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 Regulated Industries

BILL:	SB 1178
INTRODUCER:	Senators Bradley and Pizzo
SUBJECT:	Condominium and Cooperative Associations
DATE:	January 19, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

SB 1178 relates to the governance of condominium and cooperative associations and the practice of community association management. Regarding community association managers (CAMs) and CAM firms, the bill:

- Requires CAMs and CAM firms to return all community association records in their possession within 20 days of termination of a services agreement or a written request whichever occurs first, with license suspension and civil penalties for noncompliance.
- Provides conflict of interest disclosure requirements and a process for associations to follow when approving contracts with CAMs and CAM firms, or a relative, that may present a conflict of interest. The requirements are similar to those contracts with condominium association officers and directors.
- Provides grounds to discipline CAMs and CAM firms for failure to disclose a conflict of interest as required by the bill.

Regarding access to the official records of a condominium association, the bill:

- Requires official records be kept in an organized manner.
- Effective January 1, 2026, decreases from 150 units to 25 units the threshold requirement for an association to maintain specified records available for download on the association's website or by an application on a mobile device.
- Requires official records to be provided to the unit owner at no charge if the Division of Condominium, Timeshares, and Mobile Homes (division) subpoenas records an association has failed to timely provide in response to a unit owner's written request.
- Requires associations to maintain additional financial records (e.g., invoices and other documentation that substantiates any receipt or expenditure) to be maintained by a condominium association for inspection by association members as official records.
- Permits associations to fulfill records requests by directing unit owners to the records that are posted on the association's website.

- Requires associations to respond to a records request with a checklist of all records made available and a sworn affidavit as to the veracity of the checklist provided.

The bill provides the following criminal penalties related to condominium associations:
- Third degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept anything or service of value or kickback;
- Second degree misdemeanor for any director or member of the board or association to knowingly, willfully, and "repeatedly" violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association; and
- Third degree felony to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

In addition, the bill provides that a person commits theft by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

Regarding condominium association budgets, financial reporting, and reserves, the bill:
- Revises the term "deferred maintenance" to "planned maintenance."
- Prohibits associations from reducing the required type of financial statement (compiled, reviewed, or audited financial statements) for consecutive years.
- Provides for the investing of reserve funds by authorizing condominium associations, including multicondominium associations, to invest reserve funds and provides relevant procedures and requirements associations must follow when investing reserve funds, including limits on the types or permissible investments, record keeping requirements, and requiring the use of an independent investment adviser.
- Revises reserve maintenance requirements to:
  - Require an association to provide unit owners with a notice that the structural integrity reserve study is available for inspection and copying within 45 days of completion of the study. The notice may be provided electronically.
  - Clarify that the turnover report required under s. 718.301(4)(p), F.S., consists of a structural reserve study.
  - Allow associations to waive reserves and for the structural integrity reserve study to recommend a temporary suspension of reserve funding if the building or units are unsafe and uninhabitable as determined by the local enforcement agency.

Regarding meetings of the boards of administration for condominium associations, the bill:
- Requires condominium associations of 10 or more units to meet at least four times a year for the purpose of responding to inquiries from members and informing members on the status of the condominium, including the status of any construction or repair projects, the status of the association's revenue and expenditures during the fiscal year, or other issues affecting the association.
- Requires associations to include a copy of the proposed contract if the notice for a board meeting relates to the approval of a contract.

The bill provides education requirements for the officers and directors of condominium associations to:

- Require newly elected or appointed directors to submit both the written certification that they have read the association's governing documents, will work to uphold the documents to the best of their ability and will faithfully discharge their duties, and submit a certificate of completion of an approved condominium education course;
- Provide that the written certification and educational certificate are valid for 10 years;
- Provide that developer-appointed directors do not have to retake the education course for any subsequent appointment by a developer, provided that the previously submitted educational certificate is valid for only 10 years;
- Require the division to provide the required education curriculum to directors at no charge, including when the education curriculum is provided by a division-approved education provider;
- Require directors to annually complete continuing education about recent changes to the condominium laws and rules; and
- Require associations to annually certify that all directors have completed the required written certification and educational certificate requirements.

Regarding assessments levied by condominium associations, the bill:

- Provides a process for the board to may secure a line of credit and assess a contingent special assessment to fund repairs recommended by a milestone inspection required under s. 553.899, F.S., or a similar local inspection requirement or a structural integrity reserve study, or unanticipated repairs.
- Provides that, for a budget adopted on or before December 31, 2029, an association may secure a line of credit and assess a contingent special assessment to meet the reserve funding schedule recommended by the structural integrity reserve study.
- Requires notices of a special assessment and contingent special assessment to be recorded in the public record of the county where the condominium is located.

Regarding voting in condominium associations, the bill:

- Provides criminal penalties 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.
- Requires associations to send unit owners, whose right to vote has been suspended because of an unpaid financial obligation, a notice of such obligation within 90 days before an election or vote of the members.

The bill revises the requirements for the installation of hurricane protection in a condominium building to:

- Create a uniform definition for "hurricane protection," to include hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property;
- Require condominium declarations to delineate the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections, exterior doors, windows, and glass apertures;

- Provide when a majority vote of the unit owners is required to install hurricane protection;
- Provide a uniform procedure for approval of hurricane protection by the unit owners, including requiring the board to record a certificate in the public records evidencing that the association has voted to install hurricane protection; and
- Provide that unit owners are not responsible for the cost of removal and installation of hurricane protection if the removal is necessary to repair condominium property.

The bill revises the prohibitions against “strategic lawsuits against public participation" or "SLAPP suits,” which occur when association members are sued by individuals, business entities, or governmental entities for matters arising out of a unit owner's appearance and presentation before a governmental entity on matters related to the condominium association. The bill specifically includes condominium associations in the SLAPP suit prohibition, and protects unit owners from reporting complaints to government agencies or law enforcement, or making public statements critical of the operation or management of an association by:

- Prohibiting associations from retaliating against unit owners, such as by increasing assessments, threatening to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action; and
- Prohibiting associations from spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

Regarding officers and directors of a condominium association, the bill provides that the attendance of an officer or director at a meeting of the board is sufficient to constitute a quorum for the meeting and for any vote taken in his or her absence when the director is required to leave the room during the discussion and the taking of a vote on a contract in which the director, or his relative, has an interest.

The bill revises the jurisdiction of the division by deleting the limitation on its authority to enforce ch. 718, F.S., after turnover. Under the bill, the division may 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 before and after control of the association is turned over to the nondeveloper members. In addition, the bill:

- Requires that the division must refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.
- Provides that the division director or any officer or employee of the division, and the condominium ombudsman or employee of the office of the condominium ombudsman may attend and observe any meeting of the board or any unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association, for the purpose of performing the duties of the division or the office of the ombudsman under ch. 718, F.S.
- Requires the division to routinely conduct random audits of condominium associations to determine compliance with the requirement that certain official records must be available for download on the association’s website.

The bill also requires the division to submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations

committees and appropriate substantive committees, a review of the website or application requirements for official records under s. 718.111(12)(g), F.S., and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement.

