

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1075 Community Associations

SPONSOR(S): Judiciary Committee, 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) Judiciary Committee	14 Y, 0 N, As CS	Mawn	Poche
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes, within the Department of Business and Professional Regulation (DBPR), broadly regulates condominium (condo) and cooperative (co-op) associations and has limited regulatory authority over homeowner's associations (HOA).

CS/CS/HB 1075:

- Terminates DBPR's arbitration program.
- Requires mediation of certain disputes between unit owners and condo or co-op associations and deletes the requirement that DBPR certify private mediators.
- Requires election and recall disputes, and condo termination disputes, to be heard in county court.
- Exempts a pool within an HOA with 32 parcels or less from regulation as a public pool.
- Requires associations to maintain bids for work or materials for one year instead of seven.
- Requires an HOA 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 a condo association required to make association documents available on a website may instead make them available on a mobile app.
- Allows an HOA to give notice of a meeting on a website.
- Declares that condo board term limits do not apply retroactively to service prior to 2018.
- Prohibits condo owners' insurance policies from providing rights of subrogation against the association.
- Allows condos to charge a buyer or renter the actual cost of a background check.
- Amends the due date for paying a fine levied by an association.
- Declares that an interest in a co-op unit is an interest in real property.
- Deletes a prohibition against an association contracting with a company in which a board member has 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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Division of Condominiums, Timeshares and Mobile Homes (the 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).

Condominiums

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 along with an undivided right of access to common elements.¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. A declaration governs the relationship between condominium unit owners and the condominium association, and an elected board of directors enacts bylaws which govern the administration of the association.

Cooperatives

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 to those regulating condominiums.

Homeowners' Associations

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

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.

minimum requirements for operating and provides for a mandatory binding arbitration program, administered by the Division, only for certain election disputes.

Cooperatives as Personal and Real Property Interest

Current Situation

The building and land comprising a cooperative are owned by a corporation. A person who buys into a cooperative does not receive title to a unit or any portion of the cooperative's building or land. Instead, the purchaser receives shares of the cooperative association and leases a unit from the association.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.⁵ Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.⁶ 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, a long-term leasehold interest is taxed in the same manner as a fee interest, so case law commonly declares long-term leaseholds to be an interest in real property for taxation purposes.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 extends the exemption 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. However, a cooperative is not subject to Florida's homestead protections on devise and descent.¹⁰

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, an ownership interest in a condominium is expressly converted by statute into an interest in real property, but there is no corresponding statute in the Cooperative Act.¹¹ The Third District Court of Appeal recognizes a need for clarification of this type of ownership interest.¹²

Effect of the Proposed Changes

CS/HB 1075 declares that an interest in a cooperative unit is an interest in real property.

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, and rules of the association;
- Meeting minutes;

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

¹² *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008)

- 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 may request to inspect an association's official records, and the association must make the records available for inspection within 10 working days of receiving an inspection request.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

Effect of the Bill

The bill:

- Declares 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 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; and
- 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

Current Situation

A condominium association must 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 heaters, water filters, built-in cabinets and countertops, and window treatments. Insurance coverage for such property 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

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.

¹⁸ *Id.*

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

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.

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.²⁰ However, a condominium association's declaration may contain a clause requiring a unit owner's insurance policy to prohibit subrogation against the condominium association.²¹

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

Current Situation

Condominium associations with 150 or more units that do not manage timeshare units must post certain documents to 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 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

²⁰ S. 718.111(11), F.S. (2009); See Senate Analysis of 2010 Senate Bill 1196 & 1222 (April 9, 2010).

²¹ 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 Apr. 3, 2019).

²² S. 718.111(12)(g), F.S.

Effect of the Bill

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

Condominium Term Limits

Current Situation

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. In 2017, the Legislature passed a law prohibiting a condominium association board member from serving more than 4 consecutive 2-year terms unless his or her continued service is approved by two-thirds of the total voting interests or there are not enough eligible candidates to fill the vacancies on the board.²³ In 2018, the Legislature amended the term limits for condominium board members to prohibit a board member from serving more than 8 consecutive years unless his or her continued service is approved by two-thirds of the total voting interests or there are not enough eligible candidates to fill the vacancies on the board.²⁴ Questions about whether the term limits apply retroactively have arisen since the passage of the legislation.²⁵

Effect of the Bill

The bill declares that the term limits only apply to service on a condominium's board of directors as a result of an election or appointment that occurred after July 1, 2018.

