

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 73 Residential Properties

**SPONSOR(S):** Business & Professional Regulation Subcommittee; Civil Justice Subcommittee; Moraitis, Jr.

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee	10 Y, 0 N, As CS	Morton	Luczynski
3) Judiciary Committee			

### SUMMARY ANALYSIS

This bill amends various laws relating to condominiums, cooperatives, and homeowners' associations, including:

- Removing a requirement for elevators to be retrofitted to meet certain building codes by 2015.
- Requiring associations to allow members to copy, without charge, official records using smartphones, tablets, or other technology capable of scanning or taking pictures.
- Requiring election or recall challenges to be filed within 60 days.
- Providing that associations may not suspend delinquent members from using certain common elements.

As to Condominiums, the bill:

- Allows board members to serve two-year board terms, if provided for by the association's bylaws or articles of incorporation.
- Allows boards to install code-compliant hurricane doors and other types of code-compliant hurricane protection, and includes these items as common expenses of the condominium.
- Allows extra time for the completion of planned additional phases to a condominium.
- Provides for the creation of a condominium within a condominium.
- Allows the Condominium Ombudsman and his or her staff to engage in other professions.
- Increases annual revenue thresholds related to financial statement preparation.

As to Homeowners' Associations, the bill:

- Removes the requirement that a homeowners' association member or parcel owner submit a written request to speak at an association meeting.
- Increases annual revenue thresholds related to financial statement preparation.

The bill also conforms provisions relating to Cooperatives and Homeowners' Associations with those relating to Condominiums, including provisions relating to:

- Official records.
- Swimming pools.
- Limitation on mortgagee consent to amendment of documents.
- Board meetings on personnel matters.
- Certification of board members.

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

The bill provides an effective date of July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### ***Division of Florida Condominiums, Timeshares, and Mobile Homes***

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) in accordance with ch. 718, F.S., relating to condominiums, and ch. 719, F.S., relating to cooperatives.

Although condominiums and cooperatives are regulated by the division, homeowners' associations are not regulated. Chapter 720, F.S., provide for requirements for the governance of these associations.

##### ***Condominiums***

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., that is comprised of units which are individually owned, but have an undivided share of access to common facilities.<sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.<sup>2</sup> A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.<sup>3</sup> Further, it delineates condominium association bylaws, which govern the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.<sup>4</sup>

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners which operates or maintains real property in which unit owners have use rights.<sup>5</sup> The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."<sup>6</sup>

##### ***Cooperatives***

A cooperative is a form of ownership of real property created pursuant to ch. 719, F.S., wherein legal title is vested in a corporation or other business entity, and the property's residents own shares of the company, reflecting equity in the real estate.<sup>7</sup>

Like condominiums, cooperatives are created by cooperative documents and include articles of incorporation of the association, bylaws, a ground lease or any other underlying lease, a document evidencing a unit owner's membership or share in the association, and the document recognizing a unit owner's title or right of possession to his or her unit.<sup>8</sup> Cooperatives are administered in accordance with these bylaws or other cooperative documents, and are run by a board of administration.<sup>9</sup>

##### ***Homeowners' Associations***

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<sup>1</sup> Section 718.103(11), F.S.

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

<sup>3</sup> Section 718.104(5), F.S.

<sup>4</sup> Section 718.112, F.S.

<sup>5</sup> Section 718.103(2), F.S.

<sup>6</sup> Section 718.103(4), F.S.

<sup>7</sup> Section 719.103(12), F.S.

<sup>8</sup> Section 719.103(13), F.S.

<sup>9</sup> Section 719.106(1), F.S.