Regarding cooperative associations, the bill:

- Revises the term "deferred maintenance" to "planned maintenance."
- Requires an association to provide unit owners with a notice that the structural integrity reserve study is available for inspection and copying within 45 days of completion of the study. The notice may be provided electronically.
- Clarifies that the turnover report required under s. 719.301(4)(p), F.S., consists of a structural reserve study.

Except as otherwise expressly provided, the bill takes effect July 1, 2024.

II. Present Situation:

Milestone Inspections

Section 553.899, F.S., requires residential condominium and cooperative buildings that are three stories or more in height, as determined by the Florida Building Code, to have a milestone inspection by December 31 of the year in which the building reaches 30 years of age. However, if a building reaches 30 years of age before July 1, 2022, the initial milestone inspection must be performed before December 31, 2024. If a building reaches 30 years of age on or after July 1, 2022, and before December 31, 2024, the building's milestone inspection must be performed before December 31, 2025. The local enforcement agency will provide written notice of the required inspection to the association.[1]

Local enforcement agencies that are responsible with enforcing the milestone inspection requirements may set a 25-year inspection requirement if justified by local environmental conditions, including proximity to seawater.[2] Local enforcement agencies may also extend the inspection deadline for a building upon a petition showing good cause that the owner or owners of the buildings have entered into a contract with an architect or engineer to perform the milestone inspection services and the milestone inspection cannot reasonably be completed before the deadline.[3]

The milestone inspection requirement applies to buildings that in whole or in part are subject to the condominium or cooperative forms of ownership, such as mixed-ownership buildings. Consequently, all owners of a mixed-ownership building in which portions of the building are subject to the condominium or cooperative form of ownership are responsible for ensuring compliance and must share the costs of the inspection. However, condominium and cooperative buildings that are single-family, two-family, and three-family dwellings with three or fewer habitable stories above ground are exempt from the milestone inspection requirement.[4]

[1] Section 553.899(3), F.S.
[2] Section 553.899(3)(b), F.S.
[3] Section 553.899(3)(c), F.S.
[4] Section 533.899(3), F.S.

The purpose of a milestone inspection is to determine the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determine the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building.[5] The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the firesafety code.[6] The milestone inspection services may be provided by a team of professionals with an architect or engineer acting as a registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member.[7]

In addition, s. 553.899, F.S.:

- Requires that a phase one milestone inspection must commence within 180 days after an association receives a written notice from the local enforcement agency.
- Provides the minimum contents of a milestone inspection report.
- Requires inspection report results to be provided to local building officials and the affected association.
- Requires that the contract between an association that is subject to the milestone inspection requirement and a community association manager (CAM) or CAM firm must require compliance with those requirements as directed by the board.
- Requires the local enforcement agency to review and determine if a building is safe for human occupancy if an association fails to submit proof that repairs for substantial deterioration have been scheduled or begun within at least 365 days after the local enforcement agency receives a phase two inspection report.

Within 45 days after receiving a milestone inspection report, the condominium or cooperative association must distribute a copy of an inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner. The inspector-prepared summary must be provided to unit owners, regardless of the findings or recommendations in the report, by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under ch. 718, F.S., or ch. 719, F.S., as applicable, and by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission. The association must also post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

Condominium and Cooperative Associations

Chapters 718 and 719, F.S.

Chapter 718, F.S., relating to condominiums, and ch. 719, F.S., relating to cooperatives, provide for the governance of these community associations. The chapters delineate requirements for

[5] Section 553.899(2)(a), F.S.
[6] *Id.*
[7] *Id.*

notices of meetings,[8] recordkeeping requirements, including which records are accessible to the members of the association,[9] and financial reporting.[10] Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively.

Condominiums

A condominium is a "form of ownership of real property created under ch. 718, F.S,"[11] the "Condominium Act." 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.[12] For unit owners, membership in the association is an unalienable right and required condition of unit ownership.[13]

A condominium association is administered by a board of directors referred to as a "board of administration."[14] The board of administration is 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.[15]

There are approximately 1,529,764 condominium units in Florida operated by 27,588 associations.[16] Approximately 912,376 of these condominium units in Florida are at least 30 years in age.[17] Further breakdown of the age of condominium units in Florida is as follows:

- 105,404 units – 50 years old or older;
- 479,435 units – 40-50 years old;
- 327,537 units – 30-40 years old;
- 141,773 units – 20-30 years old;
- 428,657 units – 10-20 years old; and
- 46,958 units – 0-10 years old.[18]

[8] *See* ss. 718.112(2) and 719.106(2)(c), F.S., for condominium and cooperative associations, respectively.
[9] *See* ss. 718.111(12) and 719.104(2), F.S., for condominium and cooperative associations, respectively.
[10] *See* ss. 718.111(13) and 719.104(4), F.S., for condominium and cooperative associations, respectively.
[11] Section 718.103(11), F.S.
[12] *See* s. 718.103, F.S., for the terms used in the Condominium Act.
[13] *Id.*
[14] Section 718.103(4), F.S.
[15] Section 718.103(2), F.S.
[16] Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force (Task Force Report), p. 4, *available at:* https://www-media.floridabar.org/uploads/2021/10/Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf (last visited Jan. 9, 2024).
[17] *Id.*
[18] *Id.*

It has been estimated that there are over 2 million residents occupying condominiums 30 years or older in Florida, based upon census data indicating an average of approximately 2.2 persons living in a condominium unit.[19]

Cooperatives

Section 719.103(12), F.S., defines a "cooperative" to mean:

> [T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.[20] The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[21] There are 778 cooperative associations in Florida that are registered with the DBPR.[22]

Miami-Dade County Grand Jury Report "Addressing Condo Owners' Pleas for Help: Recommendations for Legislative Action"

The increasing numbers of condominiums in Florida, the increasing numbers of problems for people living in them, and the increasing numbers of complaints against the DBPR, motivated a Miami-Dade County grand jury to conduct an investigation of complaints by condominium residents and the DBPR's responses to their complaints.[23] The grand jury's report contains numerous findings and recommendations, but those relevant to the provisions of the bill are discussed below.

Additional Issues

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.

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[19] *Id.*
[20] *See Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3d DCA 2019), *review dismissed* 2020 WL 3442763 (Fla. 2020).
[21] *See* ss. 719.106(1)(g) and 719.107, F.S.
[22] *See* Task Force Report, pp. 4-5.
[23] *Final Report of the Miami-Dade County Grand Jury (Addressing Condo Owner's Pleas for Help: Recommendations for Legislative Action)* (Filed Feb. 6, 2017), Eleventh Judicial Circuit, available at https://miamisao.com/wp-content/uploads/2021/02/2016-Spring-Grand-Jury-Report-Final.pdf (last visited on Jan. 13, 2024). This document is further cited in this analysis as "*Final Report of the Miami-Dade County Grand Jury*."

III. Effect of Proposed Changes:

Community Association Managers

Present Situation

Community Association Manager Regulation

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR or department) pursuant to part VIII of ch. 468, F.S.

