

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 665 Homeowners' Association Rental Agreements

**SPONSOR(S):** McClure

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	15 Y, 0 N	Thompson	Anstead
2) Civil Justice & Property Rights Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

Chapter 720, F.S., also known as the "Homeowners' Association Act," is the chapter of law that governs homeowners' associations (HOAs) in Florida. The powers and duties of an HOA include the powers and duties provided in ch. 720, F.S., and in the HOA governing documents, including, but not limited to, amendments to those documents, which generally apply to all owners.

When an HOA adopts an amendment to its governing documents to restrict members from renting parcels, such restrictions apply to all parcel owners, regardless of when the title was acquired. However, when a condominium (condo) association adopts a rental restriction, the restriction applies only to condo unit owners who consent, or who acquire title after the restriction is imposed. As a result, this "grandfathering" provision allows certain condo unit owners to rent their units without the burden of rental restrictions that are imposed prospectively. This provision does not exist for HOAs.

The bill provides that in HOAs with more than 15 parcels, HOA amendments to governing documents restricting rental for six months or more only apply to:

- Owners who acquire title after the effective date of the governing document; or
- Owners who consent to such amendment.

However, the bill allows HOAs with more than 15 parcels to amend their governing documents to prohibit or regulate rental agreements for less than six months, and prohibit rentals more than three times a year, and have such amendments apply to all owners.

The bill provides for change of ownership criteria to be used to determine whether the HOA amendments to governing documents related to rentals for six months or more apply to certain owners.

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

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### **Community Associations**

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation, arbitration, and developer disclosure. The Division has regulatory authority over:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).<sup>1</sup>

##### **Homeowners' Associations (HOAs)**

Chapter 720, F.S., also known as the "Homeowners' Association Act," is the chapter of Florida law that governs certain types of HOAs in Florida. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.<sup>2</sup> The law provides requirements for notices of meetings,<sup>3</sup> recordkeeping, including which records are accessible to the members of the association,<sup>4</sup> and financial reporting.<sup>5</sup>

An HOA is defined as an association of residential property owners in which voting membership is:

- Made up of "parcel owners;"
- A mandatory condition of parcel ownership; and
- Authorized to impose assessments that, if unpaid, may become a lien on the parcel.<sup>6</sup>

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S.<sup>7</sup> Like a condominium or cooperative, an HOA is administered by an elected board of directors.<sup>8</sup> The powers and duties of an HOA include the powers and duties provided in ch. 720, F.S., and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.<sup>9</sup>

Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes,<sup>10</sup> but no state agency has direct oversight of HOAs. For HOAs, the Division's authority is limited to the arbitration of recall election disputes.<sup>11</sup>

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<sup>1</sup> Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes Complaints/Investigations*, [http://myfloridalicense.custhelp.com/app/answers/detail/a\\_id/2220/~division-of-florida-condominiums%2C-timeshares%2C-and-mobile-homes](http://myfloridalicense.custhelp.com/app/answers/detail/a_id/2220/~/division-of-florida-condominiums%2C-timeshares%2C-and-mobile-homes) (last visited Mar. 3, 2021).

<sup>2</sup> S. 720.302(1), F.S.

<sup>3</sup> S. 720.303(2), F.S.

<sup>4</sup> S. 720.303(4), F.S.

<sup>5</sup> S. 720.303(7), F.S.

<sup>6</sup> S. 720.301(9), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Ss. 720.303 and 720.307, F.S.

<sup>9</sup> Ss. 720.301 and 720.303, F.S.

<sup>10</sup> S. 720.306(9)(c), F.S.

<sup>11</sup> *See* s. 720.306(9)(c), F.S.

## HOA Rental Restrictions

Unless otherwise provided in the governing documents or required by law, the governing document of a HOA may be amended by the affirmative vote of two-thirds of the voting interests of the association.<sup>12</sup> **Amendments to governing documents generally apply to all owners in the HOA**, except that HOAs with 15 or fewer parcels may only enforce restrictions against a parcel owner that were in place at the time the owner acquired his or her parcel.<sup>13</sup>

Current law does not prevent an HOA from adopting an amendment to its governing documents to restrict members from renting parcels. If such a provision is adopted by an HOA, the restriction applies to all parcel owners **regardless of when they obtained title to their property** or whether they voted against the restriction.

## Condominium Association Rental Restrictions

Conversely, in a condominium association, certain rental restrictions **do not apply to all condo unit owners**. Specifically, a condo association rental restriction that alters the duration of the rental term, or specifies or limits the number of times a unit owner is entitled to rent their unit during a specified period, applies only to the following:

- Unit owners who consent to the amendment, and
- Unit owners who acquire title to their units after the effective date of the restriction.<sup>14</sup>

This type of provision does not exist for HOA parcel owners.

## Effect of the Bill

### HOA Rental Restrictions

The bill provides that any HOA governing document, or amendment to a governing document, enacted after July 1, 2021, in an HOA with more than 15 parcels, that prohibits or regulates rental agreements for rentals of six months or more, applies only to:

- HOA parcel owners who acquire title to the parcel after the effective date of the governing document or amendment; or
- HOA parcel owners who consent, individually or through a representative, to the governing document or amendment.

The bill allows HOAs with more than 15 parcels, to amend their governing documents to prohibit or regulate rental agreements for a term of less than six months. Such amendments apply to all parcel owners.

The bill allows HOAs with more than 15 parcels, to prohibit the rental of a parcel for more than three times in a calendar year. Such amendments apply to all parcel owners.

## Change of Ownership

The bill specifies change of ownership criteria for purposes of determining whether the HOA amendments to governing documents that prohibit rentals for six months or more apply to certain owners.

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<sup>12</sup> S. 720.306(1), F.S.

<sup>13</sup> S. 720.303(1), F.S.

<sup>14</sup> S. 718.110(13), F.S.

The bill provides that a change of ownership **does occur**, with respect to a parcel owner that is a business entity, when each person that owned an interest in the entity at the time of the enactment of the amendment or rule conveys its interest in the business entity to an unaffiliated party.

The bill provides that a change of ownership **does not occur**, with respect to a parcel owner that is a business entity, when a parcel owner conveys the parcel to an affiliated entity or when beneficial ownership of the parcel does not change.

The bill defines “affiliated entity” as an entity that:

- Controls, is controlled by, or is under common control with the parcel owner; or
- Becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests.

For a conveyance to be recognized as one made to an affiliated entity, the bill requires the entity to furnish to the HOA a document certifying that these provisions apply, along with any organizational documents for the parcel owner and the affiliated entity which support the representations in the certificate, as requested by the HOA.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

**Section 2:** Provides an effective date of July 1, 2021.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill appears to ensure that HOA parcel owners who acquire title prior to the HOA adopting long term rental restrictions, would not be subject to the restriction unless they consent.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to effect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 50-55 regarding a change of ownership may need to be amended to clarify what was intended when it specifies that a change of ownership does occur when "each person" that owned an interest in the entity at the time of the enactment of the amendment or rule conveys its interest in the business entity to an unaffiliated party. Does this mean a change of ownership occurs when "any" person (on an individual basis) who owned an interest conveys its interest, or must "all" persons who owned an interest convey their interest?

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A