

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1075 Community Associations
SPONSOR(S): Business & Professions Subcommittee, Rodriguez, A.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	14 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes, located within the Department of Business and Professional Regulation, has regulatory authority over condominium and cooperative associations. The Division has limited authority regarding homeowner's associations (HOA).

The bill:

- Terminates the arbitration program currently provided by DBPR related to certain condominium and cooperative disputes with owners. Instead, certain disputes between owners and condominiums or cooperatives must go to mediation. This mirrors HOA law for certain disputes between HOAs and owners.
- Repeals the requirement that DBPR certify private mediators.
- Requires association election and recall disputes to be heard in county court, instead of arbitration by DBPR.
- Requires a unit owner or lienor to contest a termination of a condominium in county court instead of arbitration by DBPR.
- Exempts pools for HOAs with 32 parcels or less are from DOH's regulation of public pools.
- Provides that associations need to maintain bids for work or materials for one year instead of seven.
- Requires HOAs to maintain ballots and all records relating to elections in the HOA's official records.
- Prohibits associations from requiring owners to state a reason for requesting to inspect official records.
- Provides that condominium associations that are required to make association documents available on a website may instead make them available on a mobile app.
- Provides that an HOA may provide notice of a meeting on a website.
- Clarifies that term limits set for a condominium's board of directors does not apply retroactively to service prior to 2018.
- Prohibits condominium owners' insurance policies from providing rights of subrogation against the association.
- Allows condominiums to charge a buyer or renter the actual cost of background checks.
- Amends the time that a fine levied by an association is due.
- Provides that an interest in a cooperative unit is an interest in real property, instead of an interest in personal property.
- Provides that an HOA may provide notice of a meeting on a website.
- Repeals the provision prohibiting associations from contracting with companies in which board members have a financial interest.

The bill's impact on state government is indeterminate. The bill is not expected to have a fiscal impact on local government.

The effective date of the bill is July 1, 2019.

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

STORAGE NAME: h1075a.BPS

DATE: 3/29/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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 of condominium 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, 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. 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, which govern the administration of the association, including quorum, voting rights, and 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 in many instances nearly identical.

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, 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.⁴ Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. No state agency has direct oversight of HOAs. Florida law provides procedures and minimum requirements for operating and provides for a mandatory binding arbitration program, administered by the Division, only 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.

Cooperatives as Personal and Real Property Interest – Current Situation

The building and land of a cooperative association are owned by the corporation, not the individual unit owners. A person who purchases a cooperative unit does not receive title to the unit or any portion of the building or land upon which the unit is situated. Instead, the purchaser receives shares of the cooperative association and the unit is leased to the owner. An interest in a corporation or cooperative is represented by the ownership of stock in the corporation.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.⁵ Black's Law Dictionary defines "intangible property" as such property that has no intrinsic and marketable value, but is merely the representative or evidence of value of stock, bonds, and franchises. Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.⁶ Intangible personal property includes all condominium and cooperative apartment leases of recreation facilities, land leases, and leases of other commonly used facilities.

Real property is anything that is permanent, fixed, and immovable such as land or a building. At common law, a leasehold, even for as long as 99 years, was not considered an interest in real property. However, long-term leasehold interests are taxed the same as fee interests, so it is common to see cases holding long-term leaseholds for taxation purposes to be an interest in real property.⁷

In Florida, a cooperative is treated as real property for some homestead purposes. Although the general definition of homestead, even for purposes of taxation, follows the common-law rule that requires an interest in real property, the Florida Constitution specifically allows that exemption to extend to a cooperative unit.⁸

Florida's homestead laws will govern the cooperative for purposes of exemption from forced sale by creditors⁹ and the exemption from ad valorem taxation. It is not subject to Florida's homestead protections on devise and descent.¹⁰

A need for clarification of this type of ownership interest was recognized by the Third District Court of Appeal, which certified as a conflict the issue with the Fifth District's holding in *Southern Walls, Inc.*, but the Florida Supreme Court denied review.¹¹

Notably, the Condominium Act specifically provides that "[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold." Thus, expressly converted by statute into an interest in real property. However, there is no corresponding statute in the Cooperative Act.¹²

Cooperatives as Personal and Real Property Interest – Effect of the Bill

The bill provides that an interest in a cooperative unit is an interest in real property.

⁵ *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996)

⁶ Am. Jur. 2d Property § 18.

⁷ *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); *See generally*, The Florida Bar, *Practice Under Florida Probate Code* Chapter 19 (9th ed. 2017).

⁸ Art. VII, s. 6(a), Fla. Const. ("The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.").

⁹ Ss. 222.01, and 222.05, F.S.

¹⁰ *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); *In re Estate of Wartels*, 357 So.2d 708 (Fla. 1978).

¹¹ *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008)

¹² S. 718.106(1), F.S.; *See generally* Ch. 719, F.S.

Official Records – Current Situation

Condominiums, cooperatives, and HOAs are required to maintain official records for at least 7 years. The official records must include:

- A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
- Meeting minutes;
- A roster of all 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 to be performed, including bids for work, materials, and equipment. Cooperatives and HOAs are only required to maintain bids for one year;
- A copy of the plans, permits, warranties, and other items provided by the developer; and
- All other written records which are related to the operation of the association.¹³

The official records for condominiums and cooperatives, but not HOAs, must also include all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.¹⁴

Owners are able to request to inspect an association's official records, and the association must have the records available for inspection within 10 working days of receiving a request to inspect them.¹⁵ A condominium and cooperative may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An HOA may also adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections, but an HOA may not require an owner to state the reason for the inspection.¹⁶

Official Records – Effect of the Bill

The bill:

- Provides that all records that are related to a condominium association and an HOA are considered official records.
- Mirrors condominium law to cooperative and HOA law by requiring that condominiums must maintain bids for work, materials, and equipment for one year instead of seven years.
- Mirrors condominium and cooperative law to HOA law by prohibiting a condominium or cooperative from requiring a unit owner to state a reason for the inspection.
- Mirrors HOA law to condominium and cooperative law by including all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by owners in the HOA's official records.

Condominium Unit Owner Insurance and Subrogation

A condominium association is required to use its best efforts to maintain insurance for the association, the association property, and the common elements. If a condominium does have insurance for the association, it must have coverage for the condominium property as originally installed and all alterations or additions made to the condominium property.¹⁷

Condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, wall, ceiling coverings, electrical fixtures, appliances, water

¹³ Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ S. 720.303(5), F.S.

¹⁷ S. 718.111, F.S.

heaters, water filters, built-in cabinets and countertops, and window treatments. Such property and insurance is the responsibility of the unit owner.¹⁸

Subrogation is “the substitution of one party for another whose debt the party pays, entitling the paying party to rights, rights, remedies, or securities that would otherwise belong to the debtor.”¹⁹ In the condominium setting, subrogation allows a unit owner’s insurer to stand in the place of the unit owner whose unit has been damaged by a negligent party. The unit owner’s insurer pays the unit owner for the damage and stands in the place of the unit owner to seek relief from the party that caused the damage, which may be the condominium association.

Often, a condominium association’s declaration contains a clause requiring a unit owner’s insurance policy to prohibit subrogation against the condominium association.²⁰

Prior to 2010, Florida law prohibited a condominium unit owner’s insurance policy from providing rights of subrogation against the association. That statutory prohibition was repealed in 2010, and subrogation against a condominium association has been permitted since that time.²¹

Condominium Unit Insurance and Subrogation – Effect of the Bill

The bill provides that a condominium unit owner’s insurance policy may not provide rights of subrogation against the association.

Condominium Websites

Condominium associations with 150 or more units that do not manage timeshare units must post certain documents on a website that is only accessible to unit owners and employees of the condominium association. The condominium association’s website must include:

- The recorded declaration of condominium of each condominium operated by the condominium association and each amendment to each declaration;
- The recorded bylaws of the condominium association and each amendment 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 a copy of 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 or complete copies 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;
- All contracts or transactions between the condominium association and any director, corporation, firm, or condominium association that is not an affiliated condominium association or any other entity in which an condominium association director is also a director or officer and financially interested;
- Any contract or document regarding a conflict of interest or possible 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

¹⁸ *Id.*

¹⁹ *Aurora Loan Services LLC v. Senchuk*, 36 So. 3d 716, 717 (Fla. 1st DCA 2010).

²⁰ Gary L. Wickert & Kelsey Burazin, *Subrogating Condominium Damage*, Claims Journal June 4, 2015 <https://www.claimsjournal.com/news/national/2015/06/04/263728.htm> (last visited Mar. 29, 2019).

²¹ S. 718.111(11), F.S. (2009); *See* Senate Analysis of 2010 Senate Bill 1196 & 1222 (April 9, 2010).

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.²²

Condominium Websites – Effect of the Bill

The bill provides that a condominium association may post the required documents on a mobile application downloadable to a mobile device instead of on a website.

Condominium Term Limits

In 2017, a law was passed that provided condominium association board members may not serve more than 4 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.²³

In 2018, the term limits for condominium board members was amended to provide that a board member may not serve more than 8 consecutive years 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.²⁴

Currently, 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 8 consecutive years, 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.²⁵ There have been questions from the public about whether time served on a board prior to the enactment of the term limits apply to a board member’s term limit.²⁶

Condominium Term Limits – Effect of the Bill

The bill provides only service on a condominium’s board of directors as a result of an election or appointment that occurred after July 1, 2018 counts towards a board member’s 8-year term limit.

Condominium Transfer Costs

A condominium association may not charge a potential buyer or renter costs or fees in connection with the sale, lease, or sublease, or other transfer of a unit unless:

- The fee is limited to \$100 or less;
- The fee is provided for in the association’s governing documents; and
- The association must approve the transfer.²⁷

A condominium association may require a potential renter to provide the association a security deposit equivalent to one month of rent. The association must place the security deposit in an escrow account maintained by the association.²⁸

²² S. 718.111(12)(g), F.S.

²³ See House Analysis of 2017 House Bill 1237 (July 5, 2017).

²⁴ See House Analysis of 2018 House Bill 841 (Mar. 27, 2018).

²⁵ S. 718.112(2)(d), F.S.

²⁶ David G. Muller, *Is new term limit restriction retroactive*, Naples Daily News (Sept. 15, 2018)

<https://www.naplesnews.com/story/money/real-estate/2018/09/15/new-term-limit-restriction-retroactive/1259991002/> (last visited Mar. 27, 2019).

²⁷ S. 718.112(2)(i), F.S.

²⁸ *Id.*

Condominium Transfer Costs – Effect of the Bill

The bill provides that in addition to a \$100 administrative fee, a condominium association may charge a potential buyer or renter the actual costs to perform any background check or screening in connection with the transfer of a unit in connection with a sale, mortgage, lease, sublease, or other transfer of a unit.

Condominium Service Providers Conflicts of Interest

Prior to 2017, a condominium association could sign a contract for maintenance or management services with an entity in which one or more of the members of the association's board of directors had a financial interest in the entity. The contract had to disclose the board member's financial interest, and the financial interest had to be in the minutes of the meeting at which the vote to authorize the contract was held. Any contract that failed to disclose such interest was unenforceable.²⁹

The contract also had to be affirmed by a two-thirds of the members of the board of directors present. The member of the board of directors who had a financial interest could not participate in the vote.³⁰

In 2017, a law was passed prohibiting a condominium association from employing or contracting with any service provider that a board member or a relative within the third degree of consanguinity by blood or marriage of a board member has a financial interest in. This restriction does not apply if the board member or relative owns less than 1 percent of the equity shares of the service provider. The provision does not apply to Timeshare condominiums.³¹

Service Providers Conflicts of Interest – Effect of the Bill

The bill repeals the provision prohibiting a condominium association from employing or contracting with any service provider in which a board member or a relative of a board member has a financial relationship.

The bill does not amend the provision that provides if a condominium association signs a contract for maintenance or management services with an entity that a member has a financial interest in, the contract must disclose the member's financial interest, and the member's financial interest must be in the minutes of the meeting. Any contract that fails disclose such interest is unenforceable. The contract also requires an affirmative vote of two-thirds of the board of directors present. The board member or members who have a financial interest may not participate in the vote.

Condominium Electric Car Charging Stations

In 2018, a law was passed prohibiting condominium association from restricting a unit owner from installing an electric vehicle charging station within the boundaries of their limited common element parking area. The electricity charges for the station must be separately metered by the unit owner.³²

Condominium Electric Car Charging Stations – Effect of the Bill

The bill prohibits a condominium association from restricting any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's exclusively designated parking area, in addition to a unit owner's limited common element.

²⁹ S. 718.3026(3), F.S.

³⁰ *Id.*

³¹ See House Analysis *supra* note 17.

³² See House Analysis *supra* note 18.

The bill allows a unit owner to use an embedded meter to meter the electricity used by an electric vehicle charging station, instead of having the charging station separately metered.

Condominium and HOA Fines and Suspensions

Condominium associations and HOAs may levy fines against or suspend an owner, occupant, or a guest of the owner for failing to comply with any provision in the association's declaration, bylaws, or rules.³³

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.³⁴

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.³⁵

Condominium and HOA Fines and Suspensions – Effect of the Bill

The bill provides that an HOA may not suspend an owner, occupant, tenant, or guest for a violation of the HOA's rules.

The bill provides that if a fine is approved by the committee it is due five days after notice of the approved fine is sent to the unit or parcel owner and if applicable, to any tenant, licensee, or invitee of the owner, instead of five days after the meeting approving the fine.

Notice of Elections for Condominium Associations

Condominium Associations are required to mail, deliver, or electronically transmit notice to unit owners of an election at least 60 days before the election. Condominium associations are also required to mail, deliver, electronically transmit a second notice of the election to the unit owners along with a ballot that lists all the candidates. However, currently no exact time is specified for the second notice.

Notice of Elections for Condominium Associations – Effect of the Bill

The bill provides that the second notice must be mailed, delivered, or electronically transmitted to unit owners not less than 14 days or more than 34 days prior to the election.

Notice of Meetings for HOAs

Community 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.³⁶

Community associations are required to notice all member meetings by mailing, hand delivering, or electronically transmitting notice before the meeting. They must also post notice in a conspicuous place

³³ Ss. 718.303(3) & 720.305(2)(a), F.S.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Ss. 718.112(2), 719.106(1), & 720.303(2)(c), F.S.

at before the meeting. If a community association opts to broadcast notice in lieu of posting notice, it must do so at least four times every broadcast hour of each day.³⁷

Additionally, when notice of an HOA meeting is mailed or delivered to an owner's address it must be the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the owner's parcel is located.³⁸

In 2018, a law was passed allowing condominium and cooperatives to adopt rules for noticing all board and owner meetings on a website if the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must include a requirement that the association send an electronic notice providing a hyperlink to the website where the notice is posted, to all unit owners whose email addresses are part of the official records, and in the same manner as notice for a meeting of the members. Notice by website must be in addition to the other notice requirements.³⁹

Notice of Meetings HOAs – Effect of the Bill

The bill amends HOA law to mirror condominium and cooperative law by allowing HOAs to adopt rules for noticing all board and owner meetings on a website if the time requirements for physically posting the meetings are met. Any rule adopted for website notice must include a requirement that the association send an electronic notice providing a hyperlink to the website where the notice is posted, to all unit owners whose email addresses are part of the official records, and in the same manner as notice for a meeting of the members. Notice by website must be in addition to the other notice requirements.

The bill provides that when notice of a meeting is mailed or delivered to an owner's address it must be the address identified as the parcel owner's mailing address in the HOA's official records.

Cooperative Associations Video Conferencing

Cooperative association board members and committee members may attend meetings by telephone. If board members or committee members do attend a meeting by a telephone then a telephone speaker must be used so the members may be heard by the rest of the board, committee, or any unit owners in attendance.⁴⁰

Cooperative Associations Video Conferencing – Effect of the Bill

The bill provides that cooperative association board members and committee members may attend meetings by telephone, real time video conferencing, or a similar real time electronic or video communication. If board members or committee members do attend a meeting by a telephone, video, or electronic or video communication a speaker must be used so the members may be heard by the rest of the board, committee, or any unit owners in attendance.

HOA Swimming Pools

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments.

In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH

³⁷ *Id.*

³⁸ S. 720.306(1)(g), F.S.

³⁹ See House Analysis *supra* note 18.

⁴⁰ S. 719.106(1)(b), F.S.

must be obtained. If DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied.⁴¹

Pools that are used by condominiums or cooperatives with 32 units or less and which are not being operated as public lodging establishments are exempt from DOH's requirements for public pools.⁴²

HOA Swimming Pools – Effect of the Bill

The bill provides pools for HOAs and other property associations that have 32 parcels or less and are not being operated as public lodging establishments are also exempt from DOH's requirements for public pools.

HOA Alternative Dispute Resolution

The HOA Act provides for an alternative dispute resolution program for certain disputes between parcel owners and HOAs. Unlike the Condominium and the Cooperative Act, the Division does not provide mandatory nonbinding arbitration for disputes between parcel owners and HOAs.

The Division does provide mandatory arbitration for election disputes and disputes involving the recall of board members. Instead of nonbinding arbitration the HOA act provides that the following disputes between parcel owners and HOAs must go to presuit mediation before a party can file suit in civil court:

- Disputes involving the use of or changes to an owner's parcel or the common areas;
- Covenant disputes;
- Disputes regarding meetings of the board or committees of the board;
- Disputes involving the meeting of owners that do not involve elections;
- Access to the official records disputes; and
- Disputes regarding amendments to the governing documents.⁴³

The following disputes are not subject to presuit mediation:

- Disputes involving the collection of assessments or other financial obligations; and
- Actions to enforce a prior mediation agreement.⁴⁴

An aggrieved party initiates the mediation proceedings by serving a written petition for mediation to the opposing party to participate in the mediation process. The petition must be in the format provided in statute and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include 5 certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required then a temporary injunction may be sought in court prior to the mediation.⁴⁵

The opposing party has 20 days to respond. If the opposing party fails to respond or refuses to mediate then the aggrieved party may proceed to civil court. If the parties agree to mediation then the mediator must hold the mediation within 90 days of the petition being sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential and persons who are not parties to the dispute may not attend the mediation.⁴⁶

⁴¹ S. 514.031(1), F.S.

⁴² S. 514.0115(2), F.S.

⁴³ S. 720.311, F.S.; Peter M. Dunbar & Charles F. Dudley, *The Law of Florida Homeowners Associations*, 77-78 (9th ed. 2013).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

If mediation is not successful in resolving all the issues between the parties then the parties may proceed to civil court or may elect to enter into binding or non-binding arbitration by the Division. All parties to the dispute must agree to enter into arbitration by the Division.⁴⁷

HOA Alternative Dispute Resolution – Effect of the Bill

The bill provides that election disputes and disputes involving the recall of board members must proceed to a summary proceeding in county court instead of being subject to mandatory binding arbitration by the Division.⁴⁸ The bill provides that the prevailing party is entitled to attorney's fees.

The bill prohibits arbitration even if the parties agree to arbitration and even if mediation is not successful.

The bill amends mediation between a parcel owner and an HOA by:

- Specifying that presuit mediation tolls the statute of limitations for the dispute until 30 days after the mediator concludes the mediation, 10 days after the deadline for the opposing party to accept mediation, or 90 days after the acceptance of mediation;
- Expanding the time an opposing party has to respond to a petition for mediation from 20 days to 30 days;
- Providing that mediation must be conducted in accordance with the Florida Rules of Civil Procedure, and the Florida Supreme Court's rules of practice and procedures for mediation.⁴⁹
- Providing that a representative from the HOA's insurance carrier may attend mediation;
- Providing that if an agreement is reached it must be signed at the time of the agreement; and
- Providing that a mediator must be certified as a Florida Supreme Court circuit court civil mediator unless the parties agree to a mediator who is not certified.

The bill amends the petition for mediation by:

- Providing that the written notice must include the email addresses of the proposed mediators in addition to their address and phone number. The written notice must also indicate if the proposed mediators are board certified.
- Requiring that the written petition must include the following statement in bold font larger than any other font:
 - **A PERSON WHO FAILS OR REFUSES TO PARTICIPATE IN THE ENTIRE MEDIATION PROCESS IS PROHIBITED FROM RECOVERING ATTORNEY FEES AND COSTS IN SUBSEQUENT LITIGATION RELATING TO THE DISPUTE.**

Condominium and Cooperative Alternative Dispute Resolution

The Condominium and Cooperative Acts provide that the Division has complete jurisdiction to investigate complaints and enforce compliance with the Condominium and Cooperative Act. For Condominiums, the Division may investigate complaints and enforce compliance with associations that are controlled by a developer, a bulk buyer, or a bulk assignee. A bulk assignee is a person who buys more than seven units in a single condominium and receives assignment of any of the developer's rights. A bulk buyer is a person who buys more than seven units in a single condominium but does not receive any of the developer's rights.⁵⁰

⁴⁷ *Id.*

⁴⁸ A "summary proceeding" is in an expedited civil court case intended to streamline the litigation of certain disputes and prevent them from lingering on a court's docket. S. 51.011, F.S.; Daniel Morman, *Application of Summary Procedure by Agreement: A Proposal to Expedite Litigation*, Florida Bar Journal (February 2002) <https://www.floridabar.org/the-florida-bar-journal/application-of-summary-procedure-by-agreement-a-proposal-to-expedite-litigation/> (last visited Mar. 27, 2019).

⁴⁹ S. 44.102(1), F.S.

⁵⁰ Ss. 718.117, 718.501, 718.703, 719.501, F.S.

Once a developer has turned control of the condominium to the association the Division only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records. Additionally, if a condominium association decides to terminate for a reason other than economic waste or impossibility it must submit a plan to the Division for approval.⁵¹

The Condominium and Cooperative Acts also provides for an alternative dispute resolution program for certain disputes between unit owners and condominium associations. The Division employs full time arbitrators and may certify private attorneys for mandatory nonbinding arbitration. The purpose of mandatory nonbinding arbitration is to provide efficient, equitable, and inexpensive decisions when disputes arise between owners and associations. An arbitrator's final decision is not binding, and any party may further pursue a matter in civil court. A petition for arbitration tolls any applicable statute of limitations for the dispute. If there is a court proceeding, an arbitrator's decision is admissible as evidence.⁵²

The Condominium and Cooperative Act requires a party to petition for mandatory nonbinding arbitration with the Division before filing a complaint in civil court for certain disputes involving an association and a unit owner. The Division's jurisdiction for mandatory nonbinding arbitration cover disputes where a board has:

- Required an owner to take an action or refrain from any action involving the owner's unit;
- Altered or added to a common element;
- Failed to provide proper notice for meetings or other actions;
- Failed to properly conduct elections;
- Failed to properly notice meetings; and
- Failed to allow inspection of the association's records.⁵³

The Division does not have jurisdiction for mandatory nonbinding arbitration for the following disputes between a unit owner and an association:

- Disagreements regarding the interpretation or enforcement of a warranty;
- The charging of a fee or assessment;
- The eviction or other removal of a tenant from unit;
- Alleged breaches of fiduciary duty by one or more board members; and
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.⁵⁴

The cost to petition the Division for arbitration is a \$50 filing fee. The petition must include the specific nature of the dispute, demand for relief, and include proof that the petitioner provided the opposing party a notice of intent to petition for arbitration. Upon receipt of a petition for arbitration, the Division must determine if the dispute qualifies for arbitration. If the dispute does qualify for arbitration then the arbitrator must conduct the arbitration within 30 days.⁵⁵

The Division has promulgated rules which allow parties to subpoena witnesses and evidence and to make inquiries under oath or through sworn statements. Any party may choose to hire an attorney or represent themselves as long as the arbitrator determines the person is qualified to do so. The arbitrator also has authority to refer any dispute to mediation. The arbitrator must render his or her decision within 30 days of the arbitration.⁵⁶

⁵¹ *Id.*

⁵² S. 718.1225, & 719.1255, F.S.; DBPR *Condominium Unit-Owner Rights and Responsibilities*, <http://www.myfloridalicense.com/dbpr/lsc/documents/LSC4.pdf> (last visited Mar. 27, 2019).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

The Condominium and Cooperative Act also provides for mediation as a way of resolving disputes between unit owners and associations. Mediation is an informal and nonadversarial process with the goal of helping the disputing parties reach a mutually acceptable agreement. A mediator's role includes assisting the parties in identifying issues, encouraging joint problem solving, and exploring settlement alternatives.⁵⁷

Either party in an arbitration proceeding may petition the arbitrator to have the proceeding sent to mediation. Upon the request for mediation, the arbitrator must contact all parties in the proceeding to determine if mediation is agreeable. An arbitrator may refer a proceeding to mediation even if all parties do not agree to mediation.⁵⁸

If a matter is referred to mediation, the parties must select a mutually agreeable mediator. The arbitrator may provide a list of available mediators. Mediation is conducted in accordance with the Florida Rules of Civil Procedure. The parties in a mediation are required to equally share the costs of mediation.⁵⁹

The Division maintains two lists of private mediators, who have obtained certification from the Division to provide mediation for the resolution of condominium disputes. The first list consists of volunteer mediators who provide mediation free of charge, and the second list consists of mediators who provide mediation for a fee. In order to be certified by the Division as a volunteer mediator, a person must have at least 20 hours of training in mediation or have mediated at least 20 disputes. In order to be certified by the Division as a paid mediator, a person must be certified by the Florida Supreme Court as a mediator in county and circuit courts.⁶⁰

Condominium and Cooperative Alternative Dispute Resolution – Effect of the Bill

The bill terminates the Arbitration program at the DBPR.

The bill repeals the ability of the Division to arbitrate disputes between owners and condominium or cooperative associations. The bill mirrors condominium and cooperative law to HOA law by requiring that certain disputes between associations and owners must proceed to presuit mediation before it can proceed to civil court. The mediation is not provided by the Division.

The bill provides that election disputes and disputes involving the recall of board members are not subject to arbitration by the Division or mediation and must proceed to county court.

The bill also repeals the provision requiring the Division to maintain lists of volunteer and paid mediators who have been certified by the Division.

The bill does not change the Division's ability to investigate complaints and enforce compliance with the Condominium and Cooperative Acts.

Termination of a Condominium Association

Section 718.117, F.S., governs the process for terminating a condominium association. There are two primary grounds for termination, each governed by its own requirements. First, a condominium may be terminated where there is economic waste or impossibility. A condominium may be terminated for "economic waste" if the total cost of construction or repairs necessary to construct the improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium. A condominium

⁵⁷ S. 718.1225, & 719.1255, F.S.; Peter Dunbar, *The Condominium Concept*, 299-300 ((13th ed. 2013).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Ss. 718.1255, 718.501(1)(l), 719.1255, & 719.501(1)(n), F.S.

may be terminated for "impossibility" if "it becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations."⁶¹

A condominium may also be terminated in the discretion of the owners. Commonly referred to as "optional termination," current law provides that unless the condominium declaration provides for a lower percentage, the condominium may be terminated if the termination is approved by at least 80 percent of the total voting interests of the condominium and no more than 10 percent of the total voting interests of the condominium reject the termination. A voting interest of the condominium may not be suspended for any reason when voting on an optional termination. If 10 percent or more of the total voting interests reject a plan of termination, another plan of optional termination may not be considered for 18 months after the date of rejection.⁶²

Optional terminations are subject to additional requirements if 80 percent of the total voting interests are owned by a bulk owner. A bulk owner is defined as a single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider holding such voting interests. These requirements are meant to protect the other unit holders. The requirements include:

- Allowing former unit owners to lease their units if the former condominium units are offered for lease to the public;
- Paying a relocation fee to former unit owners who had a homestead exemption on their units;
- Compensating all unit owners, other than the bulk owner, at least 100 percent of the fair market value of their units, as determined by an independent appraiser selected by the termination trustee;
- An original purchaser from the developer who rejects the plan of termination, whose unit was granted homestead and is current in payment of assessments, other monetary obligations to the association, and any mortgage encumbering the unit on the date of recording of the plan of termination, must receive the original purchase price paid for the unit or current fair market value, whichever is greater; and
- Requiring the plan of termination to provide for the payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien. The payment may not exceed the unit's share of the proceeds of termination under the plan.⁶³

Before a plan of termination is presented to the unit owners for consideration, a bulk owner must prepare a sworn statement with disclosures to the other owners. The sworn statement must:

- Identify any person or entity that, directly or indirectly, owns or controls 25 percent or more of the units in the condominium. If these units are owned by an artificial entity or entities, the bulk owner must disclose any natural person who owns or controls, directly or indirectly, 10 percent or more of the artificial entity or entities that constitute the bulk owner;
- Identify the units it has acquired, the date each unit was acquired, and the total compensation paid to each prior owner by the bulk owner;
- State the relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure; and
- Share the factual circumstances that show that the plan complies with the requirements in the law for optional terminations by a bulk owner and that the plan supports the public policies of the condominium termination law.⁶⁴

A unit owner or lienor may contest a plan of termination by petitioning the Division for mandatory nonbinding arbitration. The unit owner or lienor must contest the termination within 90 days after a plan of termination is recorded. A unit owner or lienor may only contest:

- The fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners;

⁶¹ S. 718.117(1), F.S.

⁶² S. 718.117(2), F.S.

⁶³ S. 718.117(3), F.S.

⁶⁴ *Id.*

- That the liens of the first mortgages of unit owners other will not be satisfied; or
- The required vote to approve the plan was not obtained.⁶⁵

The arbitrator may void the termination if the arbitrator determines the plan was not properly approved or the procedures to adopt the plan were not followed. The arbitrator must void the plan upon finding that a bulk owner gave misleading, incomplete, or inaccurate disclosures in the sworn statement.⁶⁶

Termination of Condominium Association – Effect of the Bill

The bill provides that a unit owner or lienor may challenge a termination by initiating a summary procedure in county court.

The court may void the termination if the court determines the plan was not properly approved or the procedures to adopt the plan were not followed. A court is not required to void a plan of termination upon a finding that a bulk owner gave misleading, incomplete, or inaccurate disclosures. However, if a court determines that a bulk owner gave misleading, incomplete, or inaccurate disclosures the bulk owner shall be liable for any damages caused for giving misleading, incomplete, or inaccurate disclosures.

Recall of an Association Board Member

A condominium association, cooperative association, or HOA board member 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. 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. For HOAs and cooperatives, the board must certify the recall of the board member or members. For condominium associations the board must determine if the recall is facially valid. If the board certifies the recall or determines it is facially valid then 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.⁶⁷

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 within 5 business days of being served. For HOAs and cooperatives, the board must certify the recall of the board member or members. For condominium associations, the board must determine if the recall is facially valid. If the board certifies the recall or determines it is facially valid then 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. 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.⁶⁸

If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the Division.⁶⁹

⁶⁵ S. 718.117(16), F.S.

⁶⁶ *Id.*

⁶⁷ Ss. 718.112(2)(j), 719.106(1)(f), & 720.303(10), F.S.

⁶⁸ *Id.*

⁶⁹ *Id.*

If a board does not certify the recall or determine it is facially valid then it must petition the Division for binding arbitration within 5 business days of the meeting to certify the recall. Additionally, if a board fails to notice and hold the required meeting or fails to file the required petition, the unit or parcel owner representative may file a petition with the Division for arbitration challenging the board's failure to act.⁷⁰

A 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 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.⁷¹

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. The prevailing party in arbitration is entitled to attorney's fees in an amount determined by the arbitrator.⁷²

Recall of an Association Board Member – Effect of the Bill

The bill provides that if the board fails to certify the recall or determine the recall is facially valid it must file suit in county court within 5 business days of the meeting to certify the recall.

The bill provides that an owner representative may challenge a board's failure to act or a recalled board member may challenge the validity of a recall by filing suit in county court.

The bill provides that if vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies must be filled in accordance with the association's bylaws.

The bill provides that if cooperative unit owners recall a board member in writing by a majority of all owners then the board must determine the recall is facially valid instead of having to certify the recall.

Condominium Ombudsman

Within the Division is the Office of the Condominium Ombudsman. The Ombudsman is an attorney who is appointed by the Governor, and is a neutral resource for unit owners and condominium associations. The Ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the Division, and the Legislature on any matter or subject within the jurisdiction of the Division. In addition, the Ombudsman may make recommendations to the Division for changes in rules and procedures for the filing, investigation, and resolution of complaints.⁷³

The Ombudsman also acts as a liaison among the Division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.⁷⁴

The Ombudsman is required to keep his or her principal office in Leon County.