Section 468.431(2), F.S., defines "community association management" to mean:

> any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for persons who perform clerical or ministerial functions under the direct supervision and control of a licensed manager or who only perform the maintenance of a community association and do not assist in any of the management services.[24]

Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers. Five of the members must be licensed CAMs, one of whom must be a CAM for a timeshare. The other two must not be CAMs. Members are appointed to 4-year terms by the Governor and confirmed by the Senate.[25]

To become licensed as a CAM, a person must apply to the department to take the licensure examination and submit to a background check. Upon determination that the applicant is of good moral character, the applicant must attend a department-approved in-person training prior to taking the examination.[26] Community association managers must successfully complete an exam and pay a fee to become licensed. They must also complete continuing education hours as approved by the council to maintain their licenses.[27]

Practice Standards and Conflicts of Interest

Section 468.4334, F.S., delineates the professional practice standards for CAMs and CAM firms,

[24] Section 468.431(2), F.S.
[25] Section 468.4315(1), F.S.
[26] Section 468.433, F.S.
[27] Sections 468.4336 and 468.4337, F.S.

including the duty to "discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees." In addition, if a CAM or CAM firm has a contract with a community association that has a building on the association's property that is subject to s. 553.899, F.S., the CAM or firm must comply with that section as directed by the board.

The license of a CAM or CAM firm may be disciplined, including a suspension or revocation of their license, or denial of a license renewal, for the grounds specified in s. 468.436, F.S., including contracting, on behalf of an association, with any entity in which the CAM or CAM firm has a financial interest that is not disclosed to the association.

Section 718.3027, F.S., provides the process for resolving potential conflict of interest for the officers and directors of condominium associations. It requires an officer or director of a condominium association (that is not a timeshare condominium association), to disclose any financial interest of the officer or director (or such person's relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. The board of a condominium association must approve a contract for services or other transactions by an affirmative vote of two-thirds of all other directors present. Current law does not have a comparable process for a CAM's or CAM firm's disclosure of a potential conflict of interest or the process for an association's affirmative acceptance or approval of such a conflict of interest.

Effect of Proposed Changes

The bill revises the following requirements for CAM and CAM firms under part VIII of ch. 468, F.S., which apply to all CAM and CAM firms engaged in community association management in condominium associations under ch. 718, F.S., cooperative associations under ch. 719, F.S., and homeowners' associations under ch. 720, F.S.

The bill creates s. 468.4334(3), F.S., to require a CAM or CAM firm to return all community association records in his or her possession within 20 days of termination of services agreement or a written request whichever occurs first. If the CAM or CAM firm fails to timely return all of the official records within its possession to the community association, the bill creates a rebuttable presumption that the CAM association willfully failed to comply with this subsection. However, the bill also provides that CAM or CAM firm that fails to timely return community association records is subject to suspension of its license under s. 468.436, and a civil penalty of $1,000 per day for up to 10 days, assessed beginning on the 21st day after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request from the association for return of the records, whichever occurs first.

The bill creates s. 468.4335, F.S., to provide additional conflict of interest disclosure requirements for CAMs and CAM firms and a process for associations to follow when approving contracts with a CAM or CAM firm, or a relative of a CAM, which may present a conflict of interest. The requirements are similar to those applicable to contracts between condominium associations and their officers and directors.

The bill requires a CAM or CAM firm, including the directors, officers, persons with a financial interest in the CAM firm and relatives of such persons, to disclose any activity which may reasonably be construed by the board to be a conflict of interest. The bill creates a rebuttable presumption of an existing conflict of interest if a CAM or CAM firm, including directors, officers, persons with a financial interest in a CAM firm, or the relative of such persons:

- Enters into a contract for goods or services with the association.
- Holds an interest in a corporation, limited liability corporation, 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.

Under the bill, if the association receives and considers a bid to provide a good or service, other than community association management services, from a CAM or CAM firm, including directors, officers, persons with a financial interest in a CAM firm, or a relative of such persons, the association must also consider at least three bids from other third-party providers of such good or service.

The bill requires that the proposed activity that may be a conflict of interest must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the board's meeting agenda and entered into the written minutes of the meeting. The board must approve the contract or other transaction by an affirmative vote of two-thirds of all other directors present. At the next regular or special meeting of the members, the existence of the contract or other transaction must be disclosed to the members, and any member may move that the contract or transaction be brought up for a vote of the members. Under the bill, the proposed contract or transactions, may be canceled by a majority vote of the members present. If the contract is canceled, the bill provides that the association is liable only for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

Under the bill, if the activity has not been properly disclosed as a conflict of interest or potential conflict of interest, the contract is voidable and terminates upon the association filing a written notice terminating the contract with its board of directors, which notice must contain the consent of at least 20 percent of the voting interests of the association.

The bill defines the term "relative" to mean a relative within the third degree of consanguinity[28] by blood or marriage of a board member or officer.

The bill revises the disciplinary grounds for CAMs and CAM firms to provide a disciplinary grounds on the basis of a CAM or CAM firm's failure to disclose a conflict of interest as required by s. 468.4335, F.S.

[28] Relatives of the third degree of consanguinity include great grandparent, aunt/uncle, niece/nephew, and great grandchild. *See*: https://www.uab.edu/humanresources/home/images/M_images/Relations/PDFS/FAMILY%20MEMBER%20CHART.pdf (last visited Feb. 11, 2021).

Condominium Officers and Directors

Present Situation

Breaches of a Fiduciary Duty and Prohibited Acts

Officers and directors of a condominium association have a fiduciary relationship to the unit owners, and may be sanctioned for breach of their fiduciary duty.[29] An officer, director, or manager may not solicit, offer to accept, or accept anything or service of value or a kickback for which consideration has not been provided for the benefit of such person (or immediate family members) from any person providing or proposing to provide goods or services to the association.[30]

Any such officer, director, or manager who knowingly solicits, offers to accept, or accepts anything or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d), F.S., and, if applicable, a criminal penalty as provided in s. 718.111(1)(d), F.S.

Section 718.111(1)(d), F.S., requires an officer, director, or agent to discharge his or her duties in good faith, with the care an ordinarily prudent person in a similar position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. An officer, director, or agent is liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breaches or fails to perform his or her duties. The breach of, or failure to perform, such duties constitutes:

- A violation of criminal law as provided in s. 617.0834, F.S.;
- A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or
- Recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 617.0834, F.S., relates to the provisions for the civil liability of officers and directors of not-for-profit corporations and associations.[31] 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.[32]

[29] Section 718.111(1)(a), F.S.
[30] Section 718.111(1)(a), F.S., does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs.
[31] 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.
[32] Section 617.0834, F.S., does not provide criminal penalties nor reference the criminal law that is violated by the officer's or director's breach or failure to perform his or her duties.

- 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.

The Miami-Dade County grand jury found:

> Although the directors have a legally mandated fiduciary obligation toward their unit owners, it appears that some of them are more involved in self-dealing and looking out for their own financial interests. The position of board director is not generally a paid position. Yet, some directors appear to view the ability to get into office as an opportunity to cash in. This should not be countenanced.[33]

Criminal Prohibitions

Section 718.111(1)(d), F.S., also criminalizes the following acts:

- Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. 831.01, F.S.;
- Theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, F.S.; and
- Destruction of or refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit 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., or as obstruction of justice as provided in ch. 843, F.S.

