

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 Community Affairs

BILL: SB 872

INTRODUCER: Senator Rodrigues

SUBJECT: Homeowners' Associations

DATE: March 18, 2021

REVISED: _____

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

I. Summary:

SB 872 provides that any governing document or an amendment to a governing document of a homeowners' association enacted after July 1, 2021 prohibiting rentals or regulating rental rights applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment or who consents, individually or through a representative, to the governing document or amendment.

However, the bill permits an association to prohibit or regulate rentals for less than six months or to prohibit rentals more than three times in a calendar year. The association may apply the prohibition or regulation to all parcel owners, regardless of when the parcel owner acquired title to their parcel or whether they consent to the amendment.

The bill exempts homeowners' associations with 15 or fewer parcel owners from these provisions.

Under the bill, a change of ownership affecting rental rights does not occur when a parcel owner conveys the parcel to an affiliated entity or when a beneficial ownership of the parcel does not change. The term "affiliated entity" is defined by the bill to mean an entity which controls, is controlled by, is under common control with the parcel owner, or becomes a parent or successor entity through a transfer, merger, consolidation, public offering, reorganization, dissolution of sale of stock, or transfer of membership partnership interests.

For a conveyance to be recognized as being made to an affiliated entity, the entity must give the homeowners' association a document certifying that the exception applies and, if requested by the association, any organizational documents for the parcel owner and the affiliated entity supporting the representations in the certificate.

The bill takes effect on July 1, 2021.

II. Present Situation:

Condominium

A condominium is a “form of ownership of real property created under ch. 718, F.S.”¹ Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements and members of the condominium association.² For unit owners, membership in the association is an unalienable right and required condition of unit ownership.³ A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.⁴ 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.⁵

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.⁶ 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.”⁷ The board of administrators is comprised of 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 which are owned in undivided shares by unit owners.⁸ In litigation, an association's board of directors is in charge of directing attorney actions.⁹

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over condominiums.¹⁰

¹ Section 718.103(11), F.S.

² *See s. 718.103*, F.S.

³ *Id.*

⁴ Section 718.104(2), F.S.

⁵ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁶ Section 718.303(3), F.S.

⁷ Section 718.103(4), F.S.

⁸ Section 718.103(2), F.S.

⁹ Section 718.103(30), F.S.

¹⁰ *See s. 718.501*, F.S. *See infra*, the *Present Situation* for the proposed revisions to the division's authority set forth in s. 718.501, F.S.

Rental Rights

Homeowners' associations may amend their governing documents. Section 720.306(1)(b), F.S., requires that, unless otherwise provided in the governing documents or required by law, the governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. The association is required to provide copies of the amendment to the members within 30 days after recording an amendment to the governing documents. If a copy of the proposed amendment is provided to the members before they vote on the amendment, and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted.¹¹

A written notice must also be sent to certain mortgage holders or assignees to obtain consent or joinder for the proposed amendment.¹²

Current law does not prevent a homeowners' association from adopting an amendment to its governing documents to restrict members from renting parcels. If such a provision were adopted by an association, the restriction would apply to all parcel owners regardless of when they obtained title to their property or whether they voted against the restriction. This differs from current law relating to rental restrictions in condominiums. In a condominium, any restriction in the governing documents that prohibits the rental of units, alters the duration of the rental term, or specifies or limits the number of times a unit owner may rent a unit only applies to unit owners who consent to the amendment or acquire title to the unit after the restrictions' effective date.¹³

III. Effect of Proposed Changes:

The bill creates s. 720.306(1)(h), F.S., to provide that any governing document or amendment to a governing document of a homeowners' association enacted after July 1, 2021, prohibiting rentals or regulating rental rights applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment or who consents, individually or through a representative, to the governing document or amendment.

However, the bill permits an association to prohibit or regulate rentals for less than six months or to prohibit rentals more than three times in a calendar year. The association may apply the prohibition or regulation to all parcel owners, regardless of when the parcel owner acquired title to their parcel or whether they consent to the amendment.

The bill exempts homeowners' associations with 15 or fewer parcel owners from these provisions.¹⁴

¹¹ See s. 720.306(1)(b), F.S. The consent of mortgage holder and assignees is required for any mortgage recorded before July 1, 2013.

¹² See s. 720.306(1)(d), F.S. Any mortgage recorded after July 1, 2013, only requires the consent of a mortgage holder if the amendment adversely affects the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise materially affects the rights and interests of the mortgagees.

¹³ See s. 718.110(13), F.S.

¹⁴ Section 720.303(1), F.S., provides that an association with 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner.

Under the bill, a change of ownership affecting rental rights does not occur when a parcel owner conveys the parcel to an affiliated entity or when beneficial ownership¹⁵ of the parcel does not change.

The term “affiliated entity” is defined by the bill to mean an entity which controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity through a transfer, merger, consolidation, public offering, reorganization, dissolution of sale of stock, or transfer of membership partnership interests.

For a conveyance to be recognized as being made to an affiliated entity, the entity must give the homeowners’ association a document certifying that the exception applies, if requested by the association, and any organizational documents for the parcel owner and the affiliated entity supporting the representations in the certificate.

The bill takes effect on July 1, 2021.

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:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁵ A beneficial interest is defined as “[a] right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property.” BLACK’S LAW DICTIONARY, 11th ed. 2019, *available* on Westlaw.com (last visited Mar. 12, 2021).

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 section 720.306 of the Florida Statutes.

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.