

**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.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SB 1114

INTRODUCER: Senator Rodriguez

SUBJECT: Community Associations

DATE: April 3, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Pre-meeting</b>
2.			AEG	
3.			FP	

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**I. Summary:**

SB 1114 revises the requirements for the governance and regulation of condominium and homeowners' associations. Regarding condominium and homeowners' associations, the bill:

- Prohibits the use of association funds and reserve funds by a developer, an association, and elected board members to defend civil or criminal actions, and administrative proceedings;
- Requires boards of these associations to appoint a member as a recordkeeper to maintain the official records of the association during his or her appointment term; and
- Requires the Division of Condominium, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation (DBPR) to forward complaints to the Florida Department of Law Enforcement (FDLE) that allege criminal activity within 72 hours after receiving a complaint alleging any criminal activity.

Regarding homeowners' associations, the bill:

- Restates the general standards for director of a not-for-profit corporation including the requirement to discharge duties in good faith and liability for monetary damages for certain conduct;
- Provides the criminal prohibition related to forgery of a ballot envelope or voting certificate used in an election, theft or embezzlement of funds, and destruction of or the refusal to allow inspection or copying of an official record;
- Provides for the removal from office of an officer or a director charged by information or indictment with specified crimes;
- Prohibits associations from modifying or restricting the use of a parcel without amending the governing documents;
- Revises access to official records requirements, including records related to the lease, sale, or other transfer of a parcel;

- Provides that a fine cannot exceed \$1,000, a fine of \$1,000 or less cannot be the basis for a lien, and multiple fines cannot be combined or aggregated to meet the \$1,000 minimum for a valid lien;
- Revises the process for imposing and collecting fines;
- Requires associations to apply payments made by a parcel owner first to any outstanding amounts due as designated by the parcel owner on the payment instrument or otherwise in writing or, if the parcel owner does not designate how the payment is to be applied, specifies how associations must apply the payment in order of priority;
- Prohibits associations from foreclosing liens against a parcel;
- Prohibits associations from bringing an action to recover a money judgment for the unpaid assessments without waiving any claim of lien, unless the monetary judgment action is brought in the same lawsuit as the claim of lien;
- Requires pre-suit mediation for disputes related to an alleged violation of the governing documents and any fines related to the alleged violation which subsequently are deemed covered assessments;<sup>1</sup>
- Extends from 20 days to 90 days the time to respond to a petition for mediation; and
- Provides that the FDLE has the authority to investigate complaints alleging violations of general law by condominium, cooperative, and homeowners' associations and their officers and boards of directors.

The bill takes effect October 1, 2023.

The DBPR estimates that the bill has a total fiscal impact of \$2,357,785 (\$197,457 nonrecurring). See Section V.C. Government Sector Impact.

## II. Present Situation:

### Condominium

A condominium is a “form of ownership of real property created under ch. 718, F.S.”<sup>2</sup> Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements and members of the condominium association.<sup>3</sup> For unit owners, membership in the association is an unalienable right and required condition of unit ownership.<sup>4</sup> A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.<sup>5</sup> A declaration is similar to a constitution in that it:

[S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the

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<sup>1</sup> The term “covered assessments” is not defined in the bill. See Section IV. Constitutional Issues, and Section IV. Constitutional Issues of this bill analysis.

<sup>2</sup> Section 718.103(11), F.S.

<sup>3</sup> See s. 718.103, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 718.104(2), F.S.

condominium association has broad authority to enact rules for the benefit of the community.<sup>6</sup>

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.<sup>7</sup> Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a “board of administration.”<sup>8</sup> The board of administrators comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.<sup>9</sup> In litigation, an association's board of directors is in charge of directing attorney actions.<sup>10</sup>

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over condominium associations.<sup>11</sup>

### **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.<sup>12</sup>

A “homeowners' association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”<sup>13</sup> 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.<sup>14</sup>

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<sup>6</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>7</sup> Section 718.303(3), F.S.

<sup>8</sup> Section 718.103(4), F.S.

<sup>9</sup> Section 718.103(2), F.S.

<sup>10</sup> Section 718.103(30), F.S.

<sup>11</sup> See s. 718.501, F.S. See *infra*, the *Present Situation* for the proposed revisions to the division's authority set forth in s. 718.501, F.S.

<sup>12</sup> See s. 720.302(1), F.S.

<sup>13</sup> Section 720.301(9), F.S.

<sup>14</sup> Section 720.302(5), F.S.

Homeowners' associations are administered by a board of directors whose members are elected.<sup>15</sup> 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.<sup>16</sup> The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>17</sup>

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

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

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

For homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.<sup>18</sup>

### **Chapters 718 and 720, F.S.**

Chapter 718, F.S., relating to condominiums and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community associations. The chapters delineate requirements for notices of meetings,<sup>19</sup> recordkeeping requirements, including which records are accessible to the members of the association,<sup>20</sup> and financial reporting.<sup>21</sup> Timeshare

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<sup>15</sup> See ss. 720.303 and 720.307, F.S.

