

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 437 Property Owners' Right to Install, Display, and Store Items

SPONSOR(S): Judiciary Committee, Civil Justice Subcommittee, Buchanan and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1454

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 1 N, As CS	Jones	Jones
2) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N	Wright	Anstead
3) Judiciary Committee	14 Y, 6 N, As CS	Jones	Kramer

SUMMARY ANALYSIS

A condominium (“condo”) is a form of real property ownership created under ch. 718, F.S. Persons own condo units along with an undivided right of access to the condo’s common elements. A homeowners’ association (HOA) is a residential property owners association in which voting membership is made up of parcel owners with mandatory membership. An HOA may impose assessments that may become a lien on the parcel.

Under current Florida law, a condo unit owner may display one portable, removable U.S. flag in a respectful manner, and may also, notwithstanding any declaration rules or requirements, display multiple U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard flags on specified patriotic holidays.

Further, a homeowner may, regardless of any HOA covenants, restrictions, bylaws, rules, or requirements to the contrary, display one United States flag or official State of Florida flag; and one official POW-MIA flag or a flag representing a specified branch of the United States Armed Forces. A homeowner may also set up a flagpole no more than 20 feet high on his or her property, and display from that flagpole one United States flag or official State of Florida flag; and one POW-MIA flag or a flag representing a specified branch of the United States Armed Forces. An HOA may not include in its documents any clause preventing the display of a United States flag. A homeowner who is prevented from exercising the right to display a flag or set up a flagpole may bring a civil action to enjoin the enforcement of the offending HOA provision at issue.

CS/CS/HB 437 amends s. 720.304, F.S., to provide that notwithstanding any covenant, restriction, bylaw, rule, or requirement of an HOA, a homeowner may display up to two of the following flags in a respectful manner:

- The United States flag.
- The official flag of the State of Florida.
- A flag that represents the U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.
- A POW-MIA flag.
- A first responder flag.

The bill also:

- Provides that a homeowner may fly one United States flag and one flag from the list above from a freestanding flagpole.
- Provides that an HOA may not restrict parcel owners or their tenants from installing, displaying, or storing any items which are not visible from the parcel’s frontage or an adjacent parcel, regardless of any HOA covenants, restrictions, bylaws, rules, or requirements.
- Amends s. 718.113, F.S., to add Patriot Day (that is, September 11) to the list of days when a condominium unit owner may display armed forces flags.

The bill does not appear to have a fiscal impact on state or local governments and provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 certain regulated communities through board of director educational programs, complaint resolution, alternative dispute resolution, and developer disclosure. These regulated communities include:

- Condominium associations;
- Cooperative associations; and
- Homeowners' associations (limited to the arbitration of election and recall disputes).

Condominiums

A condominium (“condo”) is a form of real property ownership created under ch. 718, F.S. Persons own condo units along with an undivided right of access to the condo’s common elements.¹ A condo is created by recording a declaration of condominium, governing the relationship between condo unit owners and the condo association, in the public records of the county where the condo is located.² All unit owners are members of the condo association, and the association is responsible for common elements operation and maintenance.³

Section 718.113, F.S., confers various rights and responsibilities upon a condo unit owner and a condo board. One such right is the right of a condo unit owner to display one portable, removable U.S. flag in a respectful manner.⁴ Moreover, the unit owner may, notwithstanding any declaration rules or requirements, display multiple U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard flags on the following holidays:

- Armed Forces Day.
- Memorial Day.
- Flag Day.
- Independence Day.
- Veterans Day.

Homeowners’ Associations

A homeowners’ association (HOA) is a residential property owners association in which voting membership is made up of parcel owners, 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.⁵ Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. 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. 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, but no state agency has direct HOA oversight.

¹ S. 718.103(11), F.S.

² S. 718.104(2), F.S.

³ S. 718.103(2), F.S.

⁴ S. 718.113(4), F.S.

⁵ S. 720.301(9), F.S.