Removal from Office

Section 718.112(2)(q), 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 must be reinstated for any remainder of his or her term of office.

Section 718.111(1)(d), F.S., also provides that an officer or director charged by information or indictment with any crime referenced in this paragraph[34] must be removed from office, and the vacancy must be filled as provided in s. 718.112(2)(d)2., 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

[33] *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at page 10 (citation omitted).

[34] The only crimes specifically referenced in s. 718.111(1)(d), F.S., are the previously-described offenses relating to forgery of a ballot envelope or voting certificate, theft or embezzlement of association funds, and destruction of or refusal to allow inspection or copying of association records. Additionally, s. 718.111(1)(d), F.S., states that 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. The reference to criminal violations in s. 718.111(1)(d), F.S., is slightly different than the reference to criminal violations in s. 718.112(2)(o), F.S., which provides that a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office. The latter provision appears to be more limited than the former provision.

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. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

Defacing or Destroying Records

Section 718.111(12)(c)2., F.S., provides that any person who knowingly or intentionally defaces or destroys accounting records that are required to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S.[35]

Effect of Proposed Changes

Additional Criminal Prohibitions

The bill amends s. 718.111, F.S., to provide the following additional criminal prohibitions relating to the management of a condominium association, and provides penalties for violations:

- Third degree felony[36] for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept anything or service of value or kickback;
- Second degree misdemeanor[37] for any director or member of the board or association to knowingly, willfully, and "repeatedly" violate (two or more violations within a 12-month period) any specified requirements relating to the inspection and copying of official records of an association;
- First degree misdemeanor[38] to knowingly or intentionally deface or destroy required accounting records or knowingly and intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members (and deletes the provision that such an offense is punishable by a civil penalty);[39]

[35] Section 718.501(1), F.S., authorizes the division to enforce and ensure compliance with the provisions of the Condominium Act, and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of the Condominium Act, an adopted rule, or a final order of the division.

[36] 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.

[37] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.

[38] 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.

[39] This provision is similar to the Miami-Dade County grand jury's recommendation to criminally punish directors and members of the board or association who knowingly or intentionally deface or destroy accounting records or fail to create or maintain such records. The grand jury recommended a second degree misdemeanor for a first offense, and a first degree misdemeanor for any subsequent offenses. *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at pages 8-9.

- Third degree felony[40] to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape;[41]

Use of Credit Cards

The bill amends s. 718.111(15), F.S., to revise the prohibitions related to use of an association's credit card. Under the bill, a person commits theft[42] by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association. The bill defines a "lawful obligation of the association" as an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget. The bill deletes the provision in current law that the unlawful use of an association's credit card constitutes credit card fraud pursuant to s. 817.61, F.S.

Removal from Office

The bill amends s. 718.112(2)(q), F.S., to expand the number of crimes for which an officer or director charged by information or indictment must be removed from office to include:

- Forgery of a ballot envelope or voting certificate used in a condominium association election punishable as a felony crime as provided in s. 831.01, F.S.;[43] and
- Destruction of or refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime which is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.

Under the bill, a vacancy must be filled as provided by s. 718.112(2)(d), 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.[44]

Under the bill, if a criminal charge is pending against an officer or director, he or she may not have access to the official records of any association, except pursuant to a court order.

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[40] 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.

[41] This provision is similar to the Miami-Dade County grand jury's recommendation to make it a third degree felony for any association, board director, management company, or management company employee to willfully, knowingly, or intentionally refuse to release or otherwise produce official association records, if such refusal is done to facilitate or cover-up the commission of a crime. *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at pages 8-9.

[42] Theft is generally punishable based upon the value of the property stolen. Petit theft is generally a second degree misdemeanor or first degree misdemeanor. Section 812.014(3)(a) and (b), F.S. Grand theft is generally a third degree felony, second degree felony, or first degree felony. Section 812.014(1)(a)-(c), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000. *Id.*

[43] 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.

[44] Section 720.306(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.

Fraudulent Voting Activities

The bill creates s. 718.112(2)(r), F.S, to provide that each of the following actions relating to condominium association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:[45]

- 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.

In addition, the bill provides that the following actions relating to condominium association elections are fraudulent voting activities and constitute a misdemeanor of the first degree:[46]

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

The criminal prohibitions in s. 718.112(2)(r), F.S., do not apply to a licensed attorney giving legal advice to a client.

[45] 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.
[46] *Id.*

Official Records – Condominiums

Present Situation

Section 718.111(12)(a), F.S., requires a condominium association to maintain various records, including but not limited to, the association's recorded bylaws and amendments to those bylaws, articles of incorporation and amendments to those articles, bills of sale or transfer for association-owned property, accounting records, voting ballots, contracts for work to be performed, and bids.

Section 718.111(12)(b), F.S., requires that some of these records (e.g., bylaws and articles of incorporation) be permanently maintained from the inception of the association. All other official records must be maintained within the state for at least seven years, unless otherwise provided by general law.[47] The records must be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. An association must make a copy of the records available for inspection or copying by a unit owner on the condominium property or association property or offer the option of making the records available electronically via the Internet or allow the records to be viewed in electronic format on a computer screen and printed upon request.

Section 718.111(12)(c)1., F.S., provides that official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times.[48] A renter of a unit has a right to inspect and copy the association's bylaws and rules. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with these requirements. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

Section 718.111(12)(g), F.S., provides that by January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units must post digital copies of specified records on its website. These documents include, but are not limited to: the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration, the recorded association bylaws and amendments to those bylaws, articles of incorporation of the association and amendments to those articles, the annual and proposed budget, and various contracts, including any contract or document regarding a conflict of interest or possible conflict of interest. The failure of the association to post required information is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

[47] Section 718.111(12)(b), F.S.

[48] The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.

Effect of Proposed Changes

The bill amends the official records requirements for condominium associations in s. 718.111(12), F.S., to require official records be kept in an organized manner. In addition, the bill provides that the obligation to maintain official records includes the obligation to obtain and recreate those records to the fullest extent possible in the event that the records are lost, destroyed, or otherwise made unavailable.

Effective January 1, 2026, the bill amends the requirements for condominium associations to maintain specified records available for download on the association's website or by an application on a mobile device to decrease from 150 units to 25 units the threshold for that requirement.

The bill also amends s. 718.111(12), F.S., to:

- Require additional financial records (all invoices, transaction receipts, deposit slips, other underlying documentation that substantiates any receipt or expenditure of funds by the association) be maintained by a condominium association and made available for inspection by association members;
- Permit associations to comply with its obligations related to a member's right of access to certain official records and right to copies of such records by posting the records on the association's website and directing an authorized requester to such website;
- Require associations to respond to a statutorily compliant written request to inspect records with a checklist of all records made available, and not made available, for inspection and copying and a sworn affidavit in which the person facilitating or handling the association's compliance with the request attests to the veracity of the checklist provided to the requestor;
- Require associations to maintain the checklist provided in response to a statutorily compliant written request for seven years; and
- Require an association to maintain, and have available for download on the association's website or by an application on a mobile device, building permits related to ongoing or planned construction.

