

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 56

INTRODUCER: Rules Committee; Community Affairs Committee; and Senator Rodriguez

SUBJECT: Community Association Assessment Notices

DATE: March 11, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<b>Fav/CS</b>
3.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 56 provides additional notice requirements for condominium, cooperative, and homeowners' associations when collecting assessments.

For community associations that send out invoices for assessments or statements of the account to unit or parcel owners, the bill revises how an association may deliver and change its method of delivery:

- Requires any invoice for assessments or statement of account to be sent by first-class mail or electronic transmission to the owner's email address maintained in the association's official records.
- Requires the association, before changing the method of delivery for any invoice for assessment or statement of account, to deliver the written notice of such change to the owner.
- Requires the notice to be sent by first-class mail and delivered to the owner's address maintained in the association's official records at least 30 days before the delivery method is changed.
- Requires the owner to affirmatively acknowledge his or her understanding that the association has changed its method of delivering the invoice for assessment or statement of account to delivery by electronic transmission.
- Requires the owner's affirmative acknowledgment to be maintained by the association as an official record, but such record is not accessible to other owners as an official record.

The bill provides that community associations may not require the payment of attorney fees related to past due assessments without first delivering a written notice of late assessment to the unit or parcel owners. The written notice must specify the amount owed and allow the owner to pay past due assessments without paying additional attorney fees. The bill provides the form of this written notice. The bill authorizes the use of a sworn affidavit as the method for associations to provide a rebuttable presumption that the association complied with these notice and delivery requirements for the notice of late assessment.

The bill also increases the period of time a condominium or cooperative unit owner has to pay a monetary obligation after receiving an association's Notice of Intent to Record a Claim of Lien. This period is increased from 30 days to 45 days. The bill revises the timeframe for condominium and cooperative unit owners to conform to current law's 45-day payment period to parcel owners in a homeowners' association.

The bill provides an effective date of July 1, 2021.

## 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., for associations that are still under developer control.<sup>1</sup> The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.<sup>2</sup> After control of the condominium is transferred from the developer to the unit owners, the division has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to association records.<sup>3</sup> For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.<sup>4</sup>

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, associations, and association board members.<sup>5</sup>

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 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 take affirmative action to carry out the applicable chapter's purposes. Also, Florida law authorizes the division to petition a

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<sup>1</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 718.501(1), F.S.

<sup>4</sup> Section 719.501(1), F.S.

<sup>5</sup> Sections 718.501(1) and 719.501(1), F.S.

court to appoint a receiver or conservator to implement a court order or enforce an injunction or temporary restraining order. The division may also impose civil penalties.<sup>6</sup>

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 the arbitration of recall election disputes.<sup>7</sup>

### **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,<sup>8</sup> recordkeeping requirements, including which records are accessible to the association members,<sup>9</sup> and financial reporting.<sup>10</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

### **Condominium**

A condominium is a "form of ownership of real property created under ch. 718, F.S."<sup>11</sup> Condominium unit owners are in a unique legal position because they are exclusive owners of

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<sup>6</sup> *Id.*

<sup>7</sup> See s. 720.306(9)(c), F.S.

<sup>8</sup> See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.

<sup>9</sup> See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.

<sup>10</sup> See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners' associations, respectively.

<sup>11</sup> Section 718.103(11), F.S.

property within a community, joint owners of community common elements, and members of the condominium association.<sup>12</sup> For unit owners, membership in the association is an unalienable right and required condition of unit ownership.<sup>13</sup> A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.<sup>14</sup> 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 condominium association has broad authority to enact rules for the benefit of the community.<sup>15</sup>

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.<sup>16</sup> Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a "board of administration."<sup>17</sup> The board of administration comprises individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements, owned in undivided shares by unit owners.<sup>18</sup> In litigation, an association's board of administration is in charge of directing attorney actions.<sup>19</sup>

### **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 owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely because of

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<sup>12</sup> See s. 718.103, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 718.104(2), F.S.

<sup>15</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>16</sup> Section 718.303(3), F.S.

<sup>17</sup> Section 718.103(4), F.S.

<sup>18</sup> Section 718.103(2), F.S.

<sup>19</sup> Section 718.103(30), F.S.

ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.<sup>20</sup> 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.<sup>21</sup>

### **Homeowners' Associations**

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida and procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing such associations' ability to perform their functions.<sup>22</sup>

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."<sup>23</sup> Unless expressly 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.<sup>24</sup>

Homeowners' associations are administered by a board of directors whose members are elected.<sup>25</sup> The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the association's governing documents, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.<sup>26</sup> The officers and members of a homeowners' association have a fiduciary relationship with the members who the association serves.<sup>27</sup>

Homeowners associations mainly differ from condominiums in the type of property individually owned. Condominium unit owners essentially own airspace within a building, whereas homeowner association members own a parcel of real property or land.

### **Collection of Assessment Debts**

Members of community associations may receive a document, i.e., a statement of the account, designating the due date and amount of each assessment, the amount paid on the account, and the owner's balance owed to the association. Current law does not specify how the statement of account must be transmitted to members of the association, e.g., by regular mail or electronic transmission (email). If an association alters its method of delivering the statement of account,

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<sup>20</sup> See *Walters v. Agency for Health Care Administration*, 2019 WL 6691513, 44 Fla. L. Weekly D2898 (Fla. 3rd DCA 2019)

<sup>21</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>22</sup> See s. 720.302(1), F.S.