A homeowners' association is defined as a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.<sup>10</sup>

Similar to condominiums and cooperatives, homeowners' associations are administered by an elected board of directors.<sup>11</sup> The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to those documents.<sup>12</sup>

## ***Elevator Safety***

### Current Situation

Current law provides that elevators in condominiums, cooperatives, and other multi-family residential buildings that were issued certificates of occupancy as of July 1, 2008, are exempt from retroactive application of future updates to the Elevator Safety Code (ASME A17.1 and A17.3) until either July 1, 2015, or until the elevator is replaced or requires major modification, whichever occurs first.<sup>13</sup> The agency is still in the rulemaking process to define "major modification."<sup>14</sup>

### Effect of Proposed Changes

The bill amends s. 399.02(9), F.S., to remove the July 1, 2015, end date for the elevator safety code enforcement exemption, creating a permanent exemption to compliance with future updates to the Elevator Safety Code for specified elevators. However, these elevators would have to comply with all updated provisions of the Elevator Safety Code if replaced or requiring major modification.

## ***Official Records***

### Current Situation

Current law requires condominium associations, cooperatives, and homeowners' associations to maintain the official records of the association within the state. These records are open to inspection by any association member or authorized representative at any time. The right to inspection includes the right to copies at the reasonable expense of the member.<sup>15</sup>

### Effect of Proposed Changes

The bill amends ss. 718.111(12)(c), 719.104(2)(b), and 720.303(5), F.S., to provide a member the right to use his or her smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, without charge to the member.

## ***Elections and Recalls***

### Current Situation

Current law allows any member of a condominium, cooperative, or homeowners' association board to be recalled and removed from office by a majority of all the voting interests.<sup>16</sup> If a recall is approved by

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<sup>10</sup> Section 720.301(9), F.S.

<sup>11</sup> See ss. 720.303 and 720.307, F.S.

<sup>12</sup> See ss. 720.301 and 720.303, F.S.

<sup>13</sup> Section 399.02(9), F.S.

<sup>14</sup> Department of Business and Professional Regulation 2012 Legislative Analysis Form, October 25, 2011, on file with Civil Justice Subcommittee staff.

<sup>15</sup> See ss. 718.111(12)(c), 719.104(2)(b), and 720.303(5), F.S.

<sup>16</sup> See ss. 718.112(2)(j), 719.106(1)(f) and 720.303(10)(b)1., F.S.

a majority of all voting interests at a meeting or by an agreement in writing, the board must notice and hold a board meeting within five business days; at that meeting, the board must determine whether to certify the recall.<sup>17</sup>

If the board fails to notice and/or hold a board meeting within five business days, the recall will automatically be deemed effective.<sup>18</sup> Currently, there is no specified procedure regarding challenging the validity of the recall. Moreover, there are no time limitations regarding challenging an election process.

Current law requires condominium board members to certify in writing to the secretary of the association within 90 days of election that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies. Alternatively, the new board member may complete a department-approved education curriculum.<sup>19</sup>

For a condominium, a person who is delinquent in the payment of any fee, fine, or special or regular assessment is not eligible for board membership.<sup>20</sup>

### Effect of Proposed Changes

The bill creates ss. 718.112(2)(j)5., 719.106(1)(f)5., and 720.303(10)(g), F.S., which allow a unit or parcel owner representative to file a petition challenging the board's failure to act on a recall. The petition must be filed within 60 days after the expiration of the applicable five-business-day period. The review of the petition is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

Similarly, the bill amends ss. 718.112(2), 719.106(1), and 720.303(10), F.S., which allow a board member who has been recalled to file a petition challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified, and must name the condominium, cooperative, or homeowners' association and the unit owner representative as respondents. The bill prohibits the division from accepting a recall petition, regardless of the reason for filing, if there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled, or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

The bill also creates s. 718.112(2)(d)4.c., F.S., and amends ss. 719.106(1)(d)1. and 720.306(9)(a), F.S., to require that any challenge to the election process must be commenced within 60 days after the election results are announced.

The bill amends s. 719.106(1)(d)1., F.S., to require cooperative board members to certify in writing to the secretary of the association within 90 days of election that he or she has read the association's bylaws, articles of incorporation, proprietary lease, and current written policies. Alternatively, the new board member may complete a department-approved education curriculum. This conforms the law respecting cooperatives to current condominium law in this regard.