The bill amends s. 718.501(1)(d)7., F.S., to require the division to provide the official records to the unit owner at no charge when the division subpoenas the records the association failed to timely provide in response to a unit owner's written request.

Financial Reporting – Condominiums

Present Situation

Section 718.11(13), F.S., provides the financial reporting requirements for condominium associations. Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the governing board of the association must complete, or contract with a third party to complete, the financial report. Within 21 days after the financial report is completed by the board or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

The association must deliver the financial report, by mail or hand delivery to each unit owner at the address last furnished to the association by the unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner.

The type of financial reporting that an association must perform differs based on the association's total annual revenue. From the least stringent to the most stringent, an association that has a total annual revenue of:

- Less than $150,000 must prepare a report of cash receipts and expenditures.
- At least $150,000 but less than $300,000 must prepare *compiled* financial statements.[49]
- At least $300,000 but less than $500,000 must prepare *reviewed* financial statements.[50]
- $500,000 or more must prepare *audited* financial statements.[51]

An association may prepare a more or less stringent type financial report if approved by vote of the majority of the voting interest of the association.[52] An approval to provide a less stringent type of financial report is effective only for the year in which the vote is taken and for the following fiscal year.[53]

Effect of Proposed Changes

The bill amends the financial reporting requirements in s. 718.111(13), F.S., to:

- Revise the requirements for delivery of the financial statement to:
  - Require that the delivery be by hand delivery or mailed to each unit owner, by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the association's notice requirements;
  - Require associations to deliver a copy of the management letter or opinion letter,[54] as applicable, for the most recent financial report; and
  - Require associations to give unit owners a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner;

[49] A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

[50] A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

[51] An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

[52] *See* s. 718.111(13)(c) and (d), F.S.

[53] *See* s. 718.111(13)(d), F.S.

[54] An opinion letter states whether the accounts accord with accounting principles. A management letter explains whether there are any problems identified with the company's internal controls. These letters are required by accounting standards and are intended to help provide investors with an overall picture of the operations of an organization. See Chron.com, *Opinion Letters Vs. Management Letters in the Accounting Field*, Sept. 21, 2020, available at: https://smallbusiness.chron.com/types-audit-opinion-letters-3787.html (last visited Jan. 13, 2024).

- Prohibit associations from reducing the required type of financial statement for consecutive years;
- Prohibit associations that invest funds pursuant to s. 718.111(16)(b), F.S., from reducing the required type of financial statement; and
- Require associations that invest funds pursuant to s. 718.111(16)(b), F.S., to prepare the required type of financial statement.

Investing Reserves – Condominiums

Present Situation

Reserve Funds

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance.[55]

Commingling of Funds and Investing

Section 718.111(14), F.S., requires all funds collected by an association to be maintained separately in the association's name. Operating funds and reserve funds must be accounted for separately, and a commingled account cannot, at any time, be less than the amount identified as reserve funds. However, reserve funds may be commingled with operating funds of the association for investment purposes only.

Investment Advisers

Investment advisers are defined as "any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services."[56] The term does not include:

- Any licensed practicing attorney whose performance of such services is solely incidental to the practice of her or his profession;
- Any licensed certified public accountant whose performance of such services is solely incidental to the practice of her or his profession;
- Any bank authorized to do business in this state;
- Any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state;
- Any trust company having trust powers which it is authorized to exercise in the state, which trust company renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;
- Any person who renders investment advice exclusively to insurance or investment companies;

[55] Section 718. 112(2)(f)2., F.S.
[56] Section 517.021(14)(a), F.S.

- Any person who does not hold herself or himself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state;
- Any person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940; or
- A federal covered adviser.[57]

An investment adviser must be registered with the Office of Financial Regulation (OFR) within the Financial Services Commission[58] to "sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the [OFR] pursuant to the provisions of this section. The [OFR] shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the [OFR] pursuant to [ch. 517, F.S.]"[59]

Effect of Proposed Changes

The bill creates s. 718.111(16), F.S., to authorize condominium associations, including multicondominium associations, to invest reserve funds. The bill provides procedures and requirements an association must follow when investing reserve funds, including limits on the types of permissible investments, recording keeping requirements, and requiring the use of an independent investment adviser. The bill:

- Requires the board to use its best efforts to make prudent investment decisions that carefully consider risk and return in an effort to maximize returns on invested funds;
- Permits reserve funds to be invested in one or any combination of depository accounts at a community bank, savings bank, commercial bank, savings and loan association, or credit union if the respective account balance at any institution does not exceed the amount of deposit insurance per account provided by any agency of the Federal Government or as otherwise available. Permits only reserve funds identified as reserve funds may be invested even if the declaration permits operating funds to be invested;
- Requires the board to create an investment committee composed of at least two board members and two-unit non-board member unit owners, adopt rules for invested funds, including, but not limited to, rules requiring periodic reviews of any investment manager's performance, the development of an investment policy statement, and that all meetings of the investment committee be recorded and made part of the official records of the association;
- Specifies the issues that must be addressed in the investment policy, including the requirement that it project reserve expenditures within, at minimum, the next 24 months to be held in cash or cash equivalents and projected expenditures relating to the milestone inspection, and prove protocols for proxy response;
- Requires the investment committee to recommend investment advisers to the board.
- Requires such investment advisers to be registered or have a notice filed under s. 517.12, F.S, which requires investment advisers to file a notice required under s. 517.1201, F.S., with the OFR, and to not be related by affinity or consanguinity to, or under common ownership with, any board member, community management company, reserve study provider, or unit owner;

[57] Section 517.021(14)(b), F.S.
[58] Section 517.021(8), F.S.
[59] Section 517.12(1), F.S.

- Requires the investment adviser to comply with the prudent investor rule in s. 518.11, F.S.,[60] to act as a fiduciary to the association in compliance with the standards set forth in the Employee Retirement Income Security Act of 1974;
- Requires that the association, at least once each calendar year, or sooner if a substantial financial obligation of the association becomes known to the board, to provide the investment adviser with the association's investment policy statement, the most recent reserve study report, the association's structural integrity report, if available, and the financial reports prepared pursuant to subsection s. 718.111(13), F.S.;
- Requires the investment adviser to:
  - Annually review these documents and provide the association with a portfolio allocation model that is suitably structured and prudently designed to match projected annual reserve fund requirements and liability, assets, and liquidity requirements;
  - Prepare a funding projection for each reserve component, including any of the component's redundancies;
  - Annually provide the association with a written certification of compliance with this section and a list of stocks, securities, and other obligations that are prohibited from being in association portfolio; and
  - Submit monthly, quarterly, and annual reports to the association which are prepared in accordance with established financial industry standards and in accordance with ch. 517, F.S, relating to the regulation of investment advisers.
- Require that there be a minimum of 24 months of projected reserves in cash or cash equivalents available to the association at all times;
- Prohibit investment in stocks, securities, or other obligations that the State Board of Administration or state agencies are prohibited from investing in under ss. 215.471, 215.4725, 215.472, and 215.473, F.S., as determined by the investment adviser;[61]
- Permit the investment adviser to withdraw investment fees, expenses, and commissions from invested funds;
- Require that any principal, earnings, or interest must be available at no cost or charge to the association within 15 business days after delivery of the association's written or electronic request; and
- Require unallocated income earned on reserve fund investments to be spent only on capital expenditures, planned maintenance, structural repairs, or other items for which the reserve accounts have been established.