<sup>16</sup> See ss. 720.301 and 720.303, F.S.

<sup>17</sup> Section 720.303(1), F.S.

<sup>18</sup> See s. 720.306(9)(c), F.S.

<sup>19</sup> See ss. 718.112(2) and 720.303(2), F.S., for condominium and homeowners' associations, respectively.

<sup>20</sup> See ss. 718.111(12) and 720.303(4), F.S., for condominium and homeowners' associations, respectively.

<sup>21</sup> See ss. 718.111(13) and 720.303(7), F.S., for condominium and homeowners' associations, respectively.

condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.” Cooperative associations, which the division also regulates, are governed under ch. 719, F.S.

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:**

#### *Use of Association Funds in Legal Actions*

##### *Present Situation*

Homeowners’ associations may:

...institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members, including, but not limited to, the common areas; roof or structural components of a building, or other improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible; representations of the developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities. The association may also defend actions in eminent domain or bring inverse condemnation actions.<sup>22</sup>

Condominium associations have a comparable power to institute, maintain, settle, or appeals actions or hearings (legal actions) in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners.<sup>23</sup>

Developers of homeowners’ associations are prohibited from using association funds to defend a civil or criminal action, administrative proceeding, or arbitration proceeding (legal actions) filed against the developer or directors appointed to the association board by the developer even when the subject of the action or proceeding concerns the operation of the developer-controlled association.<sup>24</sup>

Chapter 718, F.S., does not provide a comparable prohibition against the use of association funds to defend legal actions.

##### *Effect of Proposed Changes*

The bill creates s. 718.111(3)(g), F.S., to prohibit the use of association funds and reserve funds<sup>25</sup> by a developer, an association, and elected board members to defend a legal action. The bill also

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<sup>22</sup> Section 720.303(1), F.S.

<sup>23</sup> See s. 718.111(3), F.S.

<sup>24</sup> Section 720.303(8)(c), F.S.

<sup>25</sup> In condominium associations, the purpose of reserve funds is to fund capital expenditures and deferred maintenance for which the association is responsible. See s. 718.112(2)(f), F.S. Non-developer members of an association may elect by a

prohibits the use of reserve funds to pay attorney fees relating to such action or proceeding. The bill does not prohibit the use association funds and reserve funds by appointed board members to defend a legal action or to pay attorney fees.

The bill amends s. 720.303(8)(c), F.S., to prohibit the use of association funds and reserve funds<sup>26</sup> to by a developer, an association, and elected board members to defend legal actions against. The bill also prohibits the use of reserve funds to pay attorney fees relating to such action or proceeding. The bill does not prohibit the use of association funds and reserve funds by appointed board members to defend a legal action or to pay attorney fees. This prohibition in the bill only applies to use of funds to defend “elected” members of the board.

See Section IV. Constitutional Issues below.

## **Official Records – Condominium and Homeowners’ Associations**

### ***Present Situation***

Florida law specifies the official records that condominium and homeowners’ associations must maintain.<sup>27</sup> Generally, the official records must be maintained in Florida for at least seven years.<sup>28</sup> Certain of these records must be accessible to the members of an association.<sup>29</sup> 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.<sup>30</sup>

Condominium associations with 150 or more units are required to post digital copies of specified documents on their website or by an application that can be downloaded on a mobile device.<sup>31</sup> There is no comparable requirement for homeowners’ associations.

### ***Effect of Proposed Changes***

The bill amends s. 718.111(12)(b) and (g), F.S., relating to condominium associations, and s. 720.303(5), F.S., relating to homeowners’ associations, to require the boards of these associations to appoint a member as a recordkeeper to maintain the official records of the association during his or her appointment term. The board may determine the duration of such appointment and may grant the recordkeeper additional authority as needed. The name and

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majority vote at a meeting at which a quorum is present to waive reserves. In a developer controlled association, a majority vote of all nondeveloper voting interests is required to approve the use of reserves for purposes other than those for which they were intended. See s. 720.303(6)(h), F.S. However, effective December 31, 2024, members of homeowners’ associations may not vote to waive reserves or to use reserves for other purposes for structural integrity reserve items identified in s. 718.112(2)(f), F.S.

<sup>26</sup> In homeowners’ associations, the purpose of reserve funds is to fund capital expenditures and deferred maintenance for which the association is responsible. See s. 720.303(6)(b), F.S. Non-developer members of an association may elect by a majority vote at a meeting at which a quorum is present to waive reserve. However, in a developer controlled association, a majority vote of all nondeveloper voting interests is required to approve the use of reserves for purposes other than those for which they were intended. See s. 720.303(6)(h), F.S.