Condominium Transfer Costs

Current Situation

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 approves the sale, lease, sublease, or transfer.²⁶

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.²⁷

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 cost to perform any required background check or screening in connection with the sale, mortgage, lease, sublease, or other transfer of a unit.

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 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 Apr. 3, 2019).

²⁶ S. 718.112(2)(i), F.S.

²⁷ *Id.*

Condominium Service Providers Conflicts of Interest

Current Situation

Prior to 2017, a condominium association could sign a contract for maintenance or management services with an entity in which a member of the association's board of directors had a financial interest. The contract had to disclose the board member's financial interest, and a discussion of 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.²⁸ The contract also had to be affirmed by a two-thirds vote of the members of the board of directors present. The board member with a financial interest in the entity could not participate in the vote.²⁹

In 2017, the Legislature passed a law prohibiting a condominium association from employing or contracting with any service provider in which a board member, or a relative of a board member within the third degree of consanguinity by blood or marriage, has a financial interest. This restriction does not apply if the board member or relative owns less than 1 percent of the equity shares of the service provider or to timeshare condominiums.³⁰

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 maintains the provision requiring disclosure of a board member's financial interest in any contract and in the minutes of the meeting at which the board votes on the contract. Any contract that fails to disclose such interest is unenforceable. The contract also requires an affirmative vote of two-thirds of the board of directors present and prohibits a board member with a financial interest from participating in the vote.

Condominium Electric Car Charging Stations

Current Situation

In 2018, the Legislature passed a law prohibiting a condominium association from preventing a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The electricity charges for the station must be separately metered by the unit owner.³¹

Effect of the Bill

The bill prohibits a condominium association from prohibiting a 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 parking area.

The bill also 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.

²⁸ S. 718.3026(3), F.S.

²⁹ *Id.*

³⁰ See House Analysis, *supra* note 23.

³¹ See House Analysis, *supra* note 24.

Condominium and HOA Fines and Suspensions

Current Situation

Condominium associations and HOAs may levy fines against or suspend the right of an owner, occupant, or a guest of an owner or occupant, to use the common elements for failing to comply with any provision in the association's declaration, bylaws, or rules.³² 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.³³ 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.³⁴

Effect of the Bill

The bill provides that if the HOA approves a fine, 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

Current Situation

Condominium Associations are required to mail, deliver, or electronically transmit notice of an election to unit owners at least 60 days before the election. Condominium associations are also required to mail, deliver, or electronically transmit a second notice of election to the unit owners along with a ballot that lists all the candidates. However, an exact time is not currently specified for the provision of the second notice.

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

Current Situation

HOAs must notice all board meetings by posting notice in a conspicuous place on the HOA'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.³⁵

HOAs 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 before the meeting. If an HOA opts to broadcast notice in lieu of posting notice, it must do so at least four times every broadcast hour of each day.³⁶ Additionally, when notice of an HOA meeting is mailed or delivered

³² Ss. 718.303(3) & 720.305(2)(a), F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ Ss. 718.112(2), 719.106(1), & 720.303(2)(c), F.S.

³⁶ *Id.*

to an owner's address it must be sent to 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.³⁷

In 2018, the Legislature passed a law 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.³⁸

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

Cooperative Associations Video Conferencing

Current Situation

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, 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.³⁹

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 by using a similar real-time electronic or video communication. If board members or committee members do attend a meeting by 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

Current Situation

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 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

³⁷ S. 720.306(1)(g), F.S.

³⁸ See House Analysis, *supra* note 18.

³⁹ S. 719.106(1)(b), F.S.

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.⁴⁰

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.⁴¹ HOA pools are not exempt from DOH regulation even where the HOA has 32 homes or less.

Effect of the Bill

The bill declares that 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

Current Situation

The HOA Act provides for an alternative dispute resolution program for certain disputes between parcel owners and HOAs. HOA election disputes and disputes involving the recall of HOA board members must go to mandatory binding arbitration with the Division. However, 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.⁴²

An aggrieved party initiates the mediation proceedings by serving a written petition for mediation to the opposing party. 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, a temporary injunction may be sought in court prior to the mediation.⁴³

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, 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.⁴⁴

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.⁴⁵

Effect of the Bill

The bill provides that HOA election disputes and disputes involving the recall of HOA board members must go through a summary proceeding in county court instead of mandatory binding arbitration with

⁴⁰ S. 514.031(1), F.S.

⁴¹ S. 514.0115(2), F.S.

⁴² S. 720.311, F.S.; Peter M. Dunbar & Charles F. Dudley, *The Law of Florida Homeowners Associations*, 77-78 (9th ed. 2013).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

the Division.⁴⁶ The bill also prohibits arbitration of these disputes even if the parties agree to arbitration or mediation is unsuccessful.

