

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 841 Community Associations

SPONSOR(S): Judiciary Committee; Civil Justice & Claims Subcommittee; Careers & Competition Subcommittee; Moraitis, Jr.

TIED BILLS: IDEN./SIM. **BILLS:** SB 1274

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice & Claims Subcommittee	13 Y, 0 N, As CS	MacNamara	Bond
3) Judiciary Committee	16 Y, 2 N, As CS	MacNamara	Poche

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), has regulatory authority over condominium and cooperative associations, and limited authority over homeowner's associations (HOA). CS/CS/CS/HB 841 makes the following changes to current law relating to these associations:

- Removes the time limit for the classification as a bulk buyer, extending indefinitely the applicability of bulk buyer provisions previously limited to a specific time period.
- Extends the deadline for condominium associations to post documents on a website.
- Provides that a condominium is not liable for disclosing restricted information unless the disclosure was with a knowing disregard of the restricted information.
- Requires condominiums to permanently maintain certain official records.
- Revises the term limit provision for condominium board members.
- Allows condominiums to hire attorneys who represent the condominium's management company.
- Provides that condominium board members are recalled if the board determines the recall is facially valid, and provides attorney's fees for a recalled board member who prevails in arbitration, or attorney's fees for condominium associations under certain circumstances.
- Prohibits an association from restricting a unit owner from installing an electric vehicle charging station.
- Prohibits a condominium association from waiving the financial reporting requirements for two years if it fails to respond to the Division's request to provide a financial report to a unit owner.
- Increases the time in which a condominium or cooperative must respond to a unit owners' request to inspect records, requires electronic records related to voting to be retained as official records, and allows notice of board meetings to be posted on a website.
- Provides that amendments effecting the ability of unit owners to rent or lease their homes only applies to certain properties.
- Requires a vote authorizing an alteration or addition to a condominium be held prior to beginning work.
- Clarifies that an association may act on behalf of its unit owners for appeals by a property appraiser.
- Amends cooperative law to mirror condominium law regarding removal of board members who are 90 days or more delinquent on payments.
- Restricts co-owners from serving on the board of directors.
- Allows HOAs to provide electronic notice to any member who has provided a fax number or email.
- Includes communication and information services in bulk contracts as cooperative common expenses.
- Clarifies that a HOA may apply payments for late assessments to interest, fines, and fees before applying the payments to assessments.

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

The effective date of the bill is July 1, 2018.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background and Effect of Proposed Changes

The Division of Condominiums, Timeshares and Mobile Homes (the Division), a division within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium associations;
- Cooperative associations;
- Florida mobile home parks and related associations;
- Vacation units and timeshares;
- Yacht and ship brokers and related business entities; and
- Homeowners' associations (limited to arbitration of election and recall disputes).

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities.¹ A condominium is created by recording a declaration in the public records of the county in which the condominium will be located.² A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association. The association is responsible for the operation of the common elements owned by the unit owners, in which all unit owners have rights to use. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws governing the administration of the association, including quorum, voting rights, and the election and removal of board members.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.³ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are similar in many ways.

A homeowners' association (HOA) is an association of residential property owners where voting membership consists of parcel owners, membership is a mandatory condition of parcel ownership, and which may impose assessments that, if unpaid, can become a lien on the parcel.⁴ Chapter 720, F.S. only regulates HOAs whose covenants and restrictions include mandatory assessments. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes those provided in ch. 720, F.S., and contained in the governing documents of the association. The governing documents include the recorded covenants and restrictions, bylaws, articles of incorporation, and duly adopted amendments to those documents. Florida law provides procedures and minimum requirements for operation and provides for a mandatory binding arbitration program, administered by the Division, for certain election disputes.

¹ S. 718.103(11), F.S.

² S. 718.104(2), F.S.

³ S. 719.103(2)(26), F.S.

⁴ S. 720.301(9), F.S.

Official Records

Condominium and cooperative associations are required to maintain official records for at least 7 years. These official records include:

- A copy of the articles of incorporation, declarations, bylaws, and rules of the association;
- Meeting minutes;
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- Accounting records for the association;
- All contracts for work, including bids;
- A copy of the plans, permits, warranties, and other items provided by a developer;
- All other written records which are related to the operation of the association; and
- All ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.⁵

Unit owners are able to inspect the official records, and a condominium or cooperative must have the records available for inspection within 5 working days of receiving a request to inspect them.⁶

CS/CS/CS/HB 841:

- Extends the deadline condominium and cooperative associations have to make records available to unit owners from 5 working days to 10 working days.
- Includes electronic records relating to voting to the list of official records that must be kept by condominium and cooperative associations.
- Requires a condominium association to permanently maintain the following documents:
 - A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
 - Meeting minutes; and
 - A copy of the plans, permits, warranties, and other items required by the developer.

Condominium Websites

By July 1, 2018, a condominium association with 150 or more units that does not manage timeshare units must post certain documents on a website that is only accessible to unit owners and employees of the condominium association. A condominium association's website must include:

- The recorded declaration of each condominium operated by the condominium association and each amendment to a declaration;
- The recorded bylaws of the condominium association, including amendments to the bylaws;
- The articles of incorporation of the condominium association, or other documents creating the condominium association and each amendment thereto. The copy posted must be the articles of incorporation filed with the Department of State;
- The rules of the condominium association;
- Any management agreement, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility. Summaries of bids for materials, equipment, or services must be maintained on the website for 1 year;
- The annual budget and any proposed budget to be considered at the annual meeting;
- The financial report and any proposed financial report to be considered at a meeting;
- The certification of each director;

⁵ SS. 718.111(12)(a) and 719.104(2), F.S.

⁶ Id.

- All contracts or transactions between the condominium association and any director, firm, corporation, or condominium association that is not an affiliated condominium association or any other entity in which an condominium association director is also a financially interested director or officer;
- Any contract or document regarding a conflict of interest or potential conflict of interest by a community association manager or a board member;
- The notice of any unit owner meeting and the agenda for the meeting, posted at least 14 days before the meeting. The notice must be posted in plain view on the front page of the website or on a separate subpage of the website labeled “Notices” which is conspicuously visible and linked from the front page; and
- Any documents to be considered during a meeting or listed on the agenda for a meeting. These must be posted at least 7 days before the meeting where the document will be considered.⁷

A condominium may not post the following protected documents or restricted information to its website unless the information or documents are redacted:

- Any record protected by the lawyer-client privilege or the work-product privilege;
- Information obtained by the condominium association in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records of condominium association or management company employees;
- Medical records of the unit owners;
- Social security numbers, driver’s license numbers, credit card numbers, email addresses, telephone numbers, facsimile numbers, emergency contact information, and addresses of a unit owner other than those provided to fulfill notice requirements;
- Electronic security measures that are used to safeguard data, including passwords; and
- The software and operating system used by the condominium association, which allows the manipulation of the data.⁸

CS/CS/CS/HB 841 extends the deadline for condominium associations to post certain documents to a website from July 1, 2018 to January 1, 2019, and provides that an association’s failure to post the required information on its website is not grounds to invalidate an action or decision taken by the board or its committees.

The bill requires a condominium association to only post summaries of bids for materials, equipment, or services which exceed \$500. Moreover, the bill allows a condominium association to post the complete copies of the bids for materials, equipment, or services in lieu of those summaries. The bill also removes the requirement that an association post any proposed financial reports, replacing this with a requirement to post any monthly income or expense statements to be considered at a meeting.

The bill also provides that a condominium association or agent of a condominium association is not liable for disclosing protected or restricted information unless the disclosure was made with a knowing or intentional disregard of the protected or restricted nature of the information.

Condominium Financial Reporting

Condominium associations are required to complete an annual financial report of the previous year’s financial activities and provide the report to unit owners. To comply with financial reporting requirements, associations must:

- Complete an annual financial report for the previous fiscal year within 90 days after the end of the fiscal year, calendar year, or annually on a date provided in the bylaws;
- Provide unit or parcel owners the financial report or notice that the report is available upon request without charge within 21 days after the final financial report is completed by the

⁷ S. 718.112(12)(g), F.S.

⁸ Id.

condominium or received from the third party, but not later than 120 days after the end of the fiscal year or calendar year, or other date as provided in the bylaws; and

- Prepare financial statements according to generally accepted accounting principles and in a manner dictated by the total revenue of the association, specifically:
 - An association having total annual revenues between \$150,000 and \$300,000 must prepare compiled financial statements;
 - An association having total annual revenues between \$300,000 and \$500,000 must prepare reviewed financial statements;
 - An association having total revenues more than \$500,000 must prepare audited financial statements; and
 - An association with total annual revenue of less than \$150,000 must prepare a report of cash receipts and expenditures.⁹

If a unit owner does not receive the financial report, he or she may contact the Division to report an association's failure to provide a copy of the financial report within the required time. If the Division determines that the association failed to provide the financial report in a timely manner, the Division requires the association to provide the financial report to the unit owner and the Division within five business days. If the association fails to comply with the Division's request, the association is prohibited from waiving the financial annual financial reporting requirements.

An association may vote to waive the annual financial reporting requirements and prepare a report of cash receipts and expenditures by approval of a majority of voting interests.

CS/CS/CS/HB 841 provides that if an association fails to comply with the Division's request then the association cannot waive the financial annual financial reporting requirements for the fiscal year in which the unit owner's request is made and the following fiscal year.

Condominium Owners Contesting a Tax Assessment

Current law permits condominium associations to file a single joint petition to the Value Adjustment Board ("VAB") contesting the tax assessment of all units within the condominium.¹⁰ The association must provide each unit owner notice of the petition and their right to opt out of the appeal, if desired. This allows all unit owners the efficiency and benefit of working together to reduce their taxes if they are over-assessed.

A decision by the VAB may be appealed to the circuit court. While current law is clear that an association is authorized to act on behalf of all unit owners when filing a petition to the VAB, it is unclear whether the association may defend an appeal on behalf of all unit owners when a county property appraiser appeals a VAB decision. The Eleventh Judicial Circuit Court in Miami-Dade County recently issued an order stating that current law does not allow an association to act on behalf of unit owners on appeal where a VAB decision is appealed by a county tax appraiser.¹¹ The decision is currently on appeal in the Third District Court of Appeal.¹²

CS/CS/CS/HB 841 amends current law to clarify that where an association has filed a single joint petition to the VAB, the association may continue to represent the unit owners through an related subsequent proceeding.

⁹ S. 718.111(13), F.S.,

¹⁰ SS. 194.011 and 718.111, F.S.

¹¹ Amended Order Denying Condominium Association's Motion for Class Certification, *Pedro J. Garcia v. Central Carillon Beach Condominium Association, Inc., et. al*, No. 16-26521-CA-02 (Fla. 11th Cir. Cr. April 27, 2017).

¹² Case No.: 3D17-1198

Alterations or Additions to Condominium Property

Associations are required to maintain the property of the condominium. In order to maintain condominium property, condominiums may provide a specific procedure to approve material alterations or additions to condominium property in the association's declaration. If a condominium's declaration does not provide a procedure to approve material alterations or additions then approval by 75 percent of the voting interests is required to approve any material alterations or additions. It is not clear in current statute if the approval must occur before work begins on the additions or alterations.

CS/CS/CS/HB 841 requires approval by 75 percent of voting interests prior to work beginning on the material alterations or additions of condominium property.

Additionally, the bill prohibits an association from restricting a unit owner from installing an electric vehicle charging station within the boundaries of their common element parking area. The installation may not cause irreparable damage to the condominium property, and the association may require the unit owner to:

- Comply with bona fide safety requirements, consistent with applicable building code or recognized safety standards;
- Comply with reasonable architectural standards adopted by the association so long as such standards do not prohibit the installation of such station or substantially increase the cost;
- Engage the services of a duly licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station;
- Provide a certificate of insurance naming the association as an additional insured on the owner's insurance policy; and
- Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station.

The electricity charges must be separately metered by the unit owner installing the charging station. Moreover, the costs of installation, operation, maintenance, repair, and removal are the responsibility of the unit owner and the association may use their assessment powers under s. 718.116, F.S., to enforce the payment of such costs.

The association will grant an implied easement across the common elements to the unit owner for the installation of the electric vehicle charging station and any necessary equipment for the furnishing of electrical power to the electric vehicle charging station. A lien may not be filed against the association for any labor performed or materials furnished during the installation of a charging station. However, a lien may be filed against the unit.

Condominium, Cooperative, HOA Fines and Suspension

Condominium and cooperative associations and HOAs may levy fines and suspend a unit or parcel owner, the unit or parcel's occupant, or a guest of the unit owner for failing to comply with any provision in the association's declaration, bylaws, or rules.¹³

A board may not impose a fine or suspension unless it gives at least 14 days written notice of the imposed fine or suspension, and the opportunity for a hearing. The hearing must be held before a committee of unit owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension.

For condominiums, the committee must approve the fine or suspension by a majority. The committee for cooperative associations must agree with the fine or suspension otherwise the cooperative may not approve the fine or suspension.¹⁴ HOAs must provide written notice of any fine or suspension by mail or

¹³ SS. 718.303(3), 719.303(3), & 720.305(2), F.S.

¹⁴ S. 719.303(3), F.S.

hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.¹⁵ Current law does not provide a date for when a fine is due once the committee has approved the fine.

CS/CS/CS/HB 841 requires an association to approve a fine or suspension by majority vote, after an opportunity for a hearing. The hearing must be in front of a group of condominium or cooperative association members made up of at least three members who are appointed by the board, and are not officers, board members, employees of the association, or a spouse, parent, child, brother, or sister of an officer, board member, or employee of the association.

A fine approved by the committee is due five days after the date of the committee meeting. The condominium or cooperative must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.

Notice Meetings and Communication by Members for Condominiums, Cooperatives, and HOAs

Associations are required to notice all board meetings by posting notice in a conspicuous place on the association's property for at least 48 hours. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding unit use is considered.¹⁶ If a parcel owner in a HOA provides written consent, the notice may be provided by electronic transmission for board meetings, committee meetings, annual meetings, and special meetings.¹⁷

Condominium and cooperative associations are required to notice all member meetings by mailing, hand delivering, or electronically transmitting notice at least 14 days before the meeting. They must also post notice in a conspicuous place at least 14 days before the meeting. If a condominium or cooperative association opts to broadcast notice in lieu of posting notice, it must do so at least four times every broadcast hour of each day for 14 days.¹⁸

CS/CS/CS/HB 841 allows condominium and cooperative associations to adopt rules for noticing all board and unit owner meetings on a website where the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must require the association to send an electronic notice providing a hyperlink to the posting to all unit owners whose email addresses are part of the official records in the same manner as notice for a meeting of the members. Notice by website is in addition to the other notice requirements. Any owner who consents to receiving notice for a meeting by electronic transmission is responsible for removing or bypassing any filters that block receipt of mass emails sent to members by an association for the purpose of giving notice.

The bill further permits a HOA to give notice by electronic transmission to any parcel owner who provided written consent and a fax number or email address to the HOA.

Lastly, under current law it is not clear if board members for cooperative associations and HOAs may use email as a form of communication. Board members for condominium associations may use email as a form of communication.¹⁹ The bill permits members of the board of directors for cooperative associations and HOAs to use email as a form of communication. However, a board member may not cast a vote via email.

¹⁵ S. 720.305(2), F.S.

¹⁶ SS. 718.112(2)(c), 720.303(2)(c), & 719.106(1)(c)(1), F.S.

¹⁷ S. 720.303(2)(c), F.S.

¹⁸ SS. 718.112(2)(d) & 719.106(1)(d), F.S.

¹⁹ S. 718.112(2)(c), F.S.

Cooperative Common Expenses and Bulk Contracts

Common expenses are paid by the unit owners of a cooperative association and are included in the association's annual budget to its members.²⁰ Common expenses are normal costs incurred by a cooperative association and include:

- Costs for the operation, maintenance, repair, or replacement of cooperative property;
- Costs of carrying out the powers and duties of the cooperative; or
- Costs designated by the cooperative as a common expense.²¹

Cooperative associations may include in their bylaws that bulk contracts for the cost of a master antenna television system or franchised cable television service are common expenses. Unlike condominiums, cooperatives may not provide as common expenses bulk contracts for the cost of communication services under ch. 202, F.S., information services, or internet services.²² Chapter 202, F.S., defines communication services to mean the transmission, conveyance, or routing of:

- Voice, data, audio, video; or
- Any other information or signals, including:
 - Video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave; or
 - Other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.

The term also includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. Examples of communication services include:

- Cable and satellite television
- Video and music streaming
- Telephones
- Mobile communications, and similar services²³

Information service is defined as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using or making available information via communications services.²⁴ The term also includes data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information. The term does not include video service.

CS/CS/CS/HB 841 amends cooperative association law to mirror condominium association law by providing that bulk contracts for communication services defined in ch. 202, F.S., internet services, and information services may be considered a common expense.

Cooperatives' Board of Directors and Board Members

Cooperative associations are administered by an elected board of directors, consisting of unit owners. Directors of the board nominate officers, including a president, secretary, and treasurer. Unlike condominiums, cooperative associations are not required to have a provision that a director or officer is

²⁰ S. 719.103(1), & 719.106(1)(j), F.S.

²¹ SS. 719.103(9), & 719.107, F.S.

²² SS. 719.107, & 718.115(1)(d), F.S.

²³ Florida Department of Revenue, *Florida Communications Services Tax*, <http://floridarevenue.com/taxes/taxesfees/Pages/cst.aspx> (last visited February 9, 2018).

²⁴ S. 202.11(5), F.S.

deemed to have abandoned their post if the officer or director is more than 90 days delinquent in the payment of any monetary obligation to the association.²⁵ Additionally, cooperative associations do not have a provision that prevents co-owners of a unit in residential condominiums that are more than 10 units from serving on the board at the same time unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.²⁶

Condominium association board members serve one year terms, but a board member may serve a two year term if the association's bylaws or articles of incorporation allow it. Board members may not serve more than four consecutive 2-year terms, unless approved by two-thirds of the total voting interests or there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.²⁷

CS/CS/CS/HB 841 amends cooperative association law to mirror condominium association law by providing that:

- A director or officer is deemed to have abandoned their office if the officer or director is more than 90 days delinquent in the payment of any monetary obligation to the association; and
- In residential cooperatives that are more than 10 units, co-owners of a unit are prohibited from serving as members on the board at the same time unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.

The bill also repeals the provision that condominium association board members may not serve more than four consecutive 2-year terms, and allows a condominium association to select any term of office. The bill changes the overall term limit provision to limit time in office to eight consecutive years, unless approved by affirmative vote of two-thirds of all votes cast in the election.

Board Member Recall

A member of a condominium association board may be recalled and removed from office by a majority of all the voting interests of the association at a special meeting or by an agreement in writing by a majority of all voting interests.²⁸ If a recall is approved by a majority of all voting interests, the board must notice and hold a board meeting within 5 business days of the special meeting to recall the board member or members. The recall is effective immediately and the recalled member or members must turn over any records and association property in their possession to the board within 10 days of the vote.²⁹

If a recall is approved in writing by a majority of all voting interests, the agreement or a copy of the agreement must be served by certified mail or personal service. The board must notice and hold a meeting to recall the board member or members within 5 business days of being served. The recall is effective immediately and the recalled member or members must turn over any records and association property in their possession to the board within 10 days.³⁰ If a board fails to notice and hold a meeting within 5 business days of the unit owner's vote or receiving the written agreement, the recall is deemed effective and the recalled board member or members must turn over any records and association property to the board within 10 days.³¹

If the board fails to notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition with the Division for arbitration challenging the board's failure to act. The petition must be filed within 60 days after the expiration of the applicable 5 business day period. However, the Division may not accept the petition if there are 60 days or fewer until the reelection of the board member or 60 days or less have elapsed since the election of the board

²⁵ S. 718.112(2), F.S.

²⁶ Id.

²⁷ S. 718.112(2)(d), F.S.

²⁸ S. 718.112(2)(j), F.S.

²⁹ Id.

³⁰ Id.

³¹ Id.

member. The review of a petition is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.³²

A recalled board member may file a petition to the Division for arbitration challenging the validity of the recall. The petition must be filed within 60 days of the recall, and must name the condominium and the unit owner as the respondents.³³ The prevailing party in arbitration is entitled to attorney's fees in an amount determined by the arbitrator.³⁴

CS/CS/CS/HB 841 requires a board to hold a meeting within 5 days of the unit owners' vote or receiving a written agreement, in order to determine if the vote or written agreement is facially valid. If the board determines the vote or written agreement is facially valid, the recall becomes effective upon the conclusion of the meeting. The bill allows recalled board member to challenge the facial validity of the written agreement to recall, the ballots filed, or the compliance with the procedural requirements of the recall.

If an arbitrator determines a board member's recall is invalid, the recall is null and void and the board member must be immediately reinstated. A board member who successfully challenges a recall is entitled to reasonable costs and attorney's fees from the respondents. However, an arbitrator may award reasonable costs and attorney's fees to the respondents if the arbitrator determines a recalled board member's request for arbitration is frivolous.

Bulk Assignees and Bulk Buyer

In 2010, the Legislature passed the Distressed Condominium Relief Act (Act) in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act. The Act was intended to relieve specific parties from certain liabilities to enable economic opportunities for successor purchasers of distressed condominiums.

Specifically, the Act created categories of "bulk buyers" and "bulk assignees." A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents. Similarly, a bulk buyer is a person who acquires more than seven condominium parcels, but who does not receive an assignment of developer rights other than the right to; conduct sales, leasing, and marketing activities within the condominium; be exempt from payment of working capital contributions; and be exempt from rights of first refusal.³⁵

Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for a specific and defined period.³⁶

Originally, the time limitation for classification as a bulk assignee or bulk buyer was until July 1, 2012.³⁷ In 2012, the Legislature extended the time limitation to July 1, 2015.³⁸ In 2014, the legislature again amended s. 718.707, F.S., to extend to July 1, 2016. Finally, in 2015, the legislature again amended s. 718.707, F.S., to provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the parcels were acquired between July 1, 2010, and July 1, 2018.

CS/CS/CS/HB 841 removes the time limit on acquisition for classification as a bulk buyer, extending the applicability of the bulk buyer provisions indefinitely.

³² Id.

³³ Id.

³⁴ S. 718.1255(4)(k), F.S.

³⁵ S. 718.703, F.S.

³⁶ S. 718.702, F.S.

³⁷ Ch. 10-174, Laws of Fla.

³⁸ Ch. 12-61, Laws of Fla.

HOA Elections

HOAs are administered by an elected board of directors.³⁹ HOAs are required to hold elections at its annual meeting or as provided in its governing documents.⁴⁰ Elections are conducted in accordance with the procedures set forth in the governing documents of the association. An election is not required unless more candidates are nominated than vacancies exist.⁴¹

CS/CS/CS/HB 841 provides that if an election is not required because there are fewer or equal candidates than vacancies, and nominations from the floor are not required, then write-in nominations are not permitted. The candidates must commence service on the board of directors regardless of whether a quorum was attained at the annual meeting.

HOA Amendments and Rental Restrictions

The powers and duties of an association include those set forth by statute and, except as expressly limited or restricted by statute, those set forth in the governing documents.⁴² A HOA may amend the associations governing documents. The adoption of an amendment to the governing documents usually requires a vote of the association members. Moreover, current law does mandate any particular method with respect the form of a proposed amendment.

CS/CS/CS/HB 841 requires an amendment to the governing documents to contain the full text of the provision to be amended, the new language to be underlined, and proposed deleted language to be stricken with hyphens. The bill permits an association to make reference to the governing documents in the event that an amendment is so extensive that the including the full text with strikes and underlines would hinder the understanding of the amendment.

Moreover, an amendment to a governing document enacted after July 1, 2018, prohibiting a parcel owner from renting the home or otherwise altering or limiting an owner's ability to rent only applies to a parcel owner who acquires title to the home after the effective date of the amendment or to a parcel owner who consents to the amendment. For purposes of this provision, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity⁴³ or when the beneficial ownership of the parcel does not change. In order for this conveyance to be recognized, the entity must furnish the association with a certificate certifying that this provision applies.

Lastly, the bill requires notices under s. 720.306, F.S., to be mailed or delivered to the parcel owner's mailing address on the property appraiser's website in the county where the parcel is located, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission.

Payment of HOA Assessments

HOAs are authorized to impose assessments on owners. Assessments are sums of money owed by parcel owners to an HOA to fund the HOA.⁴⁴ If assessments or installments of assessments are not timely paid, then they accrue interest. Any payment received by a HOA for payment of an assessment or installment that accrued interest will first be applied to the interest accrued, then to any

³⁹ SS. 720.303 & 720.307, F.S.

⁴⁰ S. 720.306(2), F.S.

⁴¹ Id.

⁴² S. 720.303, F.S.

⁴³ The bill defines an "affiliated entity" as an entity which controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity or an entity under common control, including an entity that becomes a parent or successor entity of the parcel owner by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests. CS/CS/CS/ HB 841, lines XXXX.

⁴⁴ Charles F. Dudley & Peter Dunbar, *The Law of Florida Homeowners Associations*, 5 (9th ed. 2012-13).

administrative late fee, then to any costs and reasonable attorney fees, and finally to the delinquent assessment.⁴⁵ The order of payments is the same as condominium law.

The Florida Uniform Commercial Code (UCC) allows a debtor to make a restrictive notation on a payment instrument. Accepting the payment instrument with the notation may then be considered an accord and satisfaction of the outstanding debt.⁴⁶

CS/CS/CS/HB 841 clarifies that payment in HOA law applies notwithstanding the UCC.