<sup>27</sup> See ss. 718.111(12) and 720.303(5), F.S., relating to condominium and homeowners’ associations, respectively.

<sup>28</sup> See ss. 718.111(12)(b) and 720.303(5), F.S., relating to condominium and homeowners’ associations, respectively.

<sup>29</sup> See ss. 718.111(12)(a) and 720.303(5), F.S., relating to condominium and homeowners’ associations, respectively.

<sup>30</sup> See ss. 718.111(12)(c) and 720.303(5), F.S., relating to condominium and homeowners’ associations, respectively.

<sup>31</sup> Section 718.111(12)(g), F.S.

contact information of the record keeper must be displayed on the association's website or mobile application and the Department of State website.

See Section VII, Related Issues below.

## **Jurisdiction of the Division**

### ***Present Situation***

The division has the authority to enforce and ensure compliance with ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899, F.S. Before turnover of control to the non-developer members, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of ch. 718, F.S., and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After turnover the division may investigate complaints related only to financial issues, elections, and the maintenance of and unit owner access to association records under s. 718.111(12), F.S., and the procedural completion of structural integrity reserve studies under s. 718.112(2)(g), F.S.

For homeowners' associations, the division's authority is limited to the arbitration election disputes.<sup>32</sup>

### ***Effect of Proposed Changes***

The bill revises s. 718.501(1), F.S., relating to condominium associations, to require the division, within 72 hours after it receives a complaint, to review the complaint, determine whether the complaint, on its face, alleges any criminal activity, and if there is an allegation of criminal activity, forward complaints to the FDLE. The division is responsible for investigating all portions of the complaint that do not allege criminal activity.

The bill amends s. 720.302, F.S., F.S., relating to the purpose, scope, and application of ch. 720, F.S., to provide that division has jurisdiction to accept and review complaints alleging criminal activity before or after turnover, and to require the division to follow the procedures set forth in s. 720.311(1)(b), F.S. The bill provides that the Legislature recognizes that it is in the best interests of homeowners' associations and the individual association members that complaints involving criminal activity be investigated thoroughly.

The bill amends s. 720.311(1)(a), F.S., relating to dispute resolution procedures homeowners' associations, to require the division to forward a complaint to the FDLE within 72 of receipt if it reviews and determines that it contains allegations of criminal conduct.

See Section VII, Related Issues below.

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<sup>32</sup> See s. 720.306(9)(c), F.S.

## **Breaches of a 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.

#### **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 certain not-for-profit corporations and associations.<sup>33</sup> 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:

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<sup>33</sup> 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.



- 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.
- 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.

### **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.<sup>34</sup>

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.<sup>35</sup>

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

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<sup>34</sup> Section 720.303(1), F.S.

<sup>35</sup> Section 720.3033(2), F.S.

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 reiterate the general standards for directors in s. 617.0830, F.S., and the requirements for a director or officers civil liability in s. 617.0834, F.S., by providing that an officer or director:

- Must discharge his or her duties as required by s. 617.0830, F.S., and
- Is liable for monetary damages as provided in s. 617.0834, F.S.

The bill also provides the following criminal prohibitions:

- Forgery of a ballot envelope or voting certificate used in a homeowners' association election is punishable as a felony crime as provided in s. 831.01, F.S.;<sup>36</sup>
- Theft or embezzlement of funds of a homeowners' association is punishable as provided in s. 812.014, F.S.;<sup>37</sup> 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.,<sup>38</sup> or as obstruction of justice as provided in ch. 843, F.S.

An officer or a director charged by information or indictment with a crime referenced in s. 720.303(1)(b), F.S., must be removed from office, and the vacancy filled as provided in 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. If a criminal charge is pending against the 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.

## **Powers and Duties of the Association – Amending Governing Documents**

### ***Present Situation***

The powers and duties of a homeowners' association are specified in ch. 720, F.S., and in the governing documents of the association.<sup>39</sup> The term “governing documents” means the recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and the articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.<sup>40</sup>

<sup>36</sup> 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.

<sup>37</sup> 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.

<sup>38</sup> 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.

<sup>39</sup> Section 720.303, F.S.

<sup>40</sup> Section 720.307(8), F.S.

The governing documents of the association may permit the association to adopt rules for the association, including restrictions or guidelines on architectural or construction improvements.<sup>41</sup> The governing documents of the association may be amended in the manner provided in s. 720.306, F.S., unless otherwise specified in the governing documents.<sup>42</sup> The authority for such rules may rest in the governing documents or in the Florida Statutes.