The bill amends the HOA mediation provisions 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.⁴⁷
- 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 also 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

Current Situation

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.⁴⁸

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 termination plan to the Division for approval.⁴⁹

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 to conduct mandatory nonbinding arbitration. The purpose of mandatory nonbinding arbitration is to provide efficient, equitable, and inexpensive decisions when

⁴⁶ 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 Apr. 3, 2019).

⁴⁷ S. 44.102(1), F.S.

⁴⁸ Ss. 718.117, 718.501, 718.703, 719.501, F.S.

⁴⁹ *Id.*

disputes arise between owners and associations. An arbitrator's final order is not binding unless the parties agree to be bound or the parties fail to file a petition for trial de novo in the circuit court within 30 days after the mailing of the arbitrator's final order. A petition for arbitration tolls any applicable statute of limitations for the dispute, and, if there is a trial de novo, an arbitrator's decision is admissible as evidence.⁵⁰

The Condominium and Cooperative Act requires a party to petition for mandatory nonbinding arbitration with the Division before filing a complaint in circuit court for specified disputes involving an association and a unit owner, including disputes in which a board has allegedly:

- 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; or
- Failed to allow inspection of the association's records.⁵¹

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.⁵²

The cost to petition the Division for arbitration is a \$50 filing fee. The petition must include the specific nature of the dispute, a demand for relief, and 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.

The Division has promulgated rules allowing 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 may represent themselves as long as the arbitrator determines the person is qualified to do so. The arbitrator must render his or her decision within 30 days of the arbitration.⁵³

The Condominium and Cooperative Act also provides for mediation as a way of resolving disputes between unit owners and associations. A mediator's role includes assisting the parties in identifying issues, encouraging joint problem solving, and exploring settlement alternatives.⁵⁴ 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. Additionally, an arbitrator may refer a proceeding to mediation even if all parties do not agree to mediation.⁵⁵

If a matter is referred to mediation, the parties must select a mutually agreeable mediator from a list of available, Division-certified mediators. 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

⁵⁰ 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 Apr. 3, 2019).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ S. 718.1225, & 719.1255, F.S.; Peter Dunbar, *The Condominium Concept*, 299-300 (13th ed. 2013).

⁵⁵ *Id.*

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.⁵⁶ Mediation is conducted in accordance with the Florida Rules of Civil Procedure and the parties share the costs of mediation.⁵⁷

Effect of the Bill

The bill terminates DBPR's arbitration program and mirrors condominium and cooperative law to HOA law by requiring that certain disputes between associations and unit owners proceed to presuit mediation before advancing to circuit court. The required mediation is not provided by the Division, and the bill repeals the provision requiring the Division to maintain lists of volunteer and paid mediators certified by the Division. The bill also provides that election disputes and disputes involving the recall of board members are not subject to arbitration by the Division or to mediation and must instead proceed directly to a summary proceeding in county court.

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

Current Law

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 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."⁵⁸

A condominium may also be terminated in the discretion of the owners (optional termination) 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 reject the termination, unless the declaration provides for a lower threshold. 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.⁵⁹

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

⁵⁶ Ss. 718.1255, 718.501(1)(l), 719.1255, & 719.501(1)(n), F.S.

⁵⁷ *Id.*

⁵⁸ S. 718.117(1), F.S.

⁵⁹ S. 718.117(2), F.S.

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.⁶⁰

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.⁶¹

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;
- 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.⁶²

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.⁶³

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 by its actions.

Recall of an Association Board Member

Current Situation

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

⁶⁰ S. 718.117(3), F.S.

⁶¹ *Id.*

⁶² S. 718.117(16), F.S.

⁶³ *Id.*

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. If the board certifies the recall, 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.⁶⁴

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 on the board by certified mail or personal service. The board must notice and hold a meeting within 5 business days of being served. If the board certifies the recall 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.⁶⁵

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.⁶⁶

If a board does not certify the recall, 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.⁶⁷

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.⁶⁸ A recalled board member may also file a petition 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.⁶⁹

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 also 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 states 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. Further, 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.

⁶⁴ Ss. 718.112(2)(j), 719.106(1)(f), & 720.303(10), F.S.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

Condominium Ombudsman

Current Situation

Within the Division is housed the Office of the Condominium Ombudsman. The Ombudsman is an attorney appointed by the Governor and 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.⁷⁰

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.⁷¹

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

Effect of the Bill

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

B. SECTION DIRECTORY:

Section 1: Amends s. 34.01, F.S., relating to jurisdiction of county court.

Section 2: Amends s. 514.0015, F.S., relating to exemptions from supervision or regulation; variances.

Section 3: Amends s. 627.714, F.S., relating to residential condominium unit owner coverage; loss assessment coverage required.

Section 4: Amends s. 718.111, F.S., relating to the association.

Section 5: Amends s. 718.112, F.S., relating to bylaws.

Section 6: Amends s. 718.113, F.S., relating to maintenance; limitation upon improvement; display of flag, hurricane shutters and protection; display of religious decorations.

Section 7: Amends s. 718.117, F.S., relating to termination of condominium.

Section 8: Amends s. 718.1255, F.S., relating to alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.

Section 9: Amends s. 718.303, F.S., relating to obligations of owners and occupants; remedies.

Section 10: Amends s. 718.501, F.S., relating to authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.

Section 11: Amends s. 718.5014, F.S., relating to ombudsman location.

Section 12: Amends s. 719.103, F.S., relating to definitions.

Section 13: Amends s. 719.104, F.S., relating to cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 14: Amends s. 719.106, F.S., relating to bylaws; cooperative ownership.

Section 15: Amends s. 719.1255, F.S., relating to alternative resolution of disputes.

Section 16: Amends s. 719.501, F.S., relating to powers and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.

Section 17: Amends s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 18: 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 19: Amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 20: Amends s. 720.311, F.S., relating to dispute resolution.

Section 21: Providing an effective date of July 1, 2019.

⁷⁰ Ss. 718.5011 & 718.5012, F.S.

⁷¹ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The change in classification of cooperatives from personal to real property for the purpose of estate taxes or laws related to devise and descent may have an indeterminate impact on state revenue.

The state may see an increase in revenue as more condominium and cooperative disputes enter the court system due to the termination of DBPR's arbitration program.

2. Expenditures:

The state may see a reduction in expenses as the bill terminates DBPR's arbitration program, but may see an increase in expenses as more disputes enter the court system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires certain condominium, cooperative, and HOA disputes to go to mediation or to county court instead of arbitration by the Division. This will have an indeterminate impact on the private sector.

The prohibition on subrogation rights and the treatment of cooperatives as real property for purposes of devise and descent may have an indeterminate impact on the private sector.

D. FISCAL COMMENTS:

The state may see a reduction in expenses as the bill terminates DBPR's arbitration program. The change in classification of cooperatives from personal to real property for the purpose of estate taxes or laws related to devise and descent may have an indeterminate impact on the state.

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 one amendment and reported the bill favorably as a committee substitute. The amendment:

- Repealed 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.
- Amended the requirements for selecting a mediator for an HOA dispute.
- Required association election and recall disputes to be heard in county court.
- Required a unit owner or lienor to contest a termination of a condominium in county court.
- Repealed the provision requiring DBPR to certify private mediators.
- Allowed the office of the Condominium Ombudsman to be located outside of Leon County.
- Provided that pools for HOAs with 32 parcels or less are exempt from DOH's regulation of public pools.
- Provided that associations need to maintain bids for work or materials for one year instead of seven.
- Required HOAs to maintain ballots and all records relating to elections in the HOA's official records.
- Prohibited associations from requiring an owner to state a reason for requesting to inspect official records.
- Provided that a condominium association required to place association documents on a website may place the documents on a mobile application.
- Provided that term limits only apply to service on a condominium's board of directors as a result of an election or appointment after July 1, 2018.
- Prohibited condominium owners' insurance policies from providing rights of subrogation against the association.
- Allowed condominiums to charge a buyer or renter the costs of background checks.
- Amended the due date for a fine levied by an association.
- Provided that an interest in a cooperative unit is an interest in real property.
- Provided requirements for notice of condominium elections.
- Provided 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.
- Repealed the provision prohibiting associations from contracting with companies in which board members have a financial interest.

On April 3, 2019, the Judiciary Committee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarified that condominium unit owner meeting notice requirements apply to all unit owner meetings.
- Required a dispute challenging the legality of a condo board election or recalling a condo board member to be tried as a summary proceeding without a jury.
- Entitled a prevailing party in such a summary proceeding to recover its reasonable attorney fees and costs.
- Authorized an action at law or in equity for disputes over a violation of the Condominium Act, condo declaration, documents creating a condominium association, or association bylaws.
- Restored an HOA's ability to suspend a member's right, or the right of a member's tenant, guest, or invitee, to use common areas and facilities for failing to comply with reasonable HOA rules.

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