[60] Section 518.11, F.S., sets forth the prudent investor rule. Generally, a fiduciary has a duty to invest and manage investment assets as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust.

[61] These provisions deal with investments in stocks, securities, or other obligations of companies doing business with Cuba or Venezuela, that boycott Israel or engage in a boycott of Israel, or that conduct certain business operations with [North] Sudan and Iran.

Meetings of the Board of Administration – Condominiums

Present Situation

Section 718.112(2)(c), F.S., requires that all meetings of the board in which a quorum is present to be open to all unit owners. Chapter 718, F.S., provides notice requirements for meetings of the board,[62] but does not mandate the frequency of such meetings.

If the board considers any special or regular assessment against unit owners, the notice for the meeting must specifically state that the assessments will be considered and provide the estimated cost and description of the purposes for such assessments.

Effect of Proposed Changes

The bill amends s. 718.112(2)(c), F.S., to:

- Require condominium associations of 10 or more units to meet at least four times a year for the purpose of responding to inquiries from members and informing members on the state of the condominium, including the status of any construction or repair projects, the status of the association's revenue and expenditures during the fiscal year, or other issues affecting the association; and
- Require associations to include a copy of the proposed contract if the notice for a board meeting relates to the approval of a contract.

Director and Officer Education – Condominiums

Present Situation

Section 718.112(2)(d)4.b., F.S., provides education or certification requirements for newly elected or appointed members of the board.[63] Within 90 days after being elected or appointed, a new board member for a condominium, cooperative, and homeowners' association must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the declaration of condominium, articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.[64] The curriculum must be administered by a condominium education provider approved by the division.[65] A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

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[62] Section 718.112(2)(c), F.S.
[63] Sections 719.106(1)(d)b. and 720.720.303(1)(a), F.S., provide comparable post-election certification requirements for newly elected cooperative and homeowners' association board members, respectively.
[64] The division's Internet site provides a listing of approved educational providers for the certification of board members. *See* Department of Business and Professional Regulation, *Condominium & Cooperatives – Education, available at*: http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/education/ (last visited Jan. 13, 2024).
[65] Sections 718.112(2)(d)4.b., F.S.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.[66] If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a board director's election or the duration of the director's uninterrupted tenure, whichever is longer.[67] The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.[68]

Effect of Proposed Changes

The bill amends the post-election certification requirements in s. 718.112(2)(d)4.b., F.S., to:

- Require newly elected or appointed directors to submit both the written certification that they have read the association's governing documents, will work to uphold the governing documents of the association to the best of their ability and will faithfully discharge their duties, and submit a certificate of completion of an education course and submit certification that they have completed an approved condominium education course;
- Provide that the written certification and educational certificate are valid for 10 years;
- Provide that developer-appointed directors do not have to retake the education course for any subsequent appointment by a developer, but the previously submitted educational certificate is valid for only 10 years; and
- Require directors to annually complete continuing education on recent changes to the condominium laws and rules.

The bill also amends s. 718.501(1)(c), F.S., to:

- Require the division to provide the required educational curriculum to directors at no charge, including when the required educational curriculum is provided by a division-approved condominium education provider; and
- Require associations to annually certify that all directors have completed the required written certification and educational certificate requirements.

Reserves and Structural Integrity Reserve Studies – Condominiums and Cooperatives

Present Situation

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. Reserve accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000.[69]

The amount to be reserved must be computed using a formula based upon the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each

[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *See* s. 718.112(2)(f) and 719.106(1)(j), F.S., relating to reserves requirements for condominium and cooperative associations, respectively.

reserve item. Replacement reserve assessments may be adjusted annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.[70]

A "structural integrity reserve study" (SIRS) is a study of the reserve funds required for future major repairs and replacement of the common elements based on a visual inspection. A SIRS is required for condominium buildings that are three or more stories in height.[71]

Regarding the funding of reserves for the continued maintenance and repair of condominium and cooperative buildings, ss. 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively, associations that are required to have a SIRS may not waive reserves for the SIRS items or use such reserves for other purposes.

Regarding the SIRS, ss. 718.112(2)(g) and 719.106(1)(k), F.S., relating to condominium and cooperative associations, respectively:

- Require condominium associations and cooperative associations to complete a structural integrity reserve study every 10 years for each building in an association that is three stories or higher in height, as determined by the Florida building code.
- Require associations existing on or before July 1, 2022, that are controlled by non-developer unit owners, to have a structural integrity reserve study completed by December 31, 2024.
- Require that the study include a visual inspection, and state the estimated remaining useful life and the estimated replacement cost of the following items (structural integrity items): roof, structure, fireproofing and fire protection systems, plumbing, electrical systems, waterproofing, windows and exterior doors, and any item with a deferred maintenance or replacement cost that exceeds $10,000.
- Require the visual inspection be performed or verified by a person licensed as an engineer, an architect, reserve specialist, or professional reserve analyst certified by the Community Associations Institute or the Association of Professional Reserve Analysts. However, any qualified person or entity may perform the other components of a SIRS.
- Provide that the SIRS may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost or deferred maintenance expense cannot be determined or for which the estimate of useful life is greater than 25 years, but the study may recommend a deferred maintenance amount for such items;
- Exempt from the SIRS requirement:
  - Buildings less than three stories in height;
  - Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; and
  - Any portion or component of a building that has not been submitted to the condominium or cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the condominium or cooperative association.

Members of unit-owner-controlled associations may waive reserves upon a majority vote of the total voting interests of the association. However, after December 31, 2024, unit-owner-

[70] *Id.*
[71] *See* s. 718.112(2)(g) and 719.106(1)(k), F.S., relating to SIRS requirements for condominium and cooperative associations, respectively

controlled condominium and cooperative associations that must obtain a SIRS may not waive reserves. Associations that are required to obtain a SIRS also may not opt to provide less reserves or no reserves than are required for the structural integrity items. Nor may those reserves be used for any other purpose than their intended purpose.[72]

Before turnover of control to the unit owners, ss. 718.301(4)(p) and 719.301(4)(p), F.S., require the developer to perform a turnover inspection performed by a licensed professional engineer or architect, or a reserve specialist or professional reserve analyst certified by the Community Associations Institute or the Association of Professional Reserve Analysts. However, this provision does not require that the inspection comply with the SIRS requirements in ss. 718.112(2)(g) and 719.106(1)(k), F.S., relating to condominium and cooperative associations, respectively.