Unless otherwise provided in the governing documents or law, the governing documents may be amended by the affirmative vote of two-thirds of the voting interests of the association.<sup>43</sup> An amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association, unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment, unless otherwise provided in the governing documents as originally recorded or permitted by ch. 720, F.S., or ch. 617, F.S.<sup>44</sup> The consent of mortgagees may be required in certain circumstances.<sup>45</sup>

### *Effect of Proposed Changes*

The bill amends ss. 720.303(1)(c) and 720.306(1)(c), F.S., to prohibit associations from modifying or restricting the use of a parcel without amending the governing documents.

See Section IV. Constitutional Issues below.

## **Official Records**

### *Present Situation*

Florida law specifies the official records that homeowners' associations must maintain.<sup>46</sup> Generally, the official records must be maintained in Florida for at least seven years.<sup>47</sup> Certain of these records must be accessible to the members of an association.<sup>48</sup> 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.<sup>49</sup>

Condominium associations with 150 or more units are required to post digital copies of specified documents on their website.<sup>50</sup> Homeowners' associations are not required to have a website.

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

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<sup>41</sup> See 720.3035, F.S.

<sup>42</sup> Section 720.306(1), F.S. See also s. 720.303(2)(b), F.S., relating to rules governing the right of members to speak at board meetings.

<sup>43</sup> Section 720.306(1)(b), F.S.

<sup>44</sup> Section 720.306(1)(c), F.S.

<sup>45</sup> See s. 720.306(1)(d), F.S.

<sup>46</sup> Section 720.303(5), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See s. 718.111(12)(g), F.S.

of the board of directors and of the shareholders and for authenticating records of the corporation.<sup>51</sup>

### ***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.

The bill amends s. 720.303(4)(m), F.S., to correct a cross-reference.

The bill amends s. 720.303(5)(c)2., F.S., which exempts from inspection and copying by parcel owners information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel, to limit the exemption to only apply to protected personal identifying information or any other information that is protected by applicable state or federal privacy laws contained in such records. The association must redact protected information and make the redacted record available to a parcel owner for inspection or photocopying if requested.

See Section VII, Related Issues below.

### **SLAPP Suits**

The bill amends ss. 718.1224(4) and 720.304, F.S., relating to condominium and homeowners' associations, respectively to prohibit the use of reserve funds to prosecute a "Strategic Lawsuits Against Public Participation" or "SLAPP" suit, which occurs when members are sued by individuals, business entities, or governmental entities arising out of a parcel owner's appearance and presentation before a governmental entity on matters related to the homeowners' association. Current law prohibits the use of association funds, which includes reserve funds, to prosecute a SLAPP suit.

### **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.<sup>52</sup> A fine imposed by a homeowners' association may exceed \$1,000 in the aggregate if the association's governing documents authorize the fine.<sup>53</sup>

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<sup>51</sup> Section 607.01401(65), F.S., defining the term "secretary."

<sup>52</sup> Sections 720.305(2), F.S.

<sup>53</sup> *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.<sup>54</sup> A fine imposed by a condominium or cooperative association may not become a lien against the unit.<sup>55</sup>

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.<sup>56</sup>

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.<sup>57</sup>

### *Effect of Proposed Changes*

The bill amends s. 720.305(2), F.S., to provide that a fine cannot exceed \$1,000, a fine of \$1,000 or less cannot become a lien, and multiple fines cannot be combined or aggregated to create a lien. In effect, the bill prohibits associations from filing a lien to secure a fine.

The bill amends s. 720.305(2)(b), F.S., to extend the time for an appeal of a fine from 14 days to 30 days and provides that the notice of an imposed fine must be sent to the designated mailing address or e-mail in the association's official records. The notice of the intent to impose a fine must include a description of the alleged violation, the specific action required to cure such violation, 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 amends s. 720.305(2)(b), F.S., to expand the role of the review committee is to confirming whether a violation exists. The bill also clarifies that no other action may be taken if the committee reviewing the alleged violation determines that a violation does not exist. In effect, under the bill the review committee determines violations and fines, not the board.

The bill creates s. 720.305(2)(d), F.S., to require the 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.

Section 720.305(2)(d), F.S., is also revised to change process for the collection of fines. Under the bill, fines, suspensions, attorney fees, and costs may not be imposed if the violation is cured before the hearing before the review committee. Under the bill, the review committee must decide by majority vote to provide the date that the fine payment is due, which must be at least

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<sup>54</sup> Sections 718.303(3) and 719.303(3), F.S.

<sup>55</sup> Sections 718.303(3) and 719.303(3), F.S.

<sup>56</sup> Sections 720.305(2)(b) and (c), F.S.

<sup>57</sup> *Id.*

30 days after delivery of the written notice from the review committee that a fine has been approved. If the violation is cured within 30 days after delivery of the written notice, the fine must be reduced by 50 percent, any applicable suspensions must be lifted, and attorney fees and costs may not be awarded. See Section VII, Related Issues below.

