

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 919 Homeowners' Associations

SPONSOR(S): Commerce Committee and Regulatory Reform & Economic Development Subcommittee, Porras and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1114

FINAL HOUSE FLOOR ACTION: 113 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 919 passed the House on April 26, 2023, as amended. The bill was amended in the Senate on May 2, 2023, and returned to the House. The House concurred in the Senate amendment and passed the bill on May 4, 2023.

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel. HOAs may levy fines against or suspend certain access rights of a parcel owner for failing to comply with the HOA's governing documents. In addition, Florida law requires officers and directors of an HOA to comply with certain requirements and may be removed from office under certain circumstances.

Related to HOA officers and directors, the bill:

- Provides that an officer or a director must be removed from office if charged with the following crimes:
 - Forgery of a ballot envelope or voting certificate used in a homeowners' association election.
 - Theft or embezzlement of funds of an HOA.
 - Destruction or refusing to allow inspection of certain HOA records in furtherance of any crime.
 - Obstruction of justice.
- Provides criminal penalties for certain actions of fraudulent voting activities.
- Provides liability for monetary damages for accepting kickbacks.
- Provides additional requirements for disclosing officer or director conflicts of interest.

Related to HOA fines and suspensions, the bill:

- Requires the HOA to send notification a fine or suspension to a homeowner electronically or to an alternative address if so designated.
- Requires, if a violation is found, that the proposed fine or suspension be approved by the committee by a majority vote.
- Allows a member to cure a violation, as determined by the HOA.

Related to HOA funds, the bill:

- Requires that if an HOA collects a deposit from a member to pay for expenses that may be incurred as a result of construction on a member's parcel, or other reason for such deposit, such funds must not be comingled with any other HOA funds.
 - The member may request an accounting of such funds and the HOA must remit payment of unused funds within 30 days after completion.

Related to HOA official records, the bill requires an HOA to allow a member to keep an address different than the property address to be used for all required notices.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 12, 2023, ch. 2023-228, L.O.F., and will become effective on October 1, 2023.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0919z1.DOCX

DATE: 6/21/2023

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.¹

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, 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.²

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located. The powers and duties of an association include those set forth in the HOA Act and in the governing documents, except as expressly limited or restricted in the HOA Act.

After control of the HOA is obtained by members other than the developer, the HOA may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members. The HOA may defend actions in eminent domain or bring inverse condemnation actions. Any individual member or class of members may bring any action without participation by the HOA, but member does not have authority to act for the HOA by virtue of being a member.³

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.⁴

Powers and Duties of Officers and Directors – Current Situation

The officers and directors of an HOA have a fiduciary relationship to the members who are served by the HOA.⁵

A director or officer charged by information or indictment with felony theft or embezzlement involving the HOA's funds or property is removed from office. The board must fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer must be reinstated for any remainder of term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer.⁶

¹ S. 720.301(9), F.S.

² See generally ch. 720, F.S.

³ S. 720.303(1), F.S.

⁴ S. 720.311, F.S.

⁵ S. 720.303(1), F.S.

⁶ S. 720.3033(4), F.S.

An officer, director, or manager may not solicit, offer to accept, or accept any good or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the HOA.⁷ If the board finds that an officer or director has violated this condition, the board must immediately remove the officer or director from office. The vacancy must be filled according to law until the end of the director's term of office. However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than \$25 per individual or a service or good received in connection with trade fairs or education programs.⁸

If the HOA enters into a contract or other transaction with any of its directors or a corporation, firm, association that is not an affiliated HOA, or other entity in which a director is also a director or officer or is financially interested, the board must:⁹

- Comply with the requirements for conflicts of interest in a corporation not for profit.¹⁰
- Enter certain disclosure requirements into the written minutes of the meeting.
- Approve the contract or other transaction by an affirmative vote of two-thirds of the directors present.
- At the next regular or special meeting of the members, disclose the existence of the contract or other transaction to the members. Upon motion of any member, the contract or transaction must be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the HOA is only liable for the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other penalty for such cancellation.