Effect of Proposed Changes

The bill revises the term "deferred maintenance" to "planned maintenance" in chs. 718 and 719, F.S.

In addition, the bill amends s. 718.112(2), F.S., to:

- Allow condominium associations to waive reserves and for the structural integrity reserve study to recommend a temporary suspension of reserve funding if the building or units are unsafe and uninhabitable as determined by the local enforcement agency, but the association may not waive or reduce reserve funding requirements after a building or units have been declared safe for occupancy by the local enforcement agency;[73] and
- Permit the SIRS to recommend a temporary pause in the funding of reserves or a reduction in reserve funding if the condominium building or units are unsafe and uninhabitable due to substantial damage or loss as determined by the local enforcement agency and it is in the best interests of the association to use revenues and existing reserve funds to perform necessary repairs to make the building safe and habitable, but the reserve funding schedule may not pause reserve funding after the building has been declared safe for occupancy by the local enforcement agency.

Relating to the SIRS requirements for condominium and cooperative associations, the bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., respectively, to require associations to provide unit owners with a notice that the structural integrity reserve study is available for inspection and copying within 45 days of completion of the study. The notice may be provided electronically.[74]

The bill also clarifies that the turnover report required under ss. 718.301(4)(p) and 719.301(4)(p), F.S., consists of a structural reserve study.

[72] Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively.
[73] *See* s. 533.71(5), F.S., defining "local enforcement agency."
[74] This notice delivery requirement is identical to the requirement for delivery of the inspector-prepared summary of the milestone inspection report required under. s. 553.899, F.S.

Assessments – Condominiums

Present Situation

Section 718.112(2)(i), F.S., provides for the manner of collecting assessments from unit owners, which may be done not less than quarterly. Current law does not provide guidelines or requirements for condominium associations to obtain a line of credit in lieu of a special assessment for the funding of reserves or other expenditures. A special assessment is any assessment levied against a unit owner other than the assessment required by a budget adopted annually.[75]

Section 718.116(10), F.S., requires that the specific purpose or purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by s. 718.111(11), F.S., approved in accordance with the condominium documents must be set forth in a written notice of assessment sent or delivered to each unit owner. Current law does not specify that a special assessment must be recorded in the public records.

Effect of Proposed Changes

In lieu of a special assessment, the bill amends the assessment provisions in s. 718.112(2)(i), F.S., to provide a process for the board to secure a line of credit and assess a contingent special assessment to fund repairs recommended by a milestone inspection required under s. 553.899, F.S., or a similar local inspection requirement or structural integrity reserve study, or unanticipated repairs.

A declaration of special assessments evidencing the levy of such special assessments must be recorded in the public record.

Under the bill, the board must have immediate access to the funding in the line of credit to fund required repairs, maintenance, or replacement expenses without further approval by the members of the association. A unit owner may opt to pay the contingent special assessment in full at the time it becomes due, or may be allowed to make amortized payments over a term of years as provided for by the line of credit. However, a unit owner may pay the remaining balance of the special assessment at any time during the amortization period.

A line of credit may not be used as an alternative to an association's reserve funding obligation. However, for a budget adopted on or before December 31, 2029, the bill permits an association to secure a line of credit and assess a contingent special assessment to meet the reserve funding schedule recommended by the structural integrity reserve study.

The bill amends s. 718.116(10), F.S., to require notices of a special assessment and contingent special assessments to be recorded in the public record.

[75] Section 718.103(25), F.S.

Hurricane Protection – Condominiums

Present Situation

Chapter 718, F.S., does not define the term "hurricane protection."

Section 718.113(5)(b), F.S., provides that a condominium association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.

Section 718.113(5)(c), F.S., authorizes the board to operate shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed pursuant to this subsection without the permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or and association property. The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in s. 718.113(5)(c), F.S., are not a material alteration to the common elements or association property.[76]

Section 718.113(5)(d), F.S., provides that, notwithstanding any other provision in the residential condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of hurricane protection by a unit owner conforming to the specifications adopted by the board.

Section 718.115(1)(e), F.S., requires that the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5), F.S., constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. Section 718.115(1)(e)1., F.S., does not indicate that the costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S.

Further, s. 718.115(1)(e), F.S., states that a unit owner who has previously installed code-compliant shutters, impact glass, windows, or doors, must receive a credit when code-compliant shutters, impact glass, windows, or doors are installed. A unit owner who has previously

[76] Section 718.110, F.S., provides the procedure for amending the declaration of condominium. It provides that, "unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment."

installed impact glass or code-compliant windows or doors that comply with the current applicable building code, must receive a credit when the impact glass or code-compliant windows or doors are installed. A unit owner who has installed other types of code-compliant hurricane protection that comply with the currently applicable building code is entitled to receive a credit when the same type of other code-compliant hurricane protection is installed, and the credit must be equal to the pro rata portion of the assessed installation cost assigned to each unit.

Effect of Proposed Changes

The bill substantially revises the existing hurricane protection provisions in ch. 718, F.S.

The bill creates s. 718.103(19), F.S., to define "hurricane protection" to mean "hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property."

The bill clarifies the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections exterior doors, windows, and glass apertures. The bill amends s. 718.104(4)(p), F.S., relating to the creation of condominiums, to require the declarations of residential condominiums and mixed-use condominiums specify whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection that is for the preservation and protection of the condominium property and association property.

The bill amends s. 718.113(5), F.S., to provide that, to protect the health, safety, and welfare of the people of this state and to ensure uniformity and consistency in the hurricane protections installed by condominium associations and unit owners, the hurricane protection provisions apply to all residential and mixed-use condominiums in Florida, regardless of when the condominium is created pursuant to the declaration. The bill provides that the installation, maintenance, repair, replacement, and operation of hurricane protection in accordance with the hurricane protection requirements is not considered a material alteration or substantial addition to the common elements or association property.

Under the bill, a vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed. The board must record the certificate in the public records of the county where the condominium is located. The certificate must include the recording data identifying the declaration of the condominium and must be executed in the form required for the execution of a deed. Once the certificate is recorded, the board must mail or hand-deliver a copy of the recorded certificate to the unit owners at the owners' address as reflected in the records of the association. The board may provide a copy of the recorded certificate by electronic transmission to unit owners who previously consented to receive notice by electronic transmission. The board's failure to record the certificate or to send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit owners.

The bill allows the board to require that unit owners adhere to an existing unified building scheme regarding the external appearance of the condominium.

Regarding a unit owner's responsibility for the costs of installation or removal of hurricane protection, the bill provides that the unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection if the unit owner installed the hurricane protection and its removal is necessary for the maintenance, repair, or replacement of the condominium property or association property for which the association is responsible. If such removal or installation is completed by the association, the association may not charge that cost to the unit owner. If such installation of removal is completed by the unit owner, the association must reimburse the unit owner for the cost or apply the cost as a credit toward future assessments.

Under the bill, the board must determine if the removal or reinstallation of hurricane protection is the responsibility of the unit owner, including costs, and if such removal or reinstallation is completed by the association, then the costs incurred by the association may be charged to the unit owner. If the association charges a unit owner for the removal or installation of hurricane protection, such charges are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S, for the collection of assessments.