### ***Limitation on Use of Common Elements***

#### Current Situation

Condominiums, cooperatives, and homeowners' associations own common elements and facilities. Under current law, these entities are able to take action against owners and/or residents that do not comply with the provisions of the declaration bylaws, or reasonable rules. Sanctions may include suspending, for a reasonable time, the right of a unit owner, tenant, or guest to use the common elements, common facilities, or any other association property.<sup>21</sup>

<sup>17</sup> See ss. 718.112(2)(j)1., 719.106(1)(f)1., and 720.303(10)(b)5.c.2., F.S.

<sup>18</sup> See ss. 718.112(2)(j)4., 719.106(1)(f)4., and 720.303(10)(c)2.f., F.S.

<sup>19</sup> See s. 718.112(2)(d)4.b., F.S.

<sup>20</sup> See ss. 718.112(2)(d)2., F.S.

<sup>21</sup> See ss. 718.303(3), 719.303(3), and 720.305(2), F.S.

## Effect of Proposed Changes

The bill limits which common elements the association may restrict the unit owner, tenant, or guest from using. Specifically, the bill amends ss. 718.303(3)(a), 719.303(3)(a), and 720.305(2)(a), F.S., to prohibit an association from restricting the use of:

- Limited common elements intended to be used only by that unit;
- Common elements needed to access the unit;
- Utility services provided to the unit;
- Parking spaces; and
- Elevators.

The bill does not include the 'elevators' provision with regard to homeowners' associations, but does include a provision prohibiting the homeowners' association from impairing the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and from the parcel, including the right to park.

## ***Homeowners' Associations & Condominiums - Financial Reporting***

### Current Situation

Sections 718.111(13) and 720.303(7), F.S., sets forth the financial reporting responsibilities of condominium associations and homeowners' associations, respectively. Condominium and homeowners' associations have 90 days after the end of the fiscal year to prepare and complete a financial report for the preceding fiscal year. The type of financial statements or information that must be provided is based on the association's total annual revenues.

Annual Revenues	Requirement
Up to \$99,999.99	Prepare report of cash receipts and expenditures
Between \$100,000 and \$199,999.99	Prepare compiled financial statements
Between \$200,000 and \$399,999.99	Prepare reviewed financial statements
\$400,000 or more	Prepare audited financial statements

A homeowners' association with less than 50 parcels, regardless of annual revenues, may prepare a report of cash receipts and expenditures instead of financial statements, unless the governing documents provide otherwise. A condominium association with less than 75 units, regardless of annual revenues, shall prepare a report of cash receipts and expenditures.

### Effect of Proposed Changes

The bill amends the thresholds for financial reporting requirements as follows:

Annual Revenues	Requirement
Up to \$199,999.99	Prepare report of cash receipts and expenditures
Between \$200,000 and \$299,999.99	Prepare compiled financial statements
Between \$300,000 and \$499,999.99	Prepare reviewed financial statements
\$500,000 or more	Prepare audited financial statements

The bill also provides a condominium association with less than 50 units regardless of annual revenues, shall prepare a report of cash receipts and expenditures. This is a reduction from the 75 units in current law.

## ***Condominiums - Board Members***

## Current Situation

Current law requires board members to serve one-year terms, unless the bylaws allow for and a majority of the total voting interests of the condominium vote for board members to serve staggered terms of no more than two years. Current law makes any person who is delinquent in the payment of any fee, fine, or special or regular assessment ineligible to serve as a board member.<sup>22</sup>

## Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2., F.S., to allow association board members to serve two-year board terms provided for by the bylaws or articles of incorporation, eliminating the requirement that the membership conduct an annual vote to authorize 2-year terms.

The bill also amends s. 718.112(2)(d)2., F.S., to make a person ineligible for condominium board membership when the person owes *any* monetary obligation to the board, and prevents the board from listing that person on the election ballot.

