

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

BILL: CS/SB 1362

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Gruters

SUBJECT: Community Associations

DATE: April 10, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1362 revises the regulation and governance of condominium, cooperative, and homeowners' associations under chs. 718, 719, and 720, F.S., respectively.

For condominium associations, the bill:

- Prohibits a unit owner's insurance policy from including rights of subrogation against the association;
- Permits associations to make digital copies of specified documents available to members through an application that can be downloaded on a mobile device;
- Permits the association to charge a potential buyer or renter the actual costs associated with a back ground check or screening;
- Permits units owners to install an electric vehicle charging station on a parking area exclusively designated to the unit owner;
- Repeals the requirement that the condominium ombudsman must maintain his or her office in Leon County; and
- Expands the types of disputes that are subject to mandatory, non-binding arbitration by the Division of Florida Condominiums, Timeshares, and Mobile Homes.

For cooperative associations, the bill:

- Provides that an interest in a cooperative unit is an interest in real property;
- Permits board or committee members to appear and vote by telephone, real time video conferencing, or by a similar real-time electronic or video communication; and

- Revises the process for recall elections.

For homeowners' associations, the bill:

- Exempt pools serving an association that has no more than 32 parcels from permitting and inspection requirements;
- Requires sign-in sheets, voting proxies, ballots and all other papers related to voting to be maintained as an official record;
- Permits associations to use electronic methods to deliver meeting notices;
- Revises the requirements for mandatory presuit mediation before an action may be filed in court involving a dispute between an association and an association member; and
- Expands the types of disputes are and are not subject to mandatory presuit mediation.

For condominium and homeowners' associations, the bill clarifies that payment of a fine is due five days after the fine is approved by the committee responsible for approving fines.

For condominium and cooperative associations, the bill prohibits associations from requiring an owner to state a reason for wanting to inspect official records.

The bill may have a fiscal impact on state government. See Section V., Fiscal Impact Statement.

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

II. Present Situation:

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.¹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.² After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.³ For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.⁴

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.⁵

¹ Sections 718.501(1) and 719.501(1), F.S.

² *Id.*

³ Section 718.501(1), F.S.

⁴ Section 719.501(1), F.S.

⁵ Sections 718.501(1) and 719.501(1), F.S.

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. In addition, the division is authorized to petition a court to appoint a receiver or conservator to implement a court order, or to enforce of an injunction or temporary restraining order. The division may also impose civil penalties.⁶

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, F.S., the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 F.S., are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

For homeowners' associations, the division's authority is limited to arbitration of recall election disputes.⁷

Condominium

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."⁸ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁹ A declaration is similar to a constitution in that it:

[S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the

⁶ *Id.*

⁷ See s. 720.306(9)(c), F.S.

⁸ Section 718.103(11), F.S.

⁹ Section 718.104(2), F.S.

condominium association has broad authority to enact rules for the benefit of the community.¹⁰

A condominium is administered by a board of directors referred to as a “board of administration.”¹¹

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” to mean:

[T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.¹²

Homeowners’ Associations

Florida law provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹³

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and 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.”¹⁴ Unless specifically stated to the contrary in the articles of incorporation, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.¹⁵

Homeowners’ associations are administered by a board of directors whose members are elected.¹⁶ The powers and duties of homeowners’ associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted

¹⁰ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

¹¹ Section 718.103(4), F.S.

¹² See ss. 719.106(1)(g) and 719.107, F.S.

¹³ See s. 720.302(1), F.S.

¹⁴ Section 720.301(9), F.S.

¹⁵ Section 720.302(5), F.S.

¹⁶ See ss. 720.303 and 720.307, F.S.

amendments to these documents.¹⁷ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁸

Chapters 718, 719, and 720, F.S.

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community associations. The chapters delineate requirements for notices of meetings,¹⁹ recordkeeping requirements, including which records are accessible to the members of the association,²⁰ and financial reporting.²¹ Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

III. Effect of Proposed Changes:

The bill revises the regulation and governance of condominium, cooperative, and homeowners' associations under chs. 718, 719, and 720, F.S., respectively.

Swimming Pools in Homeowners' Associations

Present 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 the DOH must be obtained. If the DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, the 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.²²

Pools serving condominiums or cooperatives with no more than 32 units and which are not operated as public lodging establishments are exempt from the DOH's requirements for public pools.²³ Pools serving a homeowners' associations are not exempt from regulation by the DOH, except for water quality.

¹⁷ See ss. 720.301 and 720.303, F.S.

¹⁸ Section 720.303(1), F.S.

¹⁹ See ss. 718.112(2), 719.106(2)(c), 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.

²⁰ See ss. 718.111(12), 719.104(2), 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.

²¹ See ss. 718.111(13), 719.104(4), 720.303(7), F.S., for condominium, cooperative, and homeowners' associations, respectively.

²² Section 514.031(1), F.S.

²³ Section 514.0115(2), F.S.

Effect of the Proposed Bill

The bill amends s. 514.0115(2)(a), F.S., to exempt pools serving a homeowners' association (and other property associations) that have no more than 32 parcels and are not being operated as public lodging establishments from permitting and inspection requirements, except for water quality.

Condominium Unit Insurance

Present Situation

A condominium association is required to use its best efforts to maintain insurance for the association, the association property, the common elements, and the condominium property.²⁴ Insurance coverage for the association must insure the condominium property as originally installed and all alterations or additions made to the condominium property.²⁵

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. Such property and insurance is the responsibility of the unit owner.²⁶

A condominium unit owner's insurance policy must conform to s. 627.714, F.S.,²⁷ which requires that an individual unit owner's residential property insurance policy must state that the coverage afforded by the policy is excess coverage over the amount recoverable under any policy covering the same property.²⁸

An association is not obligated to pay for reconstruction, or repairs to an improvement, benefiting a specific unit and installed by a unit owner which was not installed as part of the standard improvements by the developer on all units as part of the original construction.²⁹

Section 718.111(11)(j)1., provides that the subrogation³⁰ rights of an insurer are not compromised if the unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by an association's insurance proceeds, if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees.

Section s. 718.111(11)(j)3., F.S., provides that an association can reimburse the unit owner without the waiver of any rights of subrogation, if:

²⁴ Section 718.111(11), F.S.

²⁵ Section 718.111(11)(f), F.S.

²⁶ Section 718.111(11)(f)3., F.S.

²⁷ Section 718.111(11)g), F.S.

²⁸ Section 627.714(4), F.S.

²⁹ Section 718.111(11)(n), F.S.

³⁰ The term "subrogation" is describes a legal right held by insurance carriers to legally pursue a third party that caused an insurance loss to the insured. This is done in order to recover the amount of the claim paid by the insurance carrier to the insured for the loss. See Investopedia.com, *Subrogation*, at <https://www.investopedia.com/terms/s/subrogation.asp> (last visited Apr. 3, 2019).

- The cost of repair or reconstruction is the unit owner's responsibility;
- The association has collected the cost of such repair or reconstruction from the unit owner; and
- The unit owner is reimbursed by the association from insurance proceeds.

Effect of Proposed Changes

The bill amends s. 627.714(4), F.S., to provide that a condominium unit owner's insurance policy may not provide rights of subrogation against the association operating the condominium in which the property is located.

Official Records – Condominium, Cooperative, and Homeowners' Associations

Present Situation

Florida law specifies the official records that condominium, cooperative, and homeowners' associations must maintain.³¹ Generally, the official records must be maintained in Florida for at least seven years.³² Certain of these records must be accessible to the members of an association.³³ Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.³⁴

Condominium associations are required to post digital copies of specified documents on its website.³⁵

Effect of Proposed Changes

The bill amends ss. 718.111(12), 719.104(2), and 720.303(5), F.S., to revise the official records requirements for condominiums, cooperatives, and homeowners' associations.

Regarding condominium associations, the bill requires bids for work performed, and bids for materials, equipment, or services to be maintained for one year as an official accounting record. Under current law, such records must be maintained for seven years.³⁶

Regarding the official records requirements for condominium and cooperative associations, the bill prohibits condominium and cooperative associations from requiring a unit owner to state a reason for the inspection.³⁷

³¹ See ss. 718.111(12), 719.104(2), 720.303(5), F.S., relating to condominium, cooperative, and homeowners' associations, respectively.

³² See ss. 718.111(12)(b), 719.104(2)(b), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners' associations, respectively.

³³ See ss. 718.111(12)(a), 719.104(2)(a), and 720.303(5), F.S., , relating to condominium, cooperative, and homeowners' associations, respectively.

³⁴ See ss. 718.111(12)(c), 719.104(2)(c), and 720.303(5), F.S., , relating to condominium, cooperative, and homeowners' associations, respectively.

³⁵ Section 718.111(12)(g), F.S.

³⁶ Sections 719.104(2)(a)9.d. and 720.303(4)(i), F.S., provide an identical provision for cooperative and homeowners' associations, respectively.

³⁷ Section 720.303(5)(c), F.S., provides a comparable provision for homeowners' associations.

Regarding homeowners' associations, the bill designates as an official record all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by owners in the association's official records.³⁸ Under the bill, these records must be maintained for one year after the date of the election, vote, or meeting to which the document relates.

The bill permits condominium associations to make digital copies of specified documents available to members through an application that can be downloaded on a mobile device as an alternative to the requirement to post copies of the documents on a website.

Term Limits for Condominium Association Board Members

Present Situation

The terms of all condominium association board members expire at the annual meeting, unless:

- It is a timeshare or nonresidential condominium;
- The staggered term of a board member does not expire until a later annual meeting; or
- All members' terms would otherwise expire but there are no candidates.³⁹

Board members may serve terms longer than one year if permitted by the bylaws or articles of incorporation. A board member may not serve more than eight consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.⁴⁰

Effect of Proposed Changes

The bill provides that only board service that occurs on or after July 1, 2018, may be used when calculating a board members term limit.

Notice of Elections for Condominium Associations

Present Situation

Condominium associations are required to mail, deliver, or electronically transmit notice of an election to unit owners at least 60 days before an election. Condominium associations are also required to mail, deliver, or electronically transmit a second notice of an election to the unit owners together with a ballot that lists all the candidates. Current law does not specify when the second notice must be provided.

³⁸ Sections 718.111(12)(a)12. and 719.104(2)(a)10., F.S., provide an identical provision for condominium and cooperative associations, respectively.

³⁹ Section 718.112(2)(d), F.S. The term of a board member does not expire at the annual board meeting if the association is for a timeshare or nonresidential condominium, the staggered term of a board member does not expire until a later annual meeting, or all members' terms would otherwise expire but there are no candidates.

⁴⁰ *Id.*

Effect of Proposed Changes

The bill amends s. 718.112(2)(d), F.S., to provide that the second notice together with the ballot must be mailed, delivered, or electronically transmitted to unit owners not less than 14 days or more than 34 days prior to the election.

Condominium Meeting Notices***Present Situation***

A condominium association must provide written notice for the annual meeting of the unit owners. The notice must include an agenda, and must be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting. The notice must also be posted in a conspicuous place on condominium property for at least 14 continuous days before the annual meeting. In lieu of posting the notice in a conspicuous place, a condominium may repeatedly broadcast the notice and agenda on a closed-circuit cable television system serving the association.⁴¹

Effect of Proposed Changes

The bill amends s. 718.112(2)(d), F.S., to extend the notice requirements to all meetings of the unit owners.

Condominium Transfer Fees***Present Situation***

A condominium association may charge a potential buyer or renter costs or fees in connection with the sale, lease, or sublease, or other transfer of a unit, if:

- The fee is limited to \$100 or less;
- The fee is authorized in the association's governing documents; and
- The association is required to approve the transfer.⁴²

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.⁴³

Effect of Proposed Changes

The bill amends s. 718.112(2)(i), F.S., to permit a condominium association to charge an applicant for transfer of a unit a fee for the actual costs of any background check or screening performed by the association. The association does not have to be authorized under its declaration, articles, or bylaws to charge a fee for the background check or screening. The fee for the background check or screening may exceed \$100 per applicant. A husband and wife or parent and dependent child are considered one applicant.

⁴¹ Section 718.112(d), F.S.

⁴² Section 718.112(2)(i), F.S.

⁴³ *Id.*

Condominium Recall Elections

The bill amends s. 718.112(2)(j)5., F.S., to repeal the authority of the division to adopt procedure rules governing the filling of vacancies on the board of a condominium association after a recall election. The bill also repeals the division's authority to adopt rules governing the conduct of recall elections in condominium associations and the operation of an association during the period after a recall but before the recall election.

Conflicts of Interest – Condominium and Homeowners' Associations –

Present Situation

Section 718.3027 and 720.3033, F.S., require an officer or director of a condominium association (that is not a timeshare condominium association) and a homeowners' association, respectively, to disclose any financial interest of the officer or director (or such person's relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. Section 718.3027(2), F.S., requires the board of a condominium association to approve a contract for services or other transaction by an affirmative vote of two-thirds of all other directors present.

Section 720.3033(1), F.S., also requires the approval of the contract or other transaction by a two-thirds vote of the homeowners' association board, but does not require that such transaction be approved by a two-thirds vote of the members present who do not have a financial interest in the contract.

Section 718.112(2)(p), F.S., also provides a comparable provision to that provided in s. 718.3027, F.S., for resolving conflicts of interest by directors and officers.

Effect of Proposed Changes

The bill repeals the provision in paragraph (p) of s. 718.112(2), F.S., relating to conflicts of interests between officers or directors and service providers.

The bill amends s. 720.3033(1), F.S., to require that the board of a homeowners' association must approve a contract or other financial transaction with a director or officer by a two-thirds vote of the members present who do not have a financial interest in the contract.

Electric Vehicle Charging Station – Condominium Associations

Present Situation

A condominium association may not prohibit 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 and payable by the unit owner.⁴⁴

⁴⁴ Section 718.113(8), F.S.

Effect of Proposed Changes

The bill amends s. 718.113(8), F.S., to include an exclusively designated parking area as a location where the association may not prohibit a unit owner from installing an electric vehicle charging station.

The bill also allows a unit owner to use an embedded meter on an electric vehicle charging station.

Fines – Condominium and Homeowners' Associations***Present Situation***

Condominium and homeowners' associations may levy fines against an owner, occupant, or a guest of an owner for failing to comply with any provision in the association's declaration, bylaws, or rules. A fine imposed by a condominium association may not exceed \$100 per violation, and the total amount of a fine may not exceed \$1,000.⁴⁵ However, a fine imposed by homeowners' association may exceed \$1,000 in the aggregate if the association's governing documents authorize the fine.⁴⁶ A fine in a condominium or homeowners' association may not become a lien against the unit or parcel.⁴⁷

An association's board may not impose a fine or suspension unless it gives at least 14 days written notice of the imposed fine or suspension, and an 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.⁴⁸

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.⁴⁹

Effect of Proposed Changes

The bill amends ss. 718.303(3) and 720.305(2), F.S., to provide that a fine imposed by a condominium or homeowners' associations is due five days after notice of an approved fine is sent to the unit or parcel owner and if applicable, to any tenant, licensee, or invitee of the owner. Current law provides that payment of the fine is due five days after the committee meeting at which the fine is approved.

⁴⁵ Sections 718.303(3), F.S. An identical provision in s. 719.303(3), F.S., applies to fines in cooperative associations.

⁴⁶ Section 720.305(2), F.S.

⁴⁷ Sections 718.303(3) and 720.305(2), F.S. An identical provision in s. 719.303(3), F.S., applies to fines in cooperative associations.

⁴⁸ Section 718.303(3)(b) and (c), F.S., and s. 720.305(2)(b) and (c), F.S. An identical provision in ss. 719.303(3)(b) and (c), F.S., applies to fines and suspensions in cooperative associations.

⁴⁹ *Id.*

Condominium Ombudsman

Present Situation

The office of the ombudsman within the division is an attorney appointed by the Governor to be 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.⁵⁰

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.⁵¹

The ombudsman is required to maintain his or her principal office in Leon County.⁵²

Effect of Proposed Changes

The bill amends s. 718.5014, F.S., to repeal the requirement that the ombudsman maintain his or her principal office in Leon County.

Cooperative Property

Present 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.⁵³ Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.⁵⁴ Real property is anything that is permanent, fixed, and immovable, such as land or a building. At common law, a 99 year leasehold 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.⁵⁵

In Florida, a cooperative is treated as real property for some homestead purposes. Although the general definition of homestead, including for taxation purposes, follows the common-law rule that requires an interest in real property, the Florida Constitution specifically extends the

⁵⁰ Sections 718.5011 and 718.5012, F.S.

⁵¹ *Id.*

⁵² Section 718.5014, F.S.

⁵³ *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996)

⁵⁴ Am. Jur. 2d Property § 18.

⁵⁵ *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).

exemption to a cooperative unit.⁵⁶ Florida's homestead laws apply to cooperative the exemption from forced sale by creditors⁵⁷ and the exemption from ad valorem taxation. However, a cooperative is not subject to Florida's homestead protections on devise and descent.⁵⁸

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 provision in the Cooperative Act.⁵⁹ The Third District Court of Appeal recognizes a need for clarification of this type of ownership interest.⁶⁰

Effect of the Proposed Changes

The bill amends the definition of “unit” in s. 719.103(25), F.S., to provide that an interest in a cooperative unit is an interest in real property.

Cooperative Association Meetings

Present Situation

When a board or committee member of a cooperative association participates in a meeting by telephone conference, that board or committee member's participation by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by unit owners present at a meeting.⁶¹

Effect of Proposed Changes

The bill amends s. 719.106(1)(b)5., F.S., to provide that a cooperative association board member or committee member who attends a meeting by telephone, real time video conferencing, or by a similar real-time electronic or video communication counts toward a quorum and may vote as if physically present.⁶²

⁵⁶ FLA. CONST. art. VII, s. 6(a) provides: “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.”

⁵⁷ Sections 222.01, and 222.05, F.S.

⁵⁸ *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).

⁵⁹ Section 718.106(1), F.S.

⁶⁰ *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008)

⁶¹ Section 719.106(1)(b)5., F.S.

⁶² Section 718.112(2)(b)5., F.S., provides a comparable provision for condominium associations.

Cooperative Association Recall Elections

Present Situation

Any board member of a cooperative association may be recalled and removed from office with or without cause by a majority of the voting interests. A board director may be recalled by a written ballot or by an agreement in writing without a membership meeting.⁶³

If the proposed recall is approved by a majority of all voting interests by a vote at a meeting, the board must notice and hold a board meeting within five full business days after the adjournment of the unit owner meeting to recall one or more board members to either certify the recall, in which case such member or members shall be recalled effective immediately. If the board decides not to certify the recall, it must file a petition for binding arbitration of the recall by the division.⁶⁴

If the proposed recall is by written agreement, the written agreement must be served on the association by certified mail or personal service. Within five full business days after receipt of the written agreement, the board must hold a meeting. If the recall by an agreement in writing is certified by the board, the recall is effective immediately.⁶⁵ If the board fails to hold a meeting within five business days or fails to file the required petition after deciding not to certify the recall, the unit owner representative may file a petition with the division to challenge the board's failure to meet.⁶⁶

Effect of Proposed Changes:

The bill amends s. 719.103(1)(f), F.S., to provide that the recall of a director is effective immediately upon the conclusion of the board meeting called after the board's receipt of the written agreement for recall or the recall is approved in an election, if the recall is facially valid. The bill deletes the requirement for the board to either certify a recall election or submit a petition to the division for binding arbitration. Under the bill, the recall is effective if the board fails to hold the required meeting within five days of a recall election or its receipt of a written agreement for recall.

The bill repeals the authority of the division to adopt procedure rules governing the filling of vacancies on the board of a cooperative association after a recall election. The bill also repeals the authority for rules governing the conduct of recall elections in cooperative associations and the operation of an association during the period after a recall but before the recall election.

Homeowners' Associations – Meeting Notices

Present Situation

A homeowners' association is required to notice all board meetings at least 48 hours before the meeting by posting a meeting notice in a conspicuous place on the association's property.

⁶³ Section 719.103(1)(f), F.S.

⁶⁴ Sections 719.103(1)(f)1. and 3., F.S.

⁶⁵ Sections 719.103(1)(f)2. and 3., F.S.

⁶⁶ Sections 719.103(1)(f)5., F.S.

Alternatively, the notice may be mailed, hand delivered, or electronically transmitted at least seven days before the meeting.⁶⁷

Meeting notices must be posted 14 days before any meeting where a nonemergency special assessment or an amendment to the rules regarding unit use is to be considered.⁶⁸

Instead of posting or mailing notices, a homeowners' association with more than 100 members may broadcast notices on a closed-circuit cable television system for at least four times every broadcast hour of each day that a posted notice is otherwise required.⁶⁹

Effect of Proposed Changes

The bill amends s. 720.303(2), F.S., to provide an additional method for homeowners' associations to provide meeting notices by authorizing the board to adopt, by rule, a procedure for conspicuously posting a meeting notice and agenda on a website serving the association. The rule must:

- Require the association to send an electronic notice to members with a hypertext link to the website where the notice is posted; and
- Require the notice on the association's website to be posted for at least as long as the physical posting of a meeting notice is required.⁷⁰

Alternative Dispute Resolution

Present Situation

Condominium Associations

Section 718.1255, F.S., provides an alternative dispute resolution process 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 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 a 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.⁷¹

A petition for mandatory nonbinding arbitration must be filed 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 failed to:

- Properly conduct elections.

⁶⁷ Section 720.303(2)(c), F.S. Sections 718.112(2) and 719.106(1), F.S., provide comparable notice requirements for condominium and cooperative associations.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Sections 718.112(2)(c) and 719.106(1)(c), F.S., provide comparable notice requirements for meetings in condominium and cooperative associations, respectively.

⁷¹ Section 718.1225(4), F.S.

- Provide adequate notice for meetings or other actions.
- Properly conduct meetings.
- Allow inspection of the association's books and records.

The division does not have jurisdiction to arbitrate the following disputes between a unit owner and an association that involve:⁷²

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

The filing fee for an arbitration petition is \$50.⁷³

Homeowners' Associations

Section 720.311, F.S., provides an alternative dispute resolution program for certain disputes between parcel owners and homeowners' associations. Association election disputes and disputes involving the recall of association board members must go through mandatory binding arbitration with the division. However, the following disputes between parcel owners and homeowners' associations 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 enforcement 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.⁷⁴

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 s. 718.311, F.S., and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five 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.⁷⁵

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 after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees.

⁷² *Id.*

⁷³ Section 718.1255(4)(a), F.S.

⁷⁴ Section 720.311(2)(a), F.S.

⁷⁵ *Id.*

Mediation is confidential and persons who are not parties to the dispute (or their attorneys or designated representative for the association) may not attend the mediation conference.⁷⁶

If mediation is not successful in resolving all the disputed issues between the parties, the parties may proceed to civil court or may elect to enter into binding or non-binding arbitration.⁷⁷

An election dispute in a homeowners' association must go through binding arbitration with the division.⁷⁸ The petitioner must remit a filing fee of at least \$200 to the division. At the conclusion of the proceeding, the division must charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. The fees paid to the division are a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding must recover its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator.⁷⁹

Effect of Proposed Changes

Condominium Associations

The bill amends the definition of "dispute" in s. 718.1255(1)(a), F.S., to include an association's failure to maintain common elements, association property, or portions of the unit for which the association is responsible. The bill also clarifies that disputes involving failure to properly conduct meetings that are subject to the mandatory non-binding arbitration requirements include meeting of the board and committees, and member meetings. Under the bill, such disputes must go through non-binding arbitration with the division before filing a law suit in court.

Homeowners' Associations

The bill amends s. 720.311, F.S., to define the term "dispute" and provide additional types of dispute that must go through mediation before the dispute may be filed in court. Under the bill, a dispute means a disagreement between two or more parties which involves:

- The authority of the board to:
 - Require any owner to take any action, or not to take any action, involving that owner's parcel; or
 - Alter or add to a common area.
- Failure of a governing body, when required by ch. 720, F.S., or an association document, to:
 - Properly enforce the governing documents;
 - Provide adequate notice of meetings or other actions;
 - Properly conduct meetings (not including elections held at a meeting); or
 - Maintain a common area.

Under the bill, a dispute is not subject to the pre-suit mediation requirements in s. 720.311, F.S., if it involves:

- Title to any parcel or common area;

⁷⁶ Section 720.311(2)(b), F.S.

⁷⁷ Section 720.311(2)(c), F.S.