The bill creates s. 720.305(2)(f), F.S., to provide that a parcel owner or any occupant, licensee, or invitee of the parcel owner may, at any time, make a written request for a detailed accounting of any amounts owed to the association and require the board to provide such information within 10 days after receipt of the written request. If the board fails to respond to a written request for a detailed accounting, the failure to respond constitutes a complete waiver of the violation. The bill is not clear whether written request for an accounting is limited to fines owed to the association.

The bill creates s. 720.305(2)(g), F.S., to require the board to apply a payment for an outstanding fine to the fine before satisfying any other amounts due to the association. In addition, attorney fees and costs may not continue to accrue after a parcel owner or any occupant, licensee, or invitee of the parcel owner has paid a fine. See Section VII, Related Issues below.

The bill creates s. 720.305(2)(h), F.S., to provide that a parcel owner or any occupant, licensee, or invitee of the parcel owner may request a hearing before the board to dispute the reasonableness of the attorney fees and costs awarded to the association.

The bill creates s. 720.305(7), F.S., to provide that the association's or review committee's failure to comply with s. 720.305, F.S., constitutes a waiver of all fines or suspensions imposed or proposed for a violation. In addition, any fines, fees, or other costs incurred by a parcel owner or any occupant, licensee, or invitee of the parcel owner which is related to a fine that is waived due to a failure to comply is also waived, or must be paid by the association, if such fine, fee, or other cost cannot be waived by the association.

See Section VII, Related Issues below.

## **Priority of Payments**

### ***Present Situation***

Any payment received and accepted by an association must be applied to these costs in the following order of priority:<sup>58</sup>

1. Interest accrued;
2. Administrative late fee,
3. Costs and reasonable attorney fees incurred in collection; and
4. Delinquent assessments.

### ***Effect of Proposed Changes***

The bill amends s. 720.3085(1), F.S., to require an association to apply payments made by a parcel owner first to any outstanding amounts due as designated by the parcel owner on the payment instrument or otherwise in writing. If the parcel owner does not designate to which

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<sup>58</sup> Section 720.3085(3)(b), F.S.

outstanding amount the payment is to be applied, the association must apply the payment in the following order of priority:

1. Regularly occurring assessments.
2. Special assessments.
3. Fines.
4. Interest.
5. Other fees or costs charged by the association to the parcel owner, including attorney fees and costs.

See Section IV. Constitutional Issues and Section VII. Related Issues below.

## **Outstanding Monetary Obligations and Liens**

### ***Present Situation***

When authorized by the governing documents, an association may secure the payment of an assessment<sup>59</sup> or other amounts due by a parcel owner with a lien on the parcel.<sup>60</sup> Section 720.3085, F.S., provides the process for a valid claim of lien and for foreclosing on the lien.

In addition, an association may bring an action in its name to foreclose a lien for assessments, which may include regular assessments required by the adopted budget of the association, fees for amenities, or fines for violation, in the same manner in which a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in an action to foreclose a lien or an action to recover a money judgment for unpaid assessments.<sup>61</sup>

### ***Effect of Proposed Changes***

The bill creates s. 720.3085(2)(c), F.S., to provide that “a lien against a parcel is not foreclosable and will stay on the parcel until it is paid, settled, or released.” In effect, the bill prohibits associations from foreclosing liens on a parcel. However, the bill maintains the provisions in this section regarding the right of an association to place a lien on a parcel to secure an unpaid monetary obligation and the process for foreclosing on such a lien.

Under the bill, an association may only bring an action to recover a money judgment for the unpaid assessments if the monetary judgment action is brought in the same lawsuit as the claim of lien.

See Section IV. Constitutional Issues below.

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<sup>59</sup> Section 720.301(1), F.S., defines the term “assessment” or “amenity fee” to mean “a sum or sums of money payable to the association, to the developer or other owner of common areas, or to recreational facilities and other properties serving the parcels by the owners of one or more parcels as authorized in the governing documents, which if not paid by the owner of a parcel, can result in a lien against the parcel.”

<sup>60</sup> Section 720.3085, F.S.

<sup>61</sup> Section 720.3085(1)(c), F.S.

## **Alternative Dispute Resolution - Condominium and Cooperative Associations**

### ***Present Situation***

Section 720.311, F.S., provides for the mediation of certain homeowners' association disputes under ch. 720, F.S. Disputes between an association and a parcel owner are subject to a demand for presuit mediation served by an aggrieved party before the dispute is filed in court. The mediation requirement applies to disputes related to:

- The use of or changes to the parcel or the common areas and other covenant enforcement disputes;
- Amendments to the association documents;
- Meetings of the board and committees appointed by the board, membership meetings not including election meetings; and
- Access to the official records of the association.

An aggrieved party in a dispute must initiate the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in s. 720.311, F.S., and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.<sup>62</sup>

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.<sup>63</sup>

Recall and election disputes in homeowners' associations are the only type of disputes that may be arbitrated by the division. Such disputes are not eligible for pre-suit mediation and must be arbitrated by the division or filed directly with a court of competent jurisdiction.<sup>64</sup>

### ***Effect of Proposed Changes***

The bill amends the catch-line description for s. 720.311, F.S., which relates to dispute resolution, to also reference "complaints alleging criminal activity." The bill amends s. 720.311(1)(b), F.S., to require the division to review a complaint within 72 hours of its receipt to determine whether the complaint, on its face, alleges any criminal activity. If the division determines that a complaint contains allegations of criminal activity, the division shall forward the complaint to the Department of Law Enforcement (FDLE) for investigation.

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<sup>62</sup> *Id.*

<sup>63</sup> Section 720.311(2)(b), F.S.

<sup>64</sup> Section 718.1255(5), F.S.



The bill amends s. 720.311(1)(b), F.S., to require pre-suit mediation for disputes related to an alleged violation of the governing documents and any fines related to the alleged violation which subsequently are deemed covered assessments.

The bill extends from 20 days to 90 days the time to respond to a petition for mediation.

## **Florida Department of Law Enforcement**

### ***Present Situation***

The FDLE is a state-wide law enforcement agency that provides services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve crimes while protecting Florida's citizens and visitors.<sup>65</sup> The duties of the FDLE include a variety of law enforcement and public safety matters, including identity theft<sup>66</sup> and cyber-crimes programs,<sup>67</sup> and maintenance of the sexual offenders and sexual predators registries.<sup>68</sup>

### ***Effect of Proposed Changes***

The bill creates s. 943.71, F.S., to provide that the FDLE has the authority to investigate complaints alleging violations of general law by a:

- Condominium association and its board of administration;
- Cooperative association and its board of administration; and
- Homeowners' association and its officers or board of directors.

### **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.

### **C. Trust Funds Restrictions:**

None.

<sup>65</sup> See Florida Department of Law Enforcement, *About FDLE*, at: <https://www.fdle.state.fl.us/About-Us> (last visited March 30, 2023).

<sup>66</sup> See s. 943.0412, F.S.

<sup>67</sup> See s. 943.0415, F.S.

<sup>68</sup> See ss. 943.0435 through 943.04354, F.S.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

***Impairment of Contract***

The bill amends ss. 720.303(1)(c) and 720.306(1)(c), F.S., to prohibit associations from modifying or restricting the use of a parcel without amending the governing documents; amends s. 720.303(5), F.S., to require homeowners' association boards to appoint an association member as a recordkeeper; amends s. 720.305(2), F.S., to limit the amount of fines and to provide a process for imposing and collecting fines; and amends s. 720.3085(2)(c), F.S., to prohibit associations from foreclosing liens on a parcel.

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.*,<sup>69</sup> 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:

- 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.<sup>70</sup>

***Access to Courts***

The bill amends s. 718.111(3), F.S., to prohibit the use of association funds and reserve funds by a developer, an association, and elected board members to defend a legal action. This provision may implicate concerns related to the constitutional right of access to courts. Article I, s. 21, Florida Constitution, provides: "The courts shall be open to every

<sup>69</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

<sup>70</sup> *Id.* at 779.

person for redress of any injury, and justice shall be administered without sale, denial or delay.” In *Lasky v. State Farm Ins. Co.*,<sup>71</sup> the Florida Supreme Court upheld the constitutionality of the state's no-fault automobile insurance statute, although the statute restricted access to the courts. Unless medical expenses reached a certain level, the statute restricted an injured party from bringing a tort action to recover for pain and suffering. The court reasoned that because the statute required every owner of a motor vehicle to obtain insurance, a reasonable alternative to traditional tort actions was available. The court concluded that the statute did not deprive the appellants of their right to a trial by jury because it only abolished the right of recovery in narrow circumstances where it left “nothing to be tried by jury.”<sup>72</sup> The bill does not provide an alternative remedy or process in lieu of the right to defend itself in judicial and administrative proceedings.