## ***Condominiums - Proxy Voting Exemption***

### Current Situation

Current law provides that condominium board members must be elected by written ballot or voting machine. Unless otherwise provided in ch. 718, F.S., proxies may not be used in board member elections.<sup>23</sup>

### Effect of Proposed Changes

The bill amends s. 718.112(2)(d)4., F.S., to provide an exemption to the subparagraph for timeshare condominium boards. Specifically, it allows proxy voting for timeshare condominium board elections.

## ***Condominiums - Windstorm Protection***

### Current Situation

Under current law, a condominium board must adopt hurricane shutter specifications for its buildings. The board may also approve the installation of hurricane shutters, impact glass, and code-compliant windows.<sup>24</sup> Unless otherwise provided in the declaration, the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters or other hurricane protection by the board pursuant to that provision is a common expense.<sup>25</sup>

### Effect of Proposed Changes

This bill allows a condominium board to also approve the installation of code-compliant doors and other types of code-compliant hurricane protection. In addition, the bill includes impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection as common expenses of the condominium.

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<sup>22</sup> *Id.*

<sup>23</sup> Section 718.112(2)(d)4., F.S.

<sup>24</sup> Section 718.113(5)(a), F.S.

<sup>25</sup> Section 718.115(1)(e), F.S.

## ***Condominiums - Phase Condominiums***

### Current Situation

Section 718.403, F.S., permits developers to develop condominiums in phases if the anticipated phases are described in detail in the original declaration of condominium or an amendment to the declaration which has been approved by all the unit owners and unit mortgagees. The time for completion of all the phases may not exceed 7 years from the date of the recording of the declaration of condominium.<sup>26</sup>

### Effect of Proposed Changes

The bill amends s. 718.403(1), F.S., to provide that the unit owners may extend the seven-year period to allow for an additional three years for completion, beginning at the end of the original period. The vote to extend must occur within the last three years of the original seven-year period. The amendment to the declaration to extend the seven-year period is not an amendment subject to s. 718.110(4), F.S., which requires approval of all unit owners in the condominium. Rather, it is a general amendment to the declaration, requiring approval by at least two-thirds of the unit owners, pursuant to s. 718.110(1)(a), F.S.

## ***Condominiums - Secondary Condominiums***

### Current Situation

The Florida Condominium Act does not currently address the concept of primary and secondary condominiums or condominiums within condominium parcels.

### Effect of Proposed Changes

The bill creates s. 718.406, F.S., to allow for the development of a secondary condominium within one or more condominium units pursuant to a secondary condominium declaration. Unless the declaration of condominium of the primary condominium provides otherwise, no secondary condominium can be created, and no amendment to the primary condominium declaration may permit secondary condominiums to be created, unless approved by the primary condominium unit owners and lienholders.<sup>27</sup> Once approved, the primary condominium association, the owner of the subdivided parcel, and the holders of liens upon the subdivided parcel shall have approval rights regarding the creation of the secondary condominium and its declaration.

The secondary condominium is governed by both the primary condominium declaration and the secondary condominium declaration. The primary condominium declaration controls the secondary condominium in the event of a conflict. Moreover, the secondary condominium association represents its unit owners in the primary condominium association, with a designated representative, or if one is not designated, the president of the secondary condominium association casting the secondary association's vote in the primary condominium association.

The primary condominium association may furnish insurance required by s. 718.111(11), F.S., for both the primary and secondary condominium if the primary condominium declaration allows it, and the board of the primary condominium association is permitted to adopt hurricane shutter and other hurricane protection specifications for both the primary and secondary condominium. Further, common expenses due the primary condominium association with respect to a subdivided unit are a common expense of the secondary condominium association, and are collected by the secondary condominium association from its members to be paid to the primary condominium association.

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<sup>26</sup> Section 718.403(1), F.S.

<sup>27</sup> See s. 718.110, F.S.

Finally, an owner or mortgagee of a unit in a secondary condominium must register with the primary condominium in order to receive notices of delinquencies of, or foreclosure against, the secondary condominium due to non-payment by the subdivided parcel owner, and of release of the unit in the secondary condominium from any such delinquency or foreclosure.

