

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: SB 1362

INTRODUCER: Senator Gruters

SUBJECT: Community Associations

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

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

Regarding condominium associations, the bill:

- Prohibits a condominium unit owner's insurance policy from including rights of subrogation against the condominium association;
- Permits the association to charge a potential buyer or renter the actual costs associated with the transfer of a unit and an administrative fee of no more than \$100; and
- Removes the provision that requires condominium liens to automatically expire after one year.

Regarding homeowners' associations, the bill:

- Permits homeowners' association to revive the governing documents of the association in the same manner currently available to revive covenants and restrictions;
- Permits associations to use electronic methods to deliver meeting notices;
- Requires sign-in sheets, voting proxies, ballots and all other papers related to voting to be maintained as an official record; and
- Provides that board members who have a financial interest in a proposed contract with the association may not participate in the vote to authorize the contract.

Regarding condominium and homeowners' associations, the bill:

- Reduces the vote required to amend the governing documents of the association from a two-thirds vote to a majority vote; and
- Permits associations to assess fines of \$1,000 or more. The fines are considered assessments that may be collected by filing a lien against the unit or parcel with the prevailing party entitled to attorney fees.

Regarding condominium and cooperative associations, the bill:

- Prohibits associations from limiting the time owners have to review official records; and
- Prohibits associations from requiring an owner to state a reason for wanting to inspect official records.

Regarding condominium, cooperative, and homeowners' associations, the bill:

- Permits members to consent to use electronic voting by registering to use an online voting system;
- Provides that records contained on the personal computers or electronic devices of a board member, officer, or committee member are not official records;
- Provides that electronic correspondence between officers, directors, or committee members is not an official record unless the correspondence is also located on a computer maintained by the association and is not otherwise excluded; and
- Permits associations to provide meeting notices on a website serving the association.

The bill is not anticipated to have a fiscal impact on state or local government.

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

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

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.

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.

Marketable Record Title Act

Present Situation

The Marketable Record Title Act (MRTA) provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land.²²

Under MRTA, a community association's covenants and restrictions expire after 30 years, if not renewed. Renewal restarts the 30-year time period. Current law provides three ways for a community association to renew its covenants and restrictions.

First, a community association may file a notice of extension of the covenants in the official records of the county in which the property is located. The board of directors must provide each parcel owner notice of a meeting to extend the covenants at least seven days prior to the meeting, and board members must approve the extension at the meeting.²³

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 712.03, F.S.

²³ Sections 712.05 and 712.06, F.S.

Second, a community association may file notice in the official records of the county in which the property is located. The notice must include:²⁴

- The association's legal name;
- The mailing and physical addresses of the association;
- The names of the affected subdivision plats and condominiums, or the common name of the community;
- The name, address, and telephone number for the current community association management company or manager, if any;
- Whether the association desires to preserve the covenants or restrictions to avoid extinguishment under MRTA;
- The name and recording information of those covenants or restrictions the association wishes to preserve;
- A legal description of the community affected by the covenants or restrictions; and
- The signature of a duly authorized officer of the association.

Third, the community association may choose to file an amendment to a community association's covenants or restrictions in the official records of the county in which the property is located. The amendment must be indexed under the legal name of the community association and must reference the recording information of the covenant or restriction to be preserved.²⁵

An association's covenants and restrictions that expire may be revitalized. A proposal to revive the covenants and restrictions must be initiated by an organizing committee of not less than three owners in the community. The organizing committee must draft a complete set of the documents proposed for revival, and identify the property owners who will be subject to the revived documents. The proposed documents may not contain covenants that are more restrictive than the covenants contained in the previous association's covenants, except that the documents may:²⁶

- Have a longer duration than the term of the previous covenants and restrictions;
- Omit restrictions contained in the previous covenants and restrictions;
- Govern fewer than all of the properties governed by the previous covenants and restrictions;
- Provide for amendments to the declaration and other governing documents; and
- Contain provisions required by law for new declarations that were not contained in the previous covenants and restrictions.

The organizing committee must mail or hand deliver the proposed documents along with a graphic depicting the affected property. A majority of the affected property owners may vote to revitalize the covenants and restrictions at a meeting, or a majority of the affected property owners may agree in writing to revive the governing documents. If a vote is held to revitalize the association, proof of notice of the meeting and the minutes of the meeting must be certified by an attorney or a court reporter.²⁷

²⁴ Section 720.3032, F.S.

²⁵ Section 712.05, F.S.

²⁶ Sections 720.404 and 720.405, F.S.

²⁷ *Id.*

If a majority of the affected property owners approve revitalization, the organizing committee must send the governing documents and the documents supporting revitalization to the Department of Economic Opportunity (DEO). If the DEO approves of the revitalization, the organizing committee must record the documents in the official records of the county where the property is located.²⁸

Effect of Proposed Changes

The bill amends s. 712.05(2), F.S., to permit a community owners' association to preserve its governing documents in addition to its covenants and restrictions.

The bill amends s. 720.404(3), F.S., relating to the requirements for reviving a declaration of covenants, to provide that the declaration provided to the DEO may include amendments to the governing documents provided in writing, electronically via the Internet, or in another electronic format, or on a website made accessible to the parcel owners. Current law does not specify the format in which an amendment must be provided to the parcel owners.

The bill amends s. 720.405, F.S., relating to the documents that the committee formed to revive a declaration of covenants must submit to the DEO and to association members, to permit the proposed revived declaration to be provided to members in writing or electronically. If the documents to obtain the consent of association members was provided on a website, the submission to the DEO must include a document with a hyperlink to access the website.

Amending Governing Documents- Condominiums and Homeowners' Associations

Present Situation

Sections 718.110(1)(a) and 720.306(1)(b), F.S., provide for the amending of a declaration of condominium and the governing documents of a homeowners' association, if the governing documents of a condominium or homeowners' association fail to provide a method of amendment. The declaration of condominium and the governing documents of an association may be amended upon the approval of the amendment by the owners of not less than two-thirds of the units or parcels. However, a declaration of condominium recorded after April 1, 1992, may not require that amendments be approved by more than four-fifths of the voting interests.

Unless otherwise provided in the declaration of condominium as originally recorded, an amendment may not materially change the configuration or size of any unit, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless all the unit owners and recorded lienholders join in the execution of the amendment and approve the amendment.²⁹

Unless otherwise provided in the declaration of condominium as originally recorded, an amendment to the declaration may not permit timeshare estates to be created in any unit of the

²⁸ Sections 720.406 and 720.407, F.S.

²⁹ Section 718.110(4), F.S.

condominium, unless the record owner of each unit of the condominium and all record lien owners join in the execution of the amendment.³⁰

Section 718.112(2)(h), F.S., provides a method for the amendment of an association's bylaws, if the association's bylaws fail to provide a method of amendment. The bylaws may be amended by the approval of not less than two-thirds of the voting interests.

Effect of Proposed Changes

The bill amends ss. 718.110(1)(a) and 720.306(1)(b), F.S., relating to condominium and homeowners' associations, to reduce the affirmative vote required to amend a declaration, articles of incorporation, or bylaws from two-thirds of the voting interests to a majority of the voting interests in the association. The affirmative vote required by the bill applies to all associations notwithstanding any provision to the contrary in the declaration, articles of incorporation, or bylaws of an association.

The bill also provides that the declaration, articles of incorporation, and bylaws may be amended by a lower voting percentage, if provided in the declaration, articles of incorporation, or bylaws of the condominium of homeowners' association.

The bill repeals the provision in s. 718.110(1)(a), F.S., prohibiting a declaration recorded after April 1, 1992, from requiring the approval of amendments by more than four-fifths of the voting interests.

The bill also amends s. 720.306(1)(g), F.S., to provide that the notices required under the provisions related to amending the governing documents must be mailed or delivered to the mailing address of the parcel in the official records of the association. The bill repeals the provision requiring such notice to be sent to the address on the property appraiser's website for the county where the property is located.

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.³¹ Insurance coverage for the association must insure the condominium property as originally installed and all alterations or additions made to the condominium property.³²

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.³³

³⁰ Section 718.110(8), F.S.

³¹ Section 718.111(11), F.S.

³² Section 718.111(11)(f), F.S.

³³ Section 718.111(11)(f)3., F.S.

A condominium unit owner's insurance policy must conform to s. 627.714, F.S.,³⁴ 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.³⁵

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.³⁶

Section 718.111(11)(j)1., provides that the subrogation³⁷ 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:

- 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.

The bill amends s. 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.³⁸ An improvement to a unit, limited common elements, or other portions of the condominium property is considered an approved improvement, if the recorded declaration of condominium, or recorded amendment to the declaration, authorizes the improvement and allows all or substantially all unit owners to proceed with specific planned improvements.

³⁴ Section 718.111(11)(g), F.S.

³⁵ Section 627.714(4), F.S.

³⁶ Section 718.111(11)(n), F.S.

³⁷ 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).

³⁸ Section 718.113(2), F.S., prohibits material alterations and substantial additions to association real property, units, or common elements.

Official Records – Condominium, Cooperative, and Homeowners’ Associations

Present Situation

Florida law specifies the official records that condominium, cooperative, and homeowners’ associations must maintain.³⁹ Generally, the official records must be maintained in Florida for at least seven years.⁴⁰ Certain of these records must be accessible to the members of an association.⁴¹ 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.⁴²

Effect of Proposed Changes

The bill amends ss. 718.111(12), 719.104(2), and 720.303(5), F.S., 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.⁴³

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, or limiting a unit owner’s right to inspect records to less than one eight-hour business day per month.⁴⁴

Regarding condominium, cooperative, and homeowners’ associations, the bill:

- Provides that records contained on the personal computers or electronic devices of a board member, officer, or committee member are not official records; and
- Provides that electronic correspondence between officers, directors, or committee members is not an official record unless the correspondence is also located on a computer maintained by the association and is not otherwise excluded.

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.⁴⁵

³⁹ See ss. 718.111(12), 719.104(2), 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

⁴⁰ See ss. 718.111(12)(b), 719.104(2)(b), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

⁴¹ See ss. 718.111(12)(a), 719.104(2)(a), and 720.303(5), F.S., , relating to condominium, cooperative, and homeowners’ associations, respectively.

⁴² See ss. 718.111(12)(c), 719.104(2)(c), and 720.303(5), F.S., , relating to condominium, cooperative, and homeowners’ associations, respectively.

⁴³ Sections 719.104(2)(a)9.d. and 720.303(4)(i), F.S., provide an identical provision for cooperative and homeowners’ associations, respectively.

⁴⁴ Section 720.303(5)(c), F.S., provides a comparable provision for homeowners’ associations.

⁴⁵ Sections 718.111(12)(a)12. and 719.104(2)(a)10., F.S., provide an identical provision for condominium and cooperative associations, respectively.

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.⁴⁶

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.⁴⁷

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.⁴⁸

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 the actual transfer costs in connection with the transfer of a unit, including the cost of background checks or screening performed by the association. The association must be authorized under its declaration to require approval of such a transfer. In addition to actual costs, the bill permits the association to charge any administrative or service costs that are authorized under the declaration, bylaws, or any contract to which the association is a party, if such administrative or service costs do not exceed \$100 per applicant. A husband and wife or parent and dependent child are considered one applicant.

The bill permits an association to charge a capital contribution, if the declaration allows for the charge.

⁴⁶ Section 718.112(d), F.S.

⁴⁷ S. 718.112(2)(i), F.S.

⁴⁸ *Id.*

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., 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.

Electronic Voting – Condominiums, Cooperatives, and Homeowners’ Associations

Present Situation

A condominium, cooperative, or homeowners’ association may elect to conduct elections and other membership votes through an online voting system. In order to conduct an online voting system, the board of directors must adopt a resolution to authorize online voting. The resolution must:⁴⁹

- Require a notice to members of the opportunity to vote through an online voting system;
- Establish reasonable procedures and deadlines for members to give written consent to online voting; and
- Establish reasonable procedures and deadlines for members to opt-out of online voting after having given consent.

An association must provide written notice of the meeting at which the resolution for online voting will be considered. The notice to owners must be mailed, delivered, or electronically transmitted to owners and conspicuously posted on association property at least 14 days before

⁴⁹ Sections 718.128(4), 719.129(4), and 720.317(4), F.S., relating to electronic voting requirements for condominium, cooperative, and homeowners’ associations, respectively.

the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.⁵⁰

Effect of Proposed Changes

The bill amends ss. 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.

The bill provides an additional method for association members to give consent to vote electronically by permitting the consent to be evidenced by the member's registering to utilize the online voting system. The bill permits an association to adopt reasonable procedures and deadlines for addressing motions brought at meetings.

The bill repeals the provisions that require the mailing, delivery, or electronic transmission of the written 14-day notice of the board meeting at which a resolution to authorize online voting will be considered. The bill retains the requirement that meeting notices must be posted conspicuously on association property at least 14 days before the meeting.

The bill also deletes the requirement for the person providing the notice of the meeting to execute an affidavit evidencing compliance with the 14-day notice requirement and requiring the filing of the affidavit with the official records of the association.

Enforcing Liens – Condominium and Homeowners' Associations

Present Situation

A condominium unit owner and a parcel owner in a homeowners' association are liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by the previous owners. Unpaid assessments may also become a lien on a unit or parcel. An association may file a lien on a unit or parcel by filing a claim of lien with the Clerk of Court in the county where the association is located.⁵¹

Condominium association liens are valid for one year after the claim of lien is recorded. The one-year period is automatically stayed if the association is prevented from taking action on the lien because of the unit owner or any other person claiming interest in the property filed a bankruptcy petition.⁵²

An association's lien on a unit in a cooperative association must also be enforced within one year of filing, unless the period is extended.⁵³

In a homeowners' association, an association's lien on a parcel must be enforced by the association within 90 days of filing, unless extended due to an automatic stay resulting from the

⁵⁰ *Id.*

⁵¹ Section 718.116(1), F.S.

⁵² Section 718.116(5)(b), F.S.

⁵³ Section 719.108(4)(b), F.S.

filing of a bankruptcy petition by the parcel owner or by any other person claiming an interest in the parcel.⁵⁴

Effect of Proposed Changes

The bill amends s. 718.116(5)(b), F.S., to delete the requirement that liens on a condominium unit expire one year after the condominium association records the claim of lien.

The bill also amends s. 720.3085(1)(b), F.S., to provide that the time period to enforce a lien placed on parcel in a homeowners' association is automatically stayed if the association is prevented from taking action on the lien because the parcel owner or any other person claiming interest in the parcel filed a bankruptcy petition.

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 \$1,000.⁵⁵ However, a fine imposed by homeowners' association may exceed \$1,000 in the aggregate if the association's governing documents authorize the fine.⁵⁶

A fine in a condominium or homeowners' association may not become a lien against the unit or parcel.⁵⁷

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.⁵⁸

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.⁵⁹

⁵⁴ Section 720.3085(1)(b), F.S.

⁵⁵ Sections 718.303(3), F.S. An identical provision in s. 719.303(3), F.S., applies to fines in cooperative associations.

⁵⁶ Section 720.305(2), F.S.

⁵⁷ 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.

⁵⁸ 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.

⁵⁹ *Id.*

Effect of Proposed Changes

The bill amends s. 718.303(3), F.S., to provide that a fine assessed by a condominium association may exceed \$1,000.

The bill amends ss. 718.303(3) and 720.305(2), F.S., to provide that fines in condominium and homeowners' associations, respectively, of \$1,000 or more are considered assessments and may be collected by filing a lien against the unit or parcel. In any action to recover a fine, the prevailing party is entitled to attorney fees and costs.

The bill also provides 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.

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. Alternatively, the notice may be mailed, hand delivered, or electronically transmitted at least seven days before the meeting.⁶⁰

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.⁶¹

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.⁶²

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.⁶³

⁶⁰ Section 720.303(2)(c), F.S. Sections 718.112(2) and 719.106(1), F.S., provide comparable notice requirements.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Sections 718.112(2)(c) and 719.106(1)(c), F.S., provide comparable notice requirements for meetings in condominium and cooperative associations, respectively.

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.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

SB 1362 amends s. 718.110(1)(a) and 720.306(1)(b), F.S., to revise the requirements for amending the governing documents of condominium and homeowners' associations, respectively, including reducing the affirmative vote required to amend a declaration, articles of incorporation, or bylaws from two-thirds of the voting interests to a majority of the voting interests in the association. The affirmative vote required by the bill applies to all associations notwithstanding any provision to the contrary in the declaration, articles of incorporation, or bylaws of the association. The bill repeals the provision in s. 718.110(1)(a), F.S., prohibiting a declaration recorded after April 1, 1992, from requiring the approval of amendments by more than four-fifths of the voting interests. These provisions of the bill may implicate constitutional concerns relating to impairment of contract.⁶⁴

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,⁶⁵ the Florida Supreme Court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated a statute, as an unconstitutional impairment of contract, which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court set forth several factors to be considered in balancing whether a state law has in fact operated as a substantial impairment of a contractual relationship, stating “[t]he severity of the impairment measures the height of the hurdle the state legislation must clear.”⁶⁶

⁶⁴ Article I, s. 10, U.S. Constitution and Art. I, s. 10, Fla. Const.

⁶⁵ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

⁶⁶ *Id.* at 779.

The court stated that if there is minimal alteration of contractual obligations, the inquiry may end at its first stage. Severe impairment pushes the inquiry into a careful examination of the nature and purpose of the state legislation. The factors to be considered are whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary, or whether it is severe, permanent, immediate, and retroactive.⁶⁷

In *United States Fidelity & Guaranty Co. v. Department of Insurance*,⁶⁸ the Florida Supreme Court followed *Pomponio* and said that the method requires a balancing of a person's interest to not have his or her contracts impaired, with the state's interest in exercising its legitimate police power. The court adopted the method used by the U.S. Supreme Court, in which the threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship."⁶⁹ The severity of the impairment increases the level of scrutiny.

Relevant to the extent of the impairment is whether the industry the complaining party had entered had been regulated in the past because if the party was already subject to regulation when the contract was entered, then it is understood that it would be subject to further legislation upon the same topic.⁷⁰ If the state regulation constitutes a substantial impairment, the state must have a significant and legitimate public purpose⁷¹ and any adjustment of the rights and responsibilities of the contracting parties must be appropriate to the public purpose justifying the legislation.⁷²

Furthermore, although retroactive application of a law may be constitutional in certain situations,⁷³ in 2011, the Florida Supreme Court unanimously held, in *Cohn v. The Grand Condominium Association, Inc.*,⁷⁴ that by changing the distribution of voting power between residential owners and other owners in a mixed-use condominium (i.e., a provision of an existing contract), the retroactive application of the law at issue in that case altered the rights of the unit owners in contravention of their contractual agreement and, thus, impaired the obligation of contract as applied.

⁶⁷ *Id.*

⁶⁸ *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984). See also *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 209 So.3d 1181, 1191-1192 (Fla. 2017).

⁶⁹ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).

⁷⁰ *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).

⁷¹ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).

⁷² *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1361.

⁷³ *Century Village, Inc. v. Wellington*, 361 So. 2d 128 (Fla. 1978).

⁷⁴ *Cohn*, 62 So. 3d. 1120, 1122 (Fla. 2011).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.714, 712.05, 718.110, 718.111, 718.112, 718.116, 718.128, 718.303, 719.104, 719.129, 720.303, 720.3033, 720.305, 720.306, 720.3085, 720.317, 720.404, 720.405, and 720.406.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.