<sup>23</sup> Section 720.301(9), F.S.

<sup>24</sup> Section 720.302(5), F.S.

<sup>25</sup> See ss. 720.303 and 720.307, F.S.

<sup>26</sup> See ss. 720.301 and 720.303, F.S.

<sup>27</sup> Section 720.303(1), F.S.

current law does not provide a process to provide the unit or parcel owner notice that the method of delivering the statement of account has changed.

Community associations may file a lien on a unit or parcel for unpaid assessments, also known as maintenance amounts.<sup>28</sup> Before filing a claim of lien, the association must give the unit or parcel owner a Notice of Intent to Record a Claim of Lien that provides the unit or parcel owner with an opportunity to remit the past due amount before the association files a claim of a lien.<sup>29</sup> In a homeowners' association, the notice provides the parcel owner 45 days after receipt of the notice to pay the past due amount. Condominium and cooperative unit owners are provided 30 days after receipt of the notice to pay the past due amount. The past due amount includes the maintenance amount, any applicable late fee, interest, certified mail charges, and other costs, possibly including attorney fees.<sup>30</sup>

### **Official Records – Condominium, Cooperative, and Homeowners' Associations**

Florida law specifies the official records that condominium, cooperative, and homeowners' associations must maintain.<sup>31</sup> Generally, the official records must be maintained in Florida for at least seven years.<sup>32</sup> Certain records must be accessible to the members of an association.<sup>33</sup> 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.<sup>34</sup> Community associations must maintain a copy of each unit or parcel owner's statement of the account, designating each assessment's due date and amount, the amount paid on the account, and the balance due.<sup>35</sup>

### **III. Effect of Proposed Changes:**

The bill provides additional notice requirements for condominium, cooperative, and homeowners' associations relating to the collection of assessments.

For community associations that send out invoices for assessments or statements of the account to unit or parcel owners, the bill revises how an association may deliver and change its methods of delivery:

- Requires any invoice for assessments or statement of account to be sent by first-class mail, or electronic transmission to the owner's email address in the association's official records.

<sup>28</sup> See ss. 718.116(5)(a), 719.108(4), and 720.3085(1), F.S., for condominium, cooperative, and homeowners' associations, respectively.

<sup>29</sup> See ss. 718.121(4), 719.108(4), and 720.3085(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.

<sup>30</sup> *Id.*

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

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

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

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

<sup>35</sup> See ss. 718.111(12)(a)11.b., 719.104(2)(a)9.b., and 720.303(4)(j)2., F.S., relating to condominium, cooperative, and homeowners' associations, respectively.

- Requires the association, before changing the method of delivery for any invoice for assessments or statement of account, to deliver the written notice of such change to the owner.
- Requires the notice to be sent by first-class mail and delivered to the owner's address maintained in the association's official records at least 30 days before the delivery method is changed.
- Requires the owner to affirmatively acknowledge his or her understanding that the association has changed its method of delivering the invoice for assessments or statement of account to delivery by electronic transmission.
- Requires the owner's affirmative acknowledgment to be maintained by the association as an official record, but such record is not accessible to other unit or parcel owners as an official record.

The bill provides that community associations may not require the payment of attorney fees related to past due assessments without first delivering a written notice of late assessment to the unit or parcel owners, which specifies the amount owed and provides an opportunity to pay past due assessments without payment of additional attorney fees. It provides the form of the notice. The bill authorizes the use of a sworn affidavit as the method for associations to provide a rebuttable presumption that the association complied with these notice and delivery requirements for the notice of late assessment.

The bill also increases the period of time a condominium or cooperative unit owner has to pay a monetary obligation from 30 days to 45 days after receiving an association's Notice of Intent to Record a Claim of Lien. If the obligation is paid within this timeframe, the unit or parcel owner will avoid the associations' filing of a claim of lien. The bill revises the timeframe for condominium and cooperative unit owners to conform to current law's 45-day payment period for parcel owners in a homeowners' association.<sup>36</sup>

The bill provides an effective date of July 1, 2021.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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<sup>36</sup> See s. 720.3085(4), F.S.

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:

The bill may have a nominal fiscal impact on community associations. The additional notice and delivery requirements, restrictions on attorney fees, and increased notice period for a claim of lien may provide a net positive fiscal impact for community residents and a net negative fiscal impact for community associations.

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: 718.111, 718.116, 718.121, 719.104, 719.108, 720.303, and 720.3085.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS/CS by Rules on March 11, 2021:**

The committee substitute amends ss. 719.108(3)(c) and 720.3085(3)(d), F.S., to replace the term “subsection” with the term “paragraph.”

**CS by Community Affairs on March 3, 2021:**

The committee substitute makes the following revisions for all three types of community associations addressed by the bill (i.e., condominium, cooperative, and homeowners’):



- Adds "invoice for assessments" to clarify and further capture the types of documents sent by associations to property owners notifying them of a monetary obligation.
- Makes the requirements related to an association's delivery of a property owner's statement of account or invoice for assessment applicable only to associations that send out statements of account or invoices for assessment.
- Authorizes the use of an affidavit as the method for associations to provide a rebuttable presumption that the association complied with the bill's notice and delivery requirements for the notice of late assessment.

B. Amendments:

None.