

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 Rules

BILL: SB 50

INTRODUCER: Senator Stewart

SUBJECT: Provision of Homeowners' Association Rules and Covenants

DATE: February 13, 2024

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | Favorable |
| 2. | <u>Hackett</u> | <u>Ryon</u> | <u>CA</u> | Favorable |
| 3. | <u>Oxamendi</u> | <u>Twogood</u> | <u>RC</u> | Pre-meeting |

I. Summary:

SB 50 requires homeowners' associations to provide, before October 1, 2024, a physical or digital copy of the association's rules and covenants to every member of the association, including new members.

In addition, homeowners' associations must give every member an updated copy of the rule or covenants if the rules or covenants are amended. Under the bill, associations may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

The bill permits associations to meet the requirement in the bill by posting a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website, if the website is accessible to the members of the association and the association sends notice to each member of the association of its intent to utilize the website for this purpose. The notice of the association's intent to use a website to meet the requirements of the bill may be delivered electronically or by mail.

The bill takes effect July 1, 2024.

II. Present Situation:

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These

laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹

A “homeowners’ association” is defined as a:²

Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Unless specifically stated to the contrary in the articles of incorporation, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.³

Homeowners’ associations are administered by a board of directors that is elected by the members of the association.⁴ The powers and duties of homeowners’ associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.⁵ The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.⁶

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

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

¹ See s. 720.302(1), F.S.

² Section 720.301(9), F.S.

³ Section 720.302(5), F.S.

⁴ See ss. 720.303 and 720.307, F.S.

⁵ See ss. 720.301 and 720.303, F.S.

⁶ Section 720.303(1), F.S.

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

The governing documents of a homeowners' association are:⁸

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.

Section 720.301(3), F.S., defines a "community" as the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term "includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto."

Florida law specifies the official records that homeowners' associations must maintain.⁹ Generally, the official records must be maintained in Florida for at least seven years.¹⁰ Certain types of these records must be accessible to the members of an association.¹¹ Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.¹²

The official records that the association must make available to the members for inspection and copying include, in relevant part, a copy of the:¹³

- Bylaws of the association and of each amendment to the bylaws.
- Articles of incorporation of the association and of each amendment thereto.
- Declaration of covenants and a copy of each amendment thereto.
- Current rules of the homeowners' association.

III. Effect of Proposed Changes:

The bill creates s. 720.303(13), F.S., to require homeowners' associations to provide, before October 1, 2024, a physical or digital copy of the association's rules and covenants to every member of the association, including new members.

In addition, homeowners' associations must give every member an updated copy of the rule or covenants if the rules or covenants are amended. Under the bill, associations may adopt rules establishing standards for the manner of distribution and a timeframe for providing copies of updated rules or covenants.

⁷ See s. 720.306(9)(c), F.S.

⁸ Section 720.301(8), F.S.

⁹ See s. 720.303(5), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Section 720.303(4), F.S.

The bill permits associations to meet the requirement in the bill by posting a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website, if the website is accessible to the members of the association and the association sends a notice to each member of its intent to utilize the website for this purpose.

The notice of the association's intent to use a website to meet the requirements of the bill may be delivered electronically to members who have consented to receive notices by electronic transmission and have provided an electronic mailing address to the association for that purpose, or by mail to all other members at the address identified in the official records of the association as the member's mailing address.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Homeowners' associations will incur costs, including copying, delivery, and processing costs, in order to provide all members of the association, including new members as they become homeowners in the community, with a copy of the association's rules and covenants, and updated copies of those documents if they are amended.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 720.303 of the Florida Statutes.

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.