Powers and Duties of Officers and Directors – Effect of the Bill

In addition to current requirements, the bill provides that an officer or a director charged by information or indictment with one of the following crimes must be removed from office, and the vacancy must be filled as provided by the HOA Act until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first:

- Forgery of a ballot envelope or voting certificate used in a homeowners' association election under s. 831.01, F.S.
- Theft or embezzlement of funds of a homeowners' association under s. 812.014, F.S.
- Destruction of or the refusal to allow inspection or copying of an official record of a homeowners' association that is accessible to parcel owners within the time periods required by general law in furtherance of any crime as tampering with physical evidence under s. 918.13, F.S.
- Obstruction of justice under ch. 843, F.S.

If such a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any HOA and may not have access to the official records of any HOA, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

The bill provides that an officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his

⁷ However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than \$25 per individual or a service or good received in connection with trade fairs or education programs. S. 720.303(3), F.S.

⁸ S. 720.3033(3), F.S.

⁹ S. 720.3033(2), F.S.

¹⁰ A contract or transaction with a conflict of interest is not voidable if the relationship or interest is disclosed or known to the board; the board authorized, approved, or ratified it by vote or written consent; or the contract or transaction is fair and reasonable at the time it is authorized. Such contract or transaction must be authorized, approved, or ratified by a majority of the directors on the board who have no relationship or interest in such transaction. S. 617.0832, F.S.

or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the association is subject to monetary damages.

The bill requires directors and officers of an HOA who are appointed by the developer to disclose to the HOA their relationship to the developer each calendar year in which they serve as a director or an officer. A developer's appointment of an officer or director does not create a presumption that the officer or director has a conflict of interest with regard to the performance of his or her official duties.

The bill requires directors and officers of an HOA to disclose to the HOA any activity that may reasonably be construed to be a conflict of interest at least 14 days prior to voting on the subject of such conflict or entering into such contract. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior disclosure to the association:

- A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the HOA.
- A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability company, partnership, limited liability partnership, or other business entity that conducts business with the HOA or proposes to enter into a contract or other transaction with the HOA.

Criminal Violations for Fraudulent Voting Activities

The bill provides that the following actions relating to HOA elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:

- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This paragraph does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.
- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

Fines and Suspension – Current Situation

Owners, tenants, and guests must comply with an HOA's declaration, bylaws, and rules. HOAs may levy fines against or suspend the right of a parcel owner, occupant, or a guest of an owner or occupant, to use the common areas¹¹ or any other association property for failing to comply with any provision in the HOA's governing documents. A suspension for failing to comply with an HOA's declaration, bylaws, or rules may not be for an unreasonable amount of time.¹²

¹¹ This does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. S. 720.305(2)(a), F.S.

¹² S. 720.305, F.S.

No fine may exceed \$100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed \$1,000 in the aggregate. However, a fine may exceed \$1,000 if the HOA's governing documents authorize it. Fines may not become a lien on the property unless the fines exceed \$1,000.¹³

Before an HOA levies a fine or a suspension, it must give the person receiving the fine or suspension at least 14 days' notice of an opportunity for a hearing. A fine and suspension committee of at least three members selected by the board must hold a hearing to reject or approve the fine or suspension. Board directors, officers, and employees of the HOA and family of such people may not serve on the committee. The committee must approve the fine or suspension by majority vote otherwise the proposed fine or suspension may not be imposed.¹⁴

A fine is due five days after written notice of the approved fine is provided to the parcel owner, occupant, or guest. Written notice of the fine or suspension must be provided to the person by mail or hand delivery.¹⁵

If a member is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the HOA, the HOA may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities¹⁶ until it is paid in full.¹⁷

An HOA may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the HOA that is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or overdue to the HOA.¹⁸

The notice and hearing requirements for levying fines do not apply to a suspension imposed for delinquent payment.¹⁹

All suspensions imposed for delinquent payment of any fee, fine, or other monetary obligation due to the HOA must be approved at a properly noticed board meeting. Upon approval, the HOA must notify the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery.²⁰

Fines and Suspension – Effect of the Bill

The bill limits when an HOA may levