

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 Regulated Industries

BILL: SB 394

INTRODUCER: Senator Rodriguez

SUBJECT: Residential Associations

DATE: January 31, 2022

REVISED: _____

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

I. Summary:

SB 394 revises the post-election certification for condominium, cooperative, and homeowners' association board members. The provisions of the bill apply to homeowners' associations with at least 10 units. Under the bill a board member for these associations must certify by affidavit that he or she has read the declaration of condominium, articles of incorporation, cooperative proprietary lease, homeowners' association's covenants, bylaws, and current written policies, as applicable, and must complete an education curriculum administered by an education provider approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation (DBPR) within one year before, or 90 days after, the election or appointment.

Under current law, a board member must certify in writing, as opposed to "by affidavit" as required in the bill, that he or she has read the applicable documents of the association and completed the approved education curriculum.

The bill has no fiscal impact on state government. See Section V.

The bill takes effect July 1, 2022.

II. Present Situation:

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,¹

¹ See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.

recordkeeping requirements, including which records are accessible to the members of the association,² and financial reporting.³ Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

Condominium Associations

A condominium is a “form of ownership of real property created under ch. 718, F.S.”⁴ 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.⁵ For unit owners, membership in the association is an unalienable right and required condition of unit ownership.⁶ A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.⁷ 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.⁸

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.⁹ 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.”¹⁰ The board of administration 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.¹¹ In litigation, an association's board of directors is in charge of directing attorney actions.¹²

The division has limited regulatory authority over condominiums.¹³

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

³ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners' associations, respectively.

⁴ Section 718.103(11), F.S.

⁵ See s. 718.103, F.S.

⁶ *Id.*

⁷ Section 718.104(2), F.S.

⁸ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁹ Section 718.303(3), F.S.

¹⁰ Section 718.103(4), F.S.

¹¹ Section 718.103(2), F.S.

¹² Section 718.103(30), F.S.

¹³ See s. 718.501, F.S.

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 by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.¹⁴ 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.¹⁵

The division has limited regulatory authority over cooperatives, including the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.¹⁶

Homeowners’ Associations

Chapter 720, F.S., 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.¹⁷

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.”¹⁸ 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.¹⁹

¹⁴ See *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019), review denied 2020 WL 3442763 (Fla. 2020).

¹⁵ See ss. 719.106(1)(g) and 719.107, F.S.

¹⁶ Section 719.501(1), F.S.

¹⁷ See s. 720.302(1), F.S.

¹⁸ Section 720.301(9), F.S.

¹⁹ Section 720.302(5), F.S.

Homeowners' associations are administered by a board of directors whose members are elected.²⁰ 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 amendments to these documents.²¹ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.²²

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.

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.²³

Division of Florida Condominiums, Timeshares, and Mobile Homes

The division 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.²⁴ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.²⁵ After control of the

²⁰ See ss. 720.303 and 720.307, F.S.

²¹ See ss. 720.301 and 720.303, F.S.

²² Section 720.303(1), F.S.

²³ See s. 720.306(9)(c), F.S.

²⁴ Sections 718.501(1) and 719.501(1), F.S.

²⁵ *Id.*

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.²⁶ For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.²⁷

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.²⁸

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 to take affirmative action to carry out the purpose of the applicable chapter. Also, Florida law authorizes the division to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.²⁹

For homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.³⁰

Post-Election Certification by Board Members

Within 90 days after being elected or appointed, a new board member for a condominium, cooperative, or homeowners' association must certify in writing to the secretary of the association that he or she:³¹

- Has read the declaration of condominium for all condominiums operated by the association and the declaration of condominium, articles of incorporation, cooperative proprietary lease,³² homeowners' association's covenants, bylaws, and current written policies, as applicable;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the

²⁶ Section 718.501(1), F.S.

²⁷ Section 719.501(1), F.S.

²⁸ Sections 718.501(1) and 719.501(1), F.S.

²⁹ *Id.*

³⁰ *See s. 720.306(9)(c)*, F.S.

³¹ Sections 718.112(2)(d)4.b., 719.106(1)(d)b., and 720.3033(1)(a), F.S., provide a post-election certification requirement for newly elected condominium, cooperative, and homeowners' association board members, respectively.

³² A newly elected member of the board of a cooperative association must also certify that they have read the "proprietary lease," which is an instrument that gives a shareholder in a cooperative association the right to occupy a particular dwelling unit. See Bankrate, *What is a Proprietary Lease?*, available at: <https://www.bankrate.com/glossary/p/proprietary-lease/> (last visited Jan. 26, 2022).

election or 90 days after the election or appointment.³³ The curriculum must be administered by a condominium education provider approved by the division.³⁴ A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.³⁵ If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a board director's election or the duration of the director's uninterrupted tenure, whichever is longer.³⁶ The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.³⁷

III. Effect of Proposed Changes:

The bill amends ss. 718.112(2)(d)4.b., 719.106(1)(d)b., and 720.3033(1)(a), F.S., to revise the post-election certification for condominium, cooperative, and homeowners' association board members; however, the provisions of the bill only apply to those homeowners' associations with at least 10 units. Under the bill, a board member for these associations must certify by affidavit that he or she has read the declaration of condominium, articles of incorporation, cooperative proprietary lease, homeowners' association's covenants, bylaws, and current written policies, as applicable, and complete a division-approved education curriculum within one year before, or 90 days after, the election or appointment.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³³ The division's Internet site provides a listing of approved educational providers for the certification of board members. See Department of Business and Professional Regulation, *Condominium & Cooperatives – Education*, at <http://www.myfloridalicense.com/dbpr/lsc/documents/ListofApprovedProviders.pdf> (last visited Jan. 26, 2022). This listing also includes training for Homeowners' Associations and some Mobile Home training.

³⁴ Sections 718.112(2)(d)4.b., 719.106(1)(d)b., and 720.3033(1)(a), F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

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:

Newly elected or appointed members of the board for a condominium, cooperative, or affected homeowners' associations may incur costs to complete a division-approved certification course. Many providers offer these courses for free.³⁸

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: 718.112, 719.106, and 720.3033.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

³⁸ See *supra*, note 33.

B. Amendments:

None.

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