

THE FLORIDA SENATE
2017 SUMMARY OF LEGISLATION PASSED
Committee on Regulated Industries

CS/CS/CS/HB 653 — Community Associations

by Commerce Committee; Civil Justice and Claims Subcommittee; Careers and Competition Subcommittee; and Rep. Moraitis (CS/CS/SB 744 by Judiciary Committee; Regulated Industries Committee; and Senator Passidomo)

The bill revises requirements for the governance and operation of condominium, cooperative, and homeowners' associations.

Regarding fire safety and lifesafety systems in condominium and cooperative buildings, the bill:

- Permits condominium or cooperative associations having a building 75 feet or less in height to vote to forego retrofitting the building with fire sprinklers.
- Permits two-thirds of the voting interests in a building higher than 75 feet to vote to forego retrofitting with fire sprinklers.
- Permits an association that votes to forego retrofitting a building with a fire sprinkler system to also forego retrofitting with an engineered lifesafety system.
- Permits professional engineers also to provide condominium or cooperative associations with a certificate of compliance with fire and lifesafety system requirements (current law allows licensed electrical contractors and electricians to provide the certificate).
- Requires condominium and cooperative associations that have not installed sprinklers in the common areas of buildings of three stories or more to mark these buildings with a sign or symbol approved by the State Fire Marshal to warn persons conducting fire control and other emergency operations about the lack of a sprinkler system in the common areas.

Under existing law, condominium, cooperative, and homeowners' associations must prepare annual financial statements. The complexity of these statements is based upon the annual revenues of the association. Associations having larger revenues must prepare more complex financial statements. The members of these associations, however, may vote to allow the association to prepare less complex financial statements than otherwise required by law but not for more than three consecutive years. The bill repeals the three-consecutive-year limit on allowing a condominium or cooperative association to prepare less complex financial statements. Current law does not limit the ability of homeowners' associations to prepare less complex financial statements.

The bill also repeals the provisions of law that require condominium, cooperative, and homeowners' associations having fewer than 50 units or parcels to prepare a report of cash receipts and expenditures. This change will require these associations to prepare annual financial reports based on annual revenues, unless the association votes to prepare a less complex financial statement.

Regarding homeowners' and cooperative associations, the bill specifies the board members of each type of association may communicate by e-mail, but not vote by e-mail. Condominium law already includes a similar provision.

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Regarding the management and governance of condominium associations, the bill:

- Prohibits an officer, director, or manager of an association from accepting a “kickback” from a person providing or proposing to provide goods or services to the condominium.
- Provides forgery of a ballot envelope used in a condominium election or the forgery of a voting certificate constitutes the crime of forgery under existing law.
- Provides theft or embezzlement of the funds of a condominium association is theft under existing law.
- Provides refusal to allow inspection of an official record that is accessible to members is punishable as the crimes of tampering with physical evidence and obstruction of justice.
- Provides an officer or director charged with certain crimes relating to the condominiums may not access condominium records without a court order while the charges are pending.
- Prohibits an association from hiring an attorney who represents the association’s management company.
- Prohibits members of the board or the management company for a condominium association that is not a timeshare condominium from purchasing a unit at a foreclosure sale resulting from foreclosure of the association’s lien for unpaid assessments or from taking title to a unit by deed in lieu of foreclosure.
- Requires associations maintain as an official records bids for materials, equipment, or services.
- Permits a member’s authorized representatives to inspect and copy association’s official records.
- Permits renters to inspect and copy the bylaws and rules.
- Effective July 1, 2018, requires condominium associations with 150 or more units to post copies of certain official records on their websites.
- Prohibits condominium associations from using a debit card to pay association obligations.
- Repeals the July 1, 2018, deadline for the classification as a condominium bulk buyer or bulk assignee.

Additionally, regarding access to records, the bill requires condominium associations to mail or hand deliver, without charge, a copy of the most recent financial report within five days of a written request. The bill provides a process for a condominium unit owner to give notice to the Division of Condominiums, Timeshares, and Mobile Homes (division) that an association has failed to do so after a request. The division must give the association notice it must comply with the request. If the association fails to comply within five business days, the association may not prepare less complex financial statements than the statutory default requirements for three years.

The bill makes the following changes affecting the optional termination of a condominium to:

- Decrease the threshold to veto a termination from 10 percent to 5 percent of the voting interests;
- Increase the minimum time period before a successive vote on a termination plan to 24 months, instead of 18 months as under current law;

- Prohibit an optional termination of a condominium created by conversion (such as from an apartment complex) until 10 years after conversion; and
- Decrease the minimum percentage of ownership of units in a condominium that requires a sworn, written disclosure of that ownership interest in the plan of termination.

Regarding cooperative associations, the bill strips a director or officer of the board of a cooperative association of his or her post if he or she is more than 90 days delinquent in paying any money due the association. As to cooperative associations having more than 10 units, the bill prohibits co-owners of a unit from serving simultaneously on the association's board, unless the co-owners own more than one unit or there are not enough eligible candidates.

Regarding homeowners' associations, the bill:

- Authorizes associations to adopt rules, with certain conditions, for providing notice of board meetings in the association's website.
- Provides if an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required pursuant to this section or the bylaws, then write-in nominations are not permitted and such candidates shall commence service on the board of directors, regardless of whether a quorum is attained at the annual meeting.
- Clarifies existing law that the accrual of interest on unpaid assessments, and the application of payments to interest, late fees, collection costs and associated reasonable attorney fees, and the delinquent assessment, in that order of priority, controls over any restrictive endorsement, designation, or instruction placed on or accompanying a payment, including any purported accord and satisfaction (that the parcel owner paid a lesser amount in full satisfaction of the amount due) pursuant to s. 673.3111, F.S.

The provisions on financial reporting are also contained in CS/CS/CS/HB 653 (CS/CS/SB 744 by Judiciary Committee, Regulated Industries Committee, and Senator Passidomo), and in CS/CS/HB 1237 (CS/CS/SB 1682 by Rules Committee, Regulated Industries Committee, and Senators Garcia, Rodriguez, Artiles, and Campbell).

CS/CS/HB 1237 (CS/CS/SB 1682 by Rules Committee, Regulated Industries Committee, and Senators Garcia, Rodriguez, Artiles, and Campbell) also contains several of the provisions in this bill related to the conduct of board members and access to records in a condominium association.

CS/SB 1520 by Regulated Industries Committee and Senator Latvala also revises the requirements for the optional termination of a condominium.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 36-1; House 119-0