### ***Vagueness or Ambiguity***

To the extent the bill provide contradictory provisions or undefined terms of which the meaning is not clear in context, the bill may violate the Due Process Clause of the U.S. Constitution if it fails to give persons fair notice as to what is prohibited. The statute must clearly delineate prohibited conduct so that persons of ordinary intelligence are not forced to guess about the statute’s meaning or application. If the statute fails to provide such notice, it violates the void for vagueness doctrine.<sup>73</sup> The bill includes the following contradictory provisions and vague terms that may fail to give a homeowners’ association fair notice of prohibited conduct or of its obligations:

- The bill creates s. 720.3085(2)(c), F.S., to provide that “a lien against a parcel is not foreclosable and will stay on the parcel until it is paid, settled, or released.” However, the bill maintains the provision in this section regarding the right of an association to place a lien on a parcel to secure an unpaid monetary obligation and the process for foreclosing on such a lien.
- The bill amends s. 720.3085(1), F.S., to provide a new order of priority for a parcel owner’s payment of a monetary obligation. However, this provision conflicts with the order of priority for the application of payments specified under current law that is not amended by the bill under s. 720.3085(3)(b), F.S.
- The bill amends s. 720.3085(2)(c), F.S., to provide that an association may only bring an action to recover a money judgment for the unpaid assessments if the monetary judgment action is brought “in the same lawsuit as the claim of lien.” The term “in the same lawsuit as the claim of lien” is not clear. If the term refers to an action to foreclose a lien, then an association would be prohibited from bringing an action to recover on a monetary judgement from a court because the bill prohibits the association from foreclosing on any liens.
- The bill amends s. 720.311(1)(b), F.S., to require pre-suit mediation for disputes related to an alleged violation of the governing documents and any fines related to the alleged violation which subsequently are deemed covered assessments. The bill does not provide a context to explain the meaning of the term “any fines related to the

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<sup>71</sup> *Lasky v. State Farm Ins. Co.*, 296 So.2d 9 (Fla. 1974).

<sup>72</sup> *Id.* at 22. See generally Mark M. Hager, *No Fault Drives Again: A Contemporary Primer*, 52 U. Miami L. Rev. 793 (1998).

<sup>73</sup> *Connally v. General Constr. Co.*, 269 U.S. 385 (1926).

alleged violation which subsequently are deemed covered assessments,” and the term “covered assessment” is not defined in ch. 720, F.S.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Homeowners associations may incur increased costs if they are unable to defend legal actions for monetary damages. The associations may also incur expenses if they are prohibited from foreclosing liens to collect a parcel owner’s unpaid monetary obligation. In addition, without the ability to file a lien to secure a fine, associations may be unable to collect such fines.

The bill creates s. 720.305(2)(d), F.S., to prohibit the imposition of a fine, including attorney fees and costs, if the violation is cured before a review committee’s hearing and to provide that if a violation is cured within 30 days after delivery of the written notice that the review committee. The bill also creates s. 720.305(2)(h), F.S., to provide that a parcel owner or any occupant, licensee, or invitee of the parcel owner may request a hearing before the board to dispute the reasonableness of the attorney fees and costs awarded to the association. If attorney fees and costs are not collected from the person charged with the violation because the violation was cured or the board determines the attorney fees were not reasonable, the association may need to impose additional assessments or special assessments on all the members of the association to pay for the attorney fees and costs that have been waived.

**C. Government Sector Impact:**

The DBPR anticipates a need for additional staff and labor within the division and the Division of Service Operations in order to receive complaints regarding homeowners’ associations, process and review complaints, and to analyze reserves of community associations. The DBPR estimates that it would require an additional, total appropriation of \$2,357,785 (\$197,457 nonrecurring).<sup>74</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

***Official Records***

The bill amends s. 718.111(12)(b)1., F.S., to require homeowners’ association boards to appoint an association member as a recordkeeper whose responsibility it is to maintain the official

<sup>74</sup> See Department of Business and Professional Regulation, 2023 Agency Legislative Bill Analysis for HB 919 (SB 1114), (Feb. 17, 2023) at 7 (on file with the Senate Regulated Industries Committee).

records of the association during his or her appointment term. The association must display the name and contact information of the recordkeeper on its website and the Department of State website. The division has expressed several concerns about the recordkeeper requirement in the bill. If the recordkeeper is not an elected board member, that person would not have fiduciary obligations or responsibilities to the other members of the association. The bill does not provide criteria to be appointed as a recordkeeper other than membership in the association. Under current law, there are no specific, statutorily delineated requirements to become a board member. Because the recordkeeper under the bill is merely an association member, as opposed to an officer or director of the association, that person may not be held liable individually, civilly, criminally, or administratively for actions or inactions while serving as the recordkeeper. In addition, the division jurisdictional authority is limited to the association as a corporate entity and not the conduct of the individual unit owners or association members. The requirement that the association's recordkeeper maintain the association's official records creates a concern as to the location in which the records will be maintained and the efficiency of providing access to unit owners who request access to records of the association. For example, if the records are being maintained in the recordkeeper's home, there may be concerns regarding a member's right to access the records within the statutorily required<sup>75</sup> 10 working days.<sup>76</sup>

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.