Condominium Ombudsman – Effect of the Bill

The removes the requirement that the Ombudsman keep his or her principal office in Leon County.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Ss. 718.5011 & 718.5012, F.S.

⁷⁴ *Id.*

B. SECTION DIRECTORY:

- Section 1. Amends s. 34.01, F.S., amending the disputes county court has original jurisdiction over.
- Section 2. Amends s. 514.0015, F.S., providing that certain property association pools are exempt from regulation.
- Section 3. Amends s. 627.714, F.S., prohibiting condominium unit owner's insurance policies from having certain subrogation rights.
- Section 4. Amends s. 718.111, F.S., amending the official records for a condominium association, providing an alternative to posting documents on a website.
- Section. 5. Amends s. 718.112, F.S, amending board member term limits, the notice requirements for condominium elections, condominium transfer costs, recall of board members, and repealing the prohibition of certain contracts between an association and a service provider.
- Section 6. Amends s. 718.117, F.S., amending terminations of a condominium association.
- Section 7. Amends s. 718.1255, F.S., amending the alternate dispute resolution for condominiums.
- Section 8. Amends s. 718.303, F.S., amending condominium association fines.
- Section 9. Amends s. 718.501, F.S., repealing the requirement for DBPR to certify certain mediators.
- Section 10. Amends s. 718.5014, F.S., amending the location of the condominium ombudsman.
- Section 11. Amends s. 719.103, F.S., amending the definition of a cooperative unit.
- Section 12. Amends s. 719.104, F.S., amending the official records for a cooperative.
- Section 13. Amends s. 719.106, F.S., amending video conferencing rules for board or committee meetings, and the recall of board members.
- Section 14. Amends s. 719.1255, F.S., amending dispute resolution requirements for cooperatives.
- Section 15. Amends s. 719.501, F.S., amending the requirements of the Division to certify mediators.
- Section 16. Amends s. 720.303, F.S., amending HOA notice requirements, official records, the recall of board members.
- Section 17. Amends s. 720.305, F.S., amending the requirements for suspending or fining HOA parcel owners.
- Section 18. Amends s. 720.306, F.S., amending HOA official records and HOA election disputes.
- Section 19. Amends s. 720.311, F.S., amending dispute resolution requirements for HOAs.
- Section 20. Providing an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. It is unknown what the cost to the private sector will be with requiring certain condominium, cooperative, and HOA disputes to go to mediation or county court instead of arbitration by the Division.

It is also unknown what the economic impact will be from the prohibition on subrogation rights on individual unit owners, and the treatment of cooperatives as real property for purposes of devise and descent.

D. FISCAL COMMENTS:

The state may see a reduction in expenses as a result of no longer being required to hire Condominium, Cooperative, and HOA arbitrators.

It is unknown what the impact to the state will be based on the change in classification of cooperatives as real property for the purpose of estate taxes or laws related devise and descent.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Repeals the provision requiring DBPR to arbitrate certain condominium and cooperative disputes with owners. Instead, certain disputes between owners and condominiums or cooperatives must go to mediation.
- Amends the requirements for selecting a mediator for an HOA dispute.
- Requires association election and recall disputes to be heard in county court.
- Requires a unit owner or lienor to contest a termination of a condominium in county court instead of arbitration by DBPR.
- Repeals the provision that DBPR must certify private mediators.
- Allows the Condominium Ombudsman to be located outside of Leon County.
- Provides that in addition to condominiums and cooperatives, pools for HOAs with 32 parcels or less are exempt from DOH's regulation of public pools.
- Provides that associations need to maintain bids for work or materials for one year instead of seven.
- Requires HOAs to maintain ballots and all records relating to elections in the HOA's official records.
- Prohibits associations from requiring an owner to state a reason for requesting to inspect official records.
- Provides that condominium associations that are required to place association documents on a website may place the documents on a mobile application.
- Provides only service on a condominium's board of directors as a result of an election or appointment that occurred after July 1, 2018 counts towards a board member's 8-year term limit.
- Prohibits condominium owners' insurance policies from providing rights of subrogation against the association.
- Allows condominiums to charge a buyer or renter the costs of background checks.
- Amends the time that a fine levied by an association is due.
- Provides that an interest in a cooperative unit is an interest in real property.
- Provides requirements for notice of condominium elections.
- Provides that an HOA may provide notice of a meeting on a website.
- Provides that an HOA may not suspend a person for violating the rules of the association.
- Repeals the provision prohibiting associations from contracting with companies in which board members have a financial interest.

This analysis is drafted to the committee substitute as approved by the Business & Professions Subcommittee.