## ***Condominiums - Ombudsman***

### Current Situation

In 2004, the Legislature re-created the Office of the Condominium Ombudsman.<sup>28</sup> The Ombudsman is an attorney appointed by the Governor who is charged with certain duties, including but not limited to:

- Preparing and issuing reports and recommendations to the Governor, the Department, the Division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division;
- Acting as a liaison between the Division, unit owners, boards of directors, board members, community association managers, and other affected parties;
- Monitoring and reviewing procedures and disputes concerning condominium elections or meetings, including enforcement when the Ombudsman believes election misconduct has occurred;
- Making recommendations to the Division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers;
- Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with the statutes, Division rules, and the condominium documents governing the association;
- Encouraging and facilitating voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy; and
- Assisting with the resolution of disputes between unit owners and the association or between unit owners when the dispute is not within the jurisdiction of the Division to resolve.<sup>29</sup>

The Ombudsman, along with office staff, is restricted from certain acts such as actively engaging in any other business or profession, serving as the representative of any political party, executive committee, or other governing body of a political party, serving as an executive, officer or employee of a political party, receiving remuneration for activities on behalf of any candidate for public office, or campaigning for a candidate for political office.<sup>30</sup> Essentially, an officer or full-time employee of the Ombudsman's office may not actively engage in any other business or profession.

### Effect of Proposed Changes

The bill amends s. 718.5011(2), F.S., to provide that an officer or full-time employee of the Ombudsman's office may engage in another business or profession, so long as it does not directly or indirectly relate to or conflict with his or her work in the Ombudsman's office.

## ***Condominiums - Acquisition of Leases and Leaseholds***

### Current Situation

Current law allows a condominium board to purchase a land or recreation lease under the standards set forth in the declaration, or if no such provision exists in the declaration, by the same standard that would be required to amend the declaration to permit the acquisition.<sup>31</sup> The standard to amend the

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<sup>28</sup> Chapter 2004-385, L.O.F.

<sup>29</sup> Section 718.5012, F.S.

<sup>30</sup> Section 718.5011(2), F.S.

<sup>31</sup> Section 718.111(8), F.S.



declaration, if the declaration itself does not assert a different standard, is no less than a two-thirds vote of the units.<sup>32</sup>

Current law also allows the acquisition of leaseholds, memberships, and other possessory or use interests in lands or recreational facilities, if such lands and facilities are intended to provide enjoyment, recreation or other use or benefit to the unit owners. The acquisition of a leasehold after 12 months following the filing of the declaration must be agreed upon as set forth in the declaration, or if no such provision exists in the declaration, by the approval of a majority of the total voting interests of the condominium.<sup>33</sup>

The bill amends s. 718.111(8), F.S., to modify the vote required for the purchase of a lease to match the standard for the acquisition of a leasehold. Essentially, this reduces the vote requires for the acquisition of a lease from two-thirds of the unit owners to a majority of the total voting interests.

### ***Condominiums - Insurance***

#### Current Situation

A condominium association must carry property insurance. An association is required to carry property insurance or have sufficient funds to self-insure for damage to areas of the condominium that are not the responsibility of an individual unit owner.<sup>34</sup>

Unit owners are responsible for all personal property within the unit and the floor, wall, and ceiling coverings. Most unit owners also carry insurance. Unit owners are also responsible for the cost of repairs to any portion of the condominium property not paid by insurance proceeds when the damage is caused by intentional conduct, negligence or failure to comply with association rules by the unit owner or his or her family, tenants or guests.

#### Effect of Proposed Changes

The bill amends s. 718.111(11), F.S., to provide that the association is only responsible for damages caused by insurable events. Furthermore, the bill specifies that the association may collect the cost of reconstruction work for damages in the same manner provided for the collection of assessments incurred by a unit owner's intentional conduct, negligence or failure to comply with association rules.