The bill amends s. 718.115(1)(e)1., F.S., to delete the requirement that the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5), F.S., constitutes a common expense and must be collected as a common expense if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. Additionally, s. 718.115(1)(e)1., F.S., is also amended to provide that the costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S.

The bill amends s. 718.115(1)(e)2., F.S., to delete the requirement that a unit owner who previously installed hurricane shutters in accordance with s. 718.113(5), F.S., that comply with the current applicable building codes receive a credit when the shutters are installed. A unit owner who has previously installed such items must receive a credit when the impact glass or code-compliant windows or doors are installed.

The provision is revised to provide that a credit is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds. The bill adds that the credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection and that expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on common elements and association property are common expenses.

SLAPP Defamation Law Suits – Condominiums

Present Situation

Section 718.1224, F.S., prohibits “strategic lawsuits against public participation" or "SLAPP suits,” and provides legislative findings that such lawsuits are against the public interest. A SLAPP lawsuit occurs when association members are sued by individuals, business entities, or governmental entities for matters arising out of a unit owner's appearance and presentation before a governmental entity on matters related to the condominium association.[77]

Under s. 718.1224, F.S., governmental entities, business organizations, and individuals are prohibited from filing or causing to be filed any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. Current law does not specifically prohibit condominium associations from engaging in SLAPP suits, instead the prohibition generally applies to governmental entities, business organizations, and individuals.

Section 718.1224, F.S., provides that unit owners have a right to an expeditious resolution of such an action, including the right to petition for a motion to dismiss or for a summary judgment. The court may award the unit owner actual damages for a violation of this prohibition and may also award treble damages. However, the court must state a basis for an award of treble damages. The court is further required to award the prevailing party reasonable attorney’s fees and costs. Governmental entities, business organizations, and individuals are barred from expending funds in prosecuting a SLAPP suit against a unit owner.[78]

Effect of Proposed Changes

The bill amends s. 718.1224, F.S., to revise the SLAPP suits prohibition to protect condominium unit owners’ exercise of their free speech rights before their association. The bill specifically prohibits condominium associations from engaging in a SLAPP suit.

The bill also amends s. 718.1224, F.S., to prohibit condominium associations from:

- Retaliating against a unit owner, such as by increasing a unit’s assessments, threatening to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action; and
- Spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

The unit owner must have acted in good faith and not for any improper purposes, such as to harass or cause unnecessary delay, for frivolous purposes, or needless increase in the cost of litigation in order for the unit owner to raise the defense of retaliatory conduct. The bill provides

[77] *See* s. 718.1224(1), F.S., providing legislative intent.
[78] A similar prohibition against SLAPP suits by homeowners' associations is contained in s. 720.304(4), F.S.

examples of conduct for which a condominium association, officer, director, or agent of an association may not retaliate include, but are not limited to, situations where:

- The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;
- The unit owner has organized, encouraged, or participated in a unit owners organization;
- The unit owner submitted information or filed a complaint alleging criminal violations or violations of this chapter or the rules of the division with the division, the Office of the Condominium Ombudsman, a law enforcement agency, a state attorney, the Attorney General, or any other governmental agency;
- The unit owner has exercised his or her rights under ch. 718, F.S.;
- The unit owner has complained to the association or any of its representatives for their failure to comply with ch. 718, F.S., or ch. 617, F.S.; or
- The unit owner has made public statements critical of the operation or management of the association.

The bill allows the unit owner to present evidence of retaliatory conduct as a defense in any action brought against him or her for possession.

In addition, the bill prohibits associations from expending association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on conduct described in the bill.

Conflicts of Interests – Condominiums

Present Situation

Section 718.3027, F.S., provides the process for resolving potential conflict of interest for the officers and directors of condominium associations. It requires an officer or director of a condominium association (that is not a timeshare condominium association), to disclose any financial interest of the officer or director (or such person's relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. The board of a condominium association must approve a contract for services or other transactions by an affirmative vote of two-thirds of all other directors present. A director or officer who is a party to, or has an interest in, the activity that may be a potential conflict of interest must leave the board meeting during the discussion and vote, and must recuse himself or herself from the vote.

Effect of Proposed Changes

The bill amends s. 718.3027, F.S., to provide that the attendance of an officer or director at the meeting of the board is sufficient to constitute a quorum for the meeting and for the vote taken in his or her absence when the director is required to leave the room during the discussion and vote on a contract in which the director, or his relative, has an interest.

Nonpayment of Monetary Obligations

Present Situation

Section 718.303(5), F.S., allows an association to suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. The association must send the unit owner proof of such obligation 30 days before such suspension takes effect. The suspension ends when the full payment of all past due obligations currently due the association are paid.

Effect of Proposed Changes

The bill amends s. 718.303(5), F.S., to require an association to send unit owners, whose right to vote has been suspended because of an unpaid financial obligation, a notice of such obligation within 90 days of an election or vote of the members.

Division of Condominiums, Cooperatives, and Mobile Homes

Present Situation

Section 718.501, F.S., provides the investigative and enforcement authority of the Division of Condominium, Timeshares, and Mobile Homes (division). The division may 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. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control, including investigating complaints against developers involving improper turnover or failure to transfer control to the association.[79] After control of the condominium is transferred from the developer to the unit owners, the division only has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.[80]

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers, associations, and association board members.[81]

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. Also, Florida law authorizes the division to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.[82]

[79] *Id.*
[80] Section 718.501(1), F.S.
[81] Sections 718.501(1), F.S.
[82] *Id.*

Effect of Proposed Changes

The bill amends s. 718.501(1), F.S., to delete the limitation on the division's authority to enforce ch. 718, F.S., after turnover. Under the bill, the division may enforce and ensure compliance with ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of a residential condominium before and after control of the association is turned over to the nondeveloper members.

In addition, the bill:

- Requires the division refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.
- Provides that the division director or any officer or employee of the division, and the condominium ombudsman or employee of the office of the condominium ombudsman,[83] may attend and observe any meeting of the board of administration or unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association for the purpose of performing the duties of the division or the office of the ombudsman under ch. 718, F.S.
- Requires the division routinely conduct random audits of condominium associations to determine compliance with the website or application requirements for official records.

Report to the Legislature

The bill requires the division submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, a review of the website or application requirements for official records under s. 718.111(12)(g), F.S., and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement in the provision.

Effective Date

Except as otherwise provide, the bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[83] Sections 718.5011-50152, F.S., relate to the Office of the Ombudsman within the division. The ombudsman is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. In addition, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints. The ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The Division of Florida Condominiums, Timeshares, and Mobile Homes has not provided a fiscal analysis for this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.4334, 468.4335, 468.436, 718.103, 718.104, 718.111, 718.112, 718.113, 718.115, 718.116, 718.121, 718.1224, 718.301, 718.3026, 718.3027, 718.303, 718.501, 718.618, 719.106, 719.301, and 719.618.

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.