The bill amends s. 720.303(5)(c)2., F.S., to require to limit the exemption in this provision to protected personal identifying information or any other information that is protected by applicable state or federal privacy laws contained in such records. The bill may require association to have an attorney review information obtained in the approval of the lease, sale, or other transfer of a parcel to determining whether the release of the information violates state or federal laws, because it is a determination that volunteer board members, if not an attorney, may not be able to perform.

### ***Fines***

The bill creates s. 720.305(2)(d), F.S., to prohibit the imposition of a fine if the violation is cured before a review committee's hearing and to provide that if a violation is cured within 30 days after delivery of the written notice that the review committee has approved a fine, the fine must be reduced by 50 percent, any applicable suspensions must be lifted, and attorney fees and costs may not be awarded. There are instances in which a violation cannot be cured because the violation is a one-time event, such as a speeding violation or leaving a garbage container at the curb beyond the permitted hour. Under the bill, it is not clear if an association may impose fines for violations that are one-time events.

The bill also creates s. 720.305(2)(d), F.S., to provide that fines, suspensions, attorney fees, and costs may not be imposed if the violation is cured before the hearing by the review committee.

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<sup>75</sup> See s. 720.303(5)(a), F.S.

<sup>76</sup> *Supra* note 73 at 3.

This would require a second hearing before the review committee. The bill does not specify the time frames or process for this second hearing. Under the bill, the 30-day opportunity-to-cure period commences when the review committee's notice is delivered. This may require an association to incur additional costs to mail the notice by certified mail with a return receipt indicating the date of delivery. In addition, the bill does not specify how the association is meant to determine or confirm that a violation has been cured and whether additional notice is required after that confirmation, e.g., confirmation may be made by a notice from the parcel owner to the review committee, or the review committee, must monitor the parcel to determine if the violation has been cured.

The bill creates s. 720.305(2)(h), F.S., to provide that a parcel owner or any occupant, licensee, or invitee of the parcel owner may request a hearing before the board to dispute the reasonableness of the attorney fees and costs awarded to the association. The bill does not provide a process for requesting this hearing, including timeframe and notice requirements. In addition, it is not clear if the attorney fees relate to pre-suit fees or to prevailing party fees awarded by a court. It is also not clear how a board may determine whether attorneys' fees are reasonable.

#### ***Priority of Payments***

The bill amends s. 720.3085(1), F.S., to require an association to apply payments made by a parcel owner first to any outstanding amounts due as designated by the parcel owner on the payment instrument or otherwise in writing, and specifies the priority of payments if the parcel does not make such a designation. This provision conflicts with the order of priority for the application of payments specified under current law that is not amended by the bill under s. 720.3085(3)(b), F.S.

#### ***Outstanding Monetary Obligations - Liens***

The bill creates s. 720.3085(2)(c), F.S., to provide that "a lien against a parcel is not foreclosable and will stay on the parcel until it is paid, settled, or released." In effect, the bill prohibits associations from foreclosing liens on a parcel. However, this provision conflicts with other provisions in this section which provide for the foreclosing of a valid lien. The bill also limits the ability of an association to bring an action to recover a monetary judgment for the unpaid assessments without waiving any claim of lien if the monetary judgment action is brought in the same lawsuit as the claim of lien. However, it is not clear how an association could bring such an action because foreclosure of the lien is prohibited under this bill.

#### ***Dispute Resolution***

The bill amends s. 720.311(1)(b), F.S., to require pre-suit mediation for disputes related to an alleged violation of the governing documents and any fines related to the alleged violation which subsequently are deemed covered assessments. The bill does not provide a context to explain the meaning of the term "any fines related to the alleged violation which subsequently are deemed covered assessments." The term "covered assessment" is not defined in ch. 720, F.S.

#### ***Division Review of Complaints Alleging Criminal Activity***

The bill amends s. 720.311(1)(b), F.S., to require that the division review a complaint within 72 hours of its receipt to determine whether the complaint, on its face, alleges any criminal activity.

If the division determines that a complaint contains allegations of criminal activity, the division shall forward the complaint to the Department of Law Enforcement for investigation.

The division's current procedure requires the initial review of complaints within seven days of receipt. According to the division, complaints are often voluminous and extremely detailed and completing an initial review within 72 hours of receipt is impracticable, particularly so if the complaint is received close to a state holiday or late on a Friday.<sup>77</sup>

In addition, the division states that the bill's effective date of October 1, 2023 would not provide adequate time within which it may create, technologically and substantively, an entirely new criminal referral unit for homeowners' associations, including the need for it to create and competently staff an entirely new investigative unit.<sup>78</sup>

### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.1224, 718.501, 720.302, 720.303, 720.304, 720.305, 720.306, 720.3085, 720.311, 720.402, and 943.71.

### **IX. Additional Information:**

#### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

#### **B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>77</sup> *Id.* at 5.

<sup>78</sup> *Id.*