### ***Homeowners' Associations - Members' Right to Speak***

#### Current Situation

In order to speak at a homeowners' association meeting, current law requires that a member and/or parcel owner first provide written notice to the association. The notice must be received prior to the meeting; if this written request is not received, a member may not speak at the meeting.<sup>35</sup>

#### Effect of Proposed Changes

The bill amends s. 720.306(6), F.S., to eliminate the requirement that homeowners' association members and/or parcel owners submit a written request to speak at the association meeting, prior to the meeting. Members and parcel owners may speak if present at the meeting.

### ***Conforming Provisions***

This bill conforms certain aspects of the Condominium Act, the Cooperative Act, and/or the statutes governing Homeowners' Associations.

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<sup>32</sup> Section 718.110(1)(a), F.S.

<sup>33</sup> Section 718.114, F.S.

<sup>34</sup> Section 718.111(11), F.S.

<sup>35</sup> Section 720.306(6), F.S.

## *Cooperative and Homeowners' Association Records*

### Current Situation

Pursuant to s. 719.104(2), F.S., the official records of a cooperative association must be open to inspection by any association member or authorized representative; however, certain records are not accessible to unit owners. Exempt information includes:

- Records that were prepared by an association attorney, records that reflect a mental impression, conclusion, litigation strategy or legal theory, or records that were prepared exclusively for imminent litigation or administrative proceedings;
- Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit; and
- Medical records of unit owners.<sup>36</sup>

### Effect of Proposed Changes

The bill amends s. 719.104(2)(c), F.S., to ensure that records protected by attorney-client privilege as provided in s. 90.502, F.S., and work-product privilege are exempt from disclosure. Further, the bill includes several other records that may not be accessible to unit owners, including:

- Personnel records of association employees;
- Identifying information of a unit owner, other than the address provided to fulfill the association's notice requirements;
- Electronic security measures that are used by the association to safeguard data, such as passwords; and
- The software and operating system used by the association, as the data is part of the official records of the association.

The bill also amends s. 720.303(5)(c)3., F.S., to exempt personnel records of management company employees from disclosure to members, in conformity with current condominium and proposed cooperative law.<sup>37</sup> These provisions substantially mirror the Condominium Act.

### *Amendment of Documents*

### Current Situation

Current law allows condominiums, cooperatives, and homeowners' associations, through the declaration of condominium, cooperative documents, and bylaws, to establish procedures for amending said documents.<sup>38</sup> Specifically, the Condominium Act provides that for any mortgage entered into after October 1, 2007, provisions in the declaration, articles of incorporation, or bylaws that require mortgagee consent in matters that do not affect the rights or interests of the mortgagee are rendered unenforceable.<sup>39</sup> The Act specifies which matters still require mortgagee consent and provides procedures for obtaining mortgagee consent for those matters.<sup>40</sup>

### Effect of Proposed Changes

The bill creates ss. 719.1055(7), F.S., and 720.306(1)(d), F.S., to provide substantially the same provisions regarding mortgage approval for both cooperatives and homeowners' associations as to mortgages recorded on or after July 1, 2013.

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<sup>36</sup> Section 719.104(2)(c), F.S.

<sup>37</sup> See ss. 718.111(12)(c), F.S.

<sup>38</sup> See ss. 718.110, 719.1055, and 720.306, F.S.

<sup>39</sup> Section 718.110(11), F.S.

<sup>40</sup> *Id.*

## *Board Meetings on Personnel Matters*

### Current Situation

Generally, association meetings are open to unit owners.<sup>41</sup> Pursuant to the Condominium Act, a condominium board may close meetings from the public when the board meets with the association's attorney to seek legal advice or when the board meeting is held for the purpose of discussing personnel matters.<sup>42</sup> Conversely, cooperatives are only able to close meetings from the public when meeting with the board's attorney.<sup>43</sup>

### Effect of Proposed Changes

The bill amends s. 719.106(1)(c), F.S., to make cooperatives consistent with condominiums regarding meetings held for the purpose of discussing personnel matters.

## *Certification of Board Members*

### Current Situation

Within 90 days after a condominium board member is elected or appointed to the board of administration, he or she must certify in writing that he or she has read the association's governing documents and current written policies, he or she will work to uphold the documents and policies, and he or she will maintain fiduciary responsibility to the association's members. In lieu of the written certification, the director can obtain certification training from a division-approved educational provider. Currently, the certification must be maintained for five years after the director's election.<sup>44</sup>

### Effect of Proposed Changes

The bill amends s. 718.112(2)(d)4.b., F.S., to require that a director's certification be maintained for either five years after the director's election, or for the duration of the director's uninterrupted tenure, whichever is longer. The bill also amends s. 719.501, F.S., to authorize the Department of Business and Professional Regulation to provide the certification training to cooperative board members.

## *Swimming Pools*

### Current Situation

A condominium or cooperative that maintains a swimming pool that serves 32 units or less and is not operated as a public lodging establishment is exempt from supervision by the Department of Health. A condominium or cooperative that maintains a swimming pool that serves more than 32 units is provided a limited exemption if the recorded documents prohibit the rental or sublease of the units for periods of less than 60 days.<sup>45</sup>

### Effect of Proposed Changes

The bill amends s. 514.0115(2), F.S., to provide the same exemptions to a homeowners' association that are provided to a condominium or cooperative under current law.

## B. SECTION DIRECTORY:

Section 1 amends s. 399.02, F.S., relating to the Elevator Safety Code.

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<sup>41</sup> See ss. 718.112(2)(c), 719.106(1)(c), and 720.306(6), F.S.

<sup>42</sup> Section 718.112(1)(c)3., F.S.

<sup>43</sup> Section 719.106(1)(c), F.S.

<sup>44</sup> Section 718.112(2)(d)4.b., F.S.

<sup>45</sup> Section 514.0115(2), F.S.

Section 2 amends s. 514.0115, F.S., relating to exemptions from supervision or regulation; variances.

Section 3 amends s. 718.111, F.S., relating the association.

Section 4 amends s. 718.112, F.S., relating to bylaws.

Section 5 amends s. 718.113, F.S., relating to maintenance; limitation upon improvement; display of flag; hurricane shutters; display of religious decorations.

Section 6 amends s. 718.115, F.S., relating to common expenses and common surplus.

Section 7 amends s. 718.303, F.S., relating to obligations of owners and occupants; remedies.

Section 8 amends s. 718.403, F.S., relating to phase condominiums.

Section 9 creates s. 718.406, F.S., relating to condominiums created within condominium parcels.

Section 10 amends s. 718.5011, F.S., relating to ombudsman; appointment; administration.

Section 11 amends s. 719.104, F.S., relating to cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 12 amends s. 719.1055, F.S., relating to amendment of cooperative documents; alteration and acquisition of property.

Section 13 amends s. 719.106, F.S., relating to bylaws; cooperative ownership.

Section 14 amends s. 719.303, F.S., relating to obligations of owners.

Section 15 amends s. 719.501, F.S., relating to powers and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.

Section 16 amends s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 17 amends s. 720.305, F.S., relating to obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.

Section 18 amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 19 provides an effective date of July 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of this bill, regarding elevator codes, will have a positive fiscal impact on associations and the owners of multi-family structures, and a corresponding negative fiscal impact on companies that provide such services.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2013, the Civil Justice Subcommittee adopted five amendments and reported the bill favorably as a committee substitute. The amendments:

- Provide the same exemption from state regulation of a swimming pool for a 32-member or smaller homeowners' association that already exists for a 32-member or smaller condominium or cooperative;
- Provide the same standards for purchase of leases by a condominium association as the acquisition of leaseholds by a condominium association;
- Specify repairs to a unit for which the unit owner is responsible, codifying the law as most practitioners presently understand it to be;
- Specify repairs to a unit for which the association is responsible, codifying the law as most practitioners presently understand it to be;
- Provide the Department with the authority to provide the same training to cooperative boards that it provides to condominium boards.

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

On March 7, 2013, the Business & Professional Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provided a condominium association

with less than 50 units regardless of annual revenues, shall prepare a report of cash receipts and expenditures. This is a reduction from the 75 units in current law.