⁷⁸ Section 720.311(1), F.S.

⁷⁹ *Id.*

- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.⁸⁰

The bill revises the form of the written demand to participate in presuit mediation to require the form to include the hourly rates of the alternate mediators and to identify whether the identified mediators are Supreme Court-certified circuit court mediators.

The bill also requires that the written demand to participate in presuit mediation include a conspicuous statement that a person who fails to participate in the entire presuit mediation process is prohibited from recovering fees and costs in subsequent litigation relating to the dispute.

The bill also:

- Permits a representative from the association's insurance carrier to attend the presuit mediation conference.
- Extends the time to respond to a demand for presuit mediation from 20 days to 30 days.
- Requires that the proposed mediators must be available to hold the mediation in the county where the parcel is located or within 40 miles of the parcel at no extra cost.
- Permits the aggrieved party to file an action in court if the presuit mediation cannot be held within 90 days of the days of acceptance of presuit mediation, unless the parties agree to extend the 90-day deadline.
- Permits the parties to agree to a mediator or arbitrator who is not certified by the Florida Supreme Court.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸⁰ Section 720.311(2)(a), F.S., exempts identical types of disputes from the mandatory non-binding arbitration requirements for condominium associations.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill amends s. 718.1255, F.S., to expand the types of disputes that are subject to mandatory, non-binding arbitration by the division. The division may incur costs related to processing and conducting additional arbitration proceedings due to the expansion in the number of disputes that qualify for arbitration by the division.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 514.0115, 627.714, 718.111, 718.112, 718.1255, 718.303, 718.5014, 719.103, 719.104, 719.106, 719.1255, 719.501, 720.303, 720.305, and 720.311.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Innovation, Industry, and Technology on April 10, 2019:

The committee substitute:

- Exempts pools serving a homeowners' association (and other property associations) that have no more than 32 parcels and are not being operated as public lodging establishments from permitting and inspection requirements by the DOH.

- Permits condominium associations to make digital copies of specified documents available to members through an application that can be downloaded on a mobile device as an alternative to the requirement to post copies of the documents on a website.
- Provides a method for calculating a condominium board member's term limit.
- Modifies notice requirements for condominium elections.
- Modifies the requirements for payment of the costs of a background check or screening in connection with the transfer of a condominium unit.
- Repeals the authority of the division to adopt procedural rules relating to recall elections.
- Revises the requirements for electric vehicle charging stations in condominium associations.
- Repeals the requirement that the condominium ombudsman maintain his or her principal office in Leon County.
- Provides that an interest in a cooperative unit is an interest in real property.
- Provides that a cooperative association board member or committee member who attends a meeting by telephone, real time video conferencing, or by a similar real-time electronic or video communication counts toward a quorum and may vote as if physically present.
- Revises the requirements for recall of cooperative association board and committee members.
- Revises the presuit mediation and arbitration requirements for disputes between members and condominium and homeowners' associations.

Removes the following provisions from the bill amending:

- Sections 712.05, 720.404, and 720.405, F.S., to revise the requirements for reviving expired governing documents of a homeowners' association.
- Sections 718.110(1)(a) and 720.306(1)(b), F.S., to revise requirements for amending the governing documents of condominium and homeowners' associations, respectively.
- Section 718.111(11)(n), F.S., to provide the method for determining whether improvements are considered approved improvements as required under s. 718.113(2), F.S.
- Sections 718.111(12), 719.104(2), and 720.303(5), F.S., to exempt as official records of condominium, cooperative, and homeowners' associations, respectively, specified records contained on the personal computers or electronic devices, and specified electronic correspondence.
- Sections 718.111(12), 719.104(2), F.S., to prohibit condominium and cooperative associations from limiting a unit owner's right to inspect records to less than one eight-hour business day per month.
- Sections 718.128(4), 719.129(4), and 720.317(4), F.S., to revise the electronic voting requirements for condominium, cooperative, and homeowners' associations, respectively.
- Sections 718.116 and 720.3085, F.S., to revise requirements for liens in condominium and homeowners' associations, respectively.

- Sections 718.303(3) and 720.305(2), F.S., to revise the requirements for the amount and liens for the collection of fines in condominium and homeowners' associations, respectively.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