Under current Florida law, regardless of any HOA covenants, restrictions, bylaws, rules, or requirements to the contrary, a homeowner may:

- Display, in a respectful manner:
 - One portable, removable United States flag or official State of Florida flag; and
 - One portable, removable official POW-MIA flag or a flag representing the United States:
 - Army.
 - Navy.
 - Air Force.
 - Marine Corps.
 - Space Force.
 - Coast Guard.
- Set up a freestanding flagpole no more than 20 feet high on his or her real property, subject to enumerated restrictions, and display from that flagpole, in a respectful manner:
 - One portable, removable United States flag or official State of Florida flag; and
 - One portable, removable official POW-MIA flag or a flag representing the United States:
 - Army.
 - Navy.
 - Air Force.
 - Marine Corps.
 - Space Force.
 - Coast Guard.⁶

A homeowner who is prevented from exercising these rights to display a flag or set up a flagpole may bring a civil action and obtain a court order enjoining the enforcement of the offending HOA provision at issue.⁷

Further, s. 720.3075, F.S., provides that an HOA may not include in its documents any clause preventing the display of a United States flag.⁸

Effect of Proposed Changes

CS/CS/HB 437 amends s. 718.113, F.S., to add Patriot Day (that is, September 11) to the list of days when a condominium unit owner may, notwithstanding declaration rules or requirements, display armed forces flags.

The bill also amends s. 720.304, F.S., to provide that notwithstanding any covenant, restriction, bylaw, rule, or requirement of an HOA, a homeowner may display up to two of the following flags in a respectful manner:

- The United States flag.
- The official flag of the State of Florida.
- A flag that represents the U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.
- A POW-MIA flag.
- A first responder flag, which may incorporate the design of any other flag listed above, and which honors the services of any of the following:
 - Law enforcement officers.
 - Firefighters.
 - Paramedics or emergency medical technicians.
 - Correctional officers.
 - 911 public safety telecommunicators.

⁶ S. 720.304(2), F.S.

⁷ S. 720.304(3), F.S.

⁸ S. 720.3075(3), F.S.

- Advanced practice registered nurses, licensed practical nurses, or registered nurses.
- Persons participating in a statewide urban search and rescue program developed by the Division of Emergency Management.
- Federal law enforcement officers.

The bill also:

- Provides that a homeowner may fly one United States flag and one flag from the list above from a freestanding flagpole.
- Amends s. 720.3075, F.S., to provide that an HOA document may not prevent a homeowner from displaying up to two flags in a respectful manner as listed above.
- Provides that an HOA may not restrict parcel owners or their tenants from installing, displaying, or storing any items which are not visible from the parcel's frontage or an adjacent parcel, regardless of any HOA covenants, restrictions, bylaws, rules, or requirements. The bill specifies that such items include, but are not limited to:
 - Artificial turf;
 - Boats;
 - Flags; and
 - Recreational vehicles.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 718.113, F.S., relating to maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.

Section 2: Amends s. 720.304, F.S., relating to right of owners to peaceably assemble; display of flag; SLAPP suits prohibited.

Section 3: Creates s. 720.3045, F.S., relating to installation, display, and storage of items.

Section 4: Amends s. 720.3075, F.S., relating to prohibited clauses in association documents.

Section 5: Provides an effective date of July 1, 2023.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 20, 2023, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed language allowing the use of a first responder flag and inserted language allowing the use of a flag that utilizes the same emblems and proportions utilized by the American flag.

On April 11, 2023, the Judiciary Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the underlying bill in that it:

- Removed language allowing the use of a flag that utilizes the same emblems and proportions utilized by the American flag and re-inserted language allowing the use of a first responder flag.
- Provided that an HOA may not restrict parcel owners or their tenants from installing, displaying, or storing any items which are not visible from the parcel's frontage or an adjacent parcel, regardless of any HOA covenants, restrictions, bylaws, rules, or requirements.
- Added Patriot Day to the list of days when a condominium unit owner may, notwithstanding declaration rules or requirements, display armed forces flags.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.