Condominium Conflicts of Interest

Current law provides that a condominium may not hire an attorney who represents the condominium's management company.⁴⁷

CS/CS/CS/HB 841 repeals the provision that a condominium may not hire an attorney who represents the condominium's management company.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 194.011, F.S., relating to assessment notice; objections to assessments.
- Section 2:** Amends s. 194.181, F.S., relating to parties to a tax suit.
- Section 3:** Amends s. 718.111, F.S., relating to 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 and protection; display of religious decorations.
- Section 6:** Amends s. 718.121, F.S., relating to liens.
- Section 7:** Amends s. 718.3026, F.S., relating to contracts for products and services; in writing; bids; exceptions.
- Section 8:** Amends s. 718.3027, F.S., relating to conflicts of interest.
- Section 9:** Amends s. 718.303, F.S., relating to obligations of owners and occupants; remedies.
- Section 10:** Amends s. 718.707, F.S., relating to time limitation for classification as bulk assignee or bulk buyer.
- 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. 719.106, F.S., relating to bylaws; cooperative ownership.
- Section 13:** Amends s. 719.107, F.S., relating to common expenses; assessment.
- Section 14:** Amends s. 719.303, F.S., relating to obligations of owners.
- Section 15:** Amends s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.
- Section 16:** 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 17:** Amends 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.
- Section 18:** Amends s. 720.3085, F.S., relating to payment for assessments; lien claims.
- Section 19:** Providing an effective date of July 1, 2018.

⁴⁵ S. 720.3085(3), F.S.

⁴⁶ S. 673.3111, F.S. The UCC is a set of regulations adopted by all 50 states with the goal of harmonizing the laws of commercial transactions throughout the United States. Duke Law, *Uniform Commercial Code*, <https://law.duke.edu/lib/researchguides/ucc/> (last visited on February 9, 2018).

⁴⁷ S. 718.111(3), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Careers & Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removed the term limits for condominium association board members and provides that terms are for two years or less.
- Provided that a condominium association or agent of a condominium association is not liable for disclosing protected or restricted information unless the disclosure was made with a knowing or intentional disregard of the protected or restricted nature of the information.
- Provided that a condominium association must permanently maintain certain official records.

- Extended the deadline for condominium associations required to create a website from July 1, 2018 to January 1, 2019.
- Provided that a condominium association must post any contract or document regarding a conflict of interest by a board member on its website, thereby maintaining current law.
- Provided that a condominium association must post complete copies of bids for materials, equipment, or summaries of bids after the bidding has closed.
- Removed the provision that homeowners' associations must fund reserve accounts, thereby maintaining current law.
- Removed the provision that homeowners' associations must notify potential owners that the budget of an association may not include sufficient funds for reserve funds, thereby maintaining current law.

On January 30, 2018, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Specified that only summaries of bids for materials, equipment, or services that exceed \$500 are required to be maintained on the association's website for one year.
- Removed the requirement that a proposed financial report be posted in digital format on the associations website, and instead inserted a requirement that monthly income or expense statements be posted in digital format on the website.
- Provided that an association's failure to post the required information on its website is not grounds to invalidate any action or decision taken by the board or its committees.
- Repealed the 2 year limit on the term of office, allowing a condominium association to select any term of office.
- Clarified overall term limit provision to limit time in office to 8 consecutive years, unless approved by affirmative vote of two-thirds of all votes cast in the election.

On February 15, 2018, the Judiciary Committee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarified that a condominium association may represent unit owners in a suit by the property appraiser seeking to increase the ad valorem tax valuation of condominium units, including subsequent appeals.
- Prohibited an association from restricting a unit owner from installing an electric vehicle charging station within the boundaries of their common element parking area, and permitted the association to require the unit owner to take certain actions or follow certain guidelines while going through the installation process.
- Provided that an amendment to a governing document enacted after July 1, 2018, prohibiting a parcel owner from renting the home or otherwise alters or limits an owners ability to rent only applies to a parcel owner who acquires title to the home after the effective date of the amendment or to a parcel owner who consents to the amendment.
- Excluded instances where title is transferred to an entity affiliated with the owner or when beneficial ownership of the parcel from being considered a "change of ownership" for purposes of amendments affecting a owners ability to rent their home, and provided a definition of "affiliated entity."
- Required notice of an HOA member meeting to be mailed or delivered to the property owner's address on file with the county property appraiser, or electronically transmitted where the property owner has consented to receiving such notice.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.