

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1341 Provision of Homeowners' Association Rules and Covenants

SPONSOR(S): Civil Justice Subcommittee, Arrington

TIED BILLS: IDEN./SIM. BILLS: SB 788

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

SUMMARY ANALYSIS

A homeowners' association ("HOA") is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. Florida law requires an HOA to maintain its official records, including a copy of the HOA's governing documents. The governing documents include the HOA's declaration of covenants, which establishes the community's basic covenants and restrictions, and its rules and regulations, which typically address matters of everyday policy. Such documents may be amended as provided in law.

The official records must be maintained within the state for at least seven years and must be made available to a parcel owner for inspection or photocopying. An HOA may comply with these requirements by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically or by allowing the records to be viewed in an electronic format on a computer screen and printed upon request.

CS/HB 1341 requires an HOA to provide:

- Before October 1, 2023, a physical or digital copy of the HOA's rules and covenants to every member of the HOA.
- A physical or digital copy of the HOA's rules and covenants to every new member of the HOA.
- If the HOA's rules or covenants are amended, an updated copy of the amended rules or covenants to every member of the association. However, under the bill, an HOA may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

The bill also specifies that the requirements to provide a copy of the HOA rules and covenants as specified above may be met by posting a complete copy of the rules and covenants, or a direct link thereto, on the homepage of the HOA's website if the website is accessible to association members and the HOA sends notice to the members of its intent to utilize the website for this purpose.

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

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A homeowners' association ("HOA") is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. Chapter 720, F.S., the Homeowners' Association Act ("HOA Act") governs those HOAs whose covenants and restrictions include mandatory assessments.

Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.¹

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.²

HOA Governing Documents

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.³

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.⁴ The articles of incorporation establish the HOA's existence, basic structure, and governance.⁵ The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.⁶

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.⁷ Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.⁸

Official Records

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:⁹

- A copy of the HOA's:
 - Declaration of covenants and each amendment,

¹ See generally ch. 720, F.S.

² S. 720.311, F.S.

³ S. 720.301(8), F.S.

⁴ Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), <https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/> (last visited April 4, 2023).

⁵ *Id.*

⁶ *Id.*

⁷ S. 720.306(1), F.S.

⁸ *Id.*

⁹ S. 720.303(4), F.S.

- Bylaws and each amendment,
- Articles of incorporation and each amendment, and
- Current rules.
- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the HOA is obligated to maintain, repair, or replace.
- The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least seven years.
- A current roster of all members and their mailing addresses and parcel identifications. The HOA must maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission must be removed from HOA records when consent to receive notice by electronic transmission is revoked. However, the HOA is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.
- All of the HOA's insurance policies, which must be retained for at least seven years.
- A current copy of all contracts to which the HOA is a party, including, without limitation, any management agreement, lease, or other contract under which the HOA has any obligation or responsibility. Bids received by the HOA for work to be performed must also be considered official records and must be kept for a period of one year.
- The financial and accounting records of the HOA, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least seven years. The financial and accounting records must include:
 - Accurate, itemized, and detailed records of all receipts and expenditures.
 - A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
 - All tax returns, financial statements, and financial reports of the HOA.
 - Any other records that identify, measure, record, or communicate financial information.
- A copy of the disclosure summary.
- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least one year after the date of the election, vote, or meeting.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.
- All other written records of the HOA which are related to the operation of the HOA.

Access to Official Records

The official records must be maintained within the state for at least seven years and be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the HOA is located within ten business days after receipt by the board or its designee of a written request for inspection or copying. An HOA may comply with such requirements by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

If the HOA has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association must allow a member or authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of providing the member or authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.¹⁰

The failure of an association to provide access to the records within ten business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this requirement.¹¹ A member who is denied access to official records is entitled to his or her actual damages or minimum damages for the HOA's willful failure to comply with this requirement, which minimum damages are \$50 per calendar day up to ten days, with the calculation to begin on the 11th business day after receipt of the written request.¹²

However, the HOA may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one eight-hour business day per month.¹³

Further, the following records are not accessible to members or parcel owners:¹⁴

- Any record protected by the lawyer-client privilege as described in s. 90.502, F.S., and any record protected by the work-product privilege.
- Information obtained in connection with the approval of the lease, sale, or other transfer of a parcel.
- Information obtained in a gated community in connection with guests' visits to parcel owners or community residents.
- Personnel records of HOA or management company employees.
- Medical records of parcel owners or community residents.
- Personal identifying information of a parcel owner other than as provided for HOA notice requirements, excluding the person's name, parcel designation, mailing address, and property address.
- Any electronic security measure that is used to safeguard data, including passwords.
- The software and operating system which allows the manipulation of data; however, the data is part of the official records.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.

Effect of Proposed Changes

CS/HB 1341 requires an HOA to provide:

- Before October 1, 2023, a physical or digital copy of the HOA's rules and covenants to every member of the HOA.
- A physical or digital copy of the HOA's rules and covenants to every new member of the HOA.
- If the HOA's rules or covenants are amended, an updated copy of the amended rules or covenants to every member of the association. However, under the bill, an HOA may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

The bill also specifies that the requirements to provide a copy of the HOA rules and covenants may be met by posting a complete copy of the rules and covenants, or a direct link thereto, on the homepage of the HOA's website if the website is accessible to association members and the HOA sends notice to the members of its intent to utilize the website for this purpose. Such notice must be sent by:

- Email to any member who has consented to receive notices by electronic transmission and has provided an email address for that purpose.
- Mail to all other members at the address identified as the member's mailing address in the official records of the association.

The bill provides an effective date of July 1, 2023.

¹¹ S. 720.303(5)(a), F.S.

¹² S. 720.303(5)(b), F.S.

¹³ S. 720.303(5)(c), F.S.

¹⁴ S. 720.303(5)(c)1.-9., F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 720.303, F.S., relating to rules and covenants of a homeowners' association.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires an HOA to provide copies of its rules and covenants to members under specified circumstances. Because such copies may be in a digital format, there may not be any cost to the HOA associated with distributing such documents. Further, the documents, once distributed, may assist a parcel owner in an HOA in protecting his or her investment.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 4, 2023, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute specified that the requirements to provide a copy of the HOA rules and covenants may be met by posting a complete copy of the rules and covenants, or a direct link thereto, on the homepage of the HOA's website if the website is accessible to association members and the HOA sends notice to the members of its intent to utilize the website for this purpose.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.