proposed Changes

The bill amends s. 720.305(2), F.S., to provide that association fines may levy fines for violations of the declaration, association bylaws, or reasonable rules of the association.

Section 720.305(2)(b), F.S., is revised by the bill to require the board of an association to mail the 14-day written notice for a review committee hearing to the parcel owner's designated mailing address or email address in the official records. The notice must include a description of the alleged violation, the specific action required to cure such violation, if applicable, and the date and location of the hearing. Under the bill, a parcel owner has the right to attend a hearing by telephone or other electronic means.

The bill creates s. 720.305(2)(d), F.S., to require a review committee to provide written notice after a hearing to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, of the review committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected. The notice must indicate how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation, if applicable.

The bill amends s. 720.305(2)(e), F.S., to clarify that the board must approve a fine by a majority vote.

Section 720.305(5), F.S., is revised by the bill to require a written notice to the parcel owner, and if applicable, to the parcel's occupant, licensee, or invitee by mail or hand delivery to the parcel's owner's designated mailing or e-mail address in the association's records.

²⁷ Sections 718.303(3) and 719.303(3), F.S.

²⁸ *Id.*

²⁹ Sections 720.305(2)(b) and (c), F.S.

³⁰ *Id.*

Fraudulent Voting Activities

Present Situation

Chapter 720, F.S., does not provide a criminal prohibition or penalties for fraudulent voting activity in homeowners' association elections.

Present Situation

The bill creates s. 720.3065, F.S, to provide that each of the following actions relating to homeowners' association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:³¹

- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This provision does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.
- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

Effective Date

The bill takes effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³¹ Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:***Impairment of Contract***

The bill revises the requirements for the governance of homeowners' associations under ch. 720, F.S. The governing documents of condominium or homeowners' associations are a contract. To the extent the provisions of the bill affect previously recorded governing documents of an association, the bill may unconstitutionally impair a contract, under s. 10, Art. I, Fla. Const., which provides in relevant part, "No... law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws that retroactively burden or alter contractual relations. Article I, s. 10 of the United States Constitution provides in relevant part that "No state shall . . . pass any . . . law impairing the obligation of contracts."

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,³² the Florida Supreme Court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The court set forth several factors in balancing whether a state law operates as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:³³

- Was the law enacted to deal with a broad, generalized economic or social problem;
- Does the law operate in an area that was already subject to state regulation at the time the contract was entered into; and
- Is the law's effect on the contractual relationships temporary or is it severe, permanent, immediate, and retroactive.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

³² *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

³³ *Id.* at 779.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Business and Professional Regulation has not provided a fiscal analysis for CS/SB 1114. However, the DBPR may incur costs related to investigating homeowners' association to determine if the division may impose a civil penalty on an officer, director, or manager for a homeowners' association under the authority granted to it under s. 718.501(1)(d), F.S., to impose a civil penalty in condominium associations.

VI. Technical Deficiencies:

None.

VII. Related Issues:*Directors and Officers*

The bill amends s. 720.303(1)(b), F.S., to provide that an officer or a director charged by information or indictment with specified crimes must be removed from office. The bill does not specify how an officer or a director is removed from office, or specify a timeframe for such removal.

The bill also amends s. 720.303(1), F.S., to provide for the removal from office of a director or officer for specified act, including a director or officer charged by information or indictment with fraud or embezzlement. These provisions are substantially the same as the current requirements in s. 720.3033(4), F.S., for the removal from office of a director or officer charged by information or indictment with fraud or embezzlement. The bill sponsor may want to consider revising s. 720.3033(4), F.S., instead of s. 720.303(1), F.S., to include the provisions in the bill.

The bill amends s. 720.3033(3), F.S., provide that an officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association is subject to a civil penalty under s. 718.501(1)(d), F.S.,³⁴ and, if applicable, a criminal penalty as provided in s. 718.111(1)(d), F.S. However, the Division of Condominiums, Timeshares, and Mobile Homes has limited authority over homeowners' associations under ch. 720, F.S.,³⁵ and no authority over homeowners' associations under ch. 718, F.S., except for

³⁴ Section 718.501(1)(d), F.S., relating to condominium associations and the powers and duties of the Division of Condominiums, Timeshares, and Mobile Homes, authorizes the division to impose civil penalties on developers,, bulk assignees, associations, and directors and officers of condominium associations. Before initiating formal agency action under ch. 120, F.S., the division must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of a continuing violation, but the penalty for any offense may not exceed \$5,000.

³⁵ See s. 720.501, F.S.

the arbitration of election recall disputes.³⁶ If a manager of an association violates prohibition under ch. 720, F.S., or ch. 718, F.S., he or she may be subject to discipline by the Regulatory Council of Community Association Managers, which regulates community association managers licensed under part VIII of ch. 468, F.S.

Official Records

The bill changes the term “electronic mailing address” to “e-mail” in s. 720.303(4)(g), F.S. However, the bill does not revise the term “electronic mailing addresses” in s. 720.303(5)(c), 5. F.S., relating to the official records exemption for specified personal identifying information.

The bill amends s. 720.303(4)(g), F.S., to provide that a member’s designated mailing address is the member’s “property address,” unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices. The bill does not specify that the term “property address” means the address of the member’s parcel within the association.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 720.303, 720.3033, 720.304, and 720.305.

The bill creates section 720.3065 of the Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries on April 4, 2023:

The CS substantially changes the bill by removing the revisions to:

- Section 718.111, F.S., prohibiting association funds and reserves from being used by specified persons or entities for certain reasons; requiring the board of each association to appoint an official recordkeeper for the association with powers and duties authorized by the board, if necessary; and requiring certain information be posted on the association’s website or application and the Department of State website.
- Sections 718.1224 and 720.304, F.S., prohibiting reserves from being used in prosecuting “Strategic Lawsuits Against Public Participation” or “SLAPP” suits.
- Sections 718.501 and 720.302, F.S., providing the division with jurisdiction over homeowners’ association complaints and to forward complaints containing criminal allegation to the Florida Department of Law Enforcement.
- Section 720.303, F.S., providing criminal penalties for certain actions by an officer or director of the association; requiring that the governing documents of an association be amended to modify or restrict parcel use, requiring the board of each association to designate an official recordkeeper with powers and duties authorize by the board;

³⁶ See ss. 720.303(10) and 720.311(1), F.S.

requiring certain information be posted on the association's and the Department of State websites; revising the confidentiality of certain official records; and prohibiting the use of association funds and reserves by specified persons or entities for certain reasons.

- Section 720.305, F.S., restricting the levying of fines and attorney fees, specify the types of violations for which an association may levy fines; expanding the duties of the fine review committee, providing additional notice and requirements for the review committee, providing a parcel owner with an opportunity to cure a violation, and waive or reduce fines and attorney fees if a violation is cured within a specified timeframe.
- Section 720.306, F.S., requiring that the governing documents of an association be amended to modify or restrict parcel use.
- Section 720.3085, F.S., specifying how payments made by a parcel owner to an association must be applied to an outstanding debt, prohibit an association from bringing an action to foreclose a lien against a parcel, and limit the enforcement of liens on a parcel.
- Section 720.311, F.S., requiring the division to review complaints to determine if there are allegations of criminal conduct and to forward complaints containing criminal allegations to the FDLE, and revise the dispute resolution requirements.
- Section 720.402, F.S., prohibiting reserve funds from being used by a developer in the defense of actions related to false and misleading information in certain documents.
- Section 943.71, F.S.; as created by the bill, authorizing the FDLE to investigate violations of general law relating to condominium, cooperative, homeowners' associations and their boards of administration, officers, or directors.

In addition, the CS:

- Amends s. 720.303(8), F.S., to revise the requirements for the commingling of homeowners' association funds.
- Amends s. 720.3033(3), F.S., to provide criminal and civil penalties for soliciting, offering to accept, or accepting kickbacks.
- Amends s. 720.3033(6), F.S., to provide additional requirements for disclosing officer or director conflicts of interest, including those appointed by the developer.
- Creates s. 720.3065, F.S, to specify the actions relating to homeowners' association elections that are fraudulent voting activity and constitute a misdemeanor of the first degree.

B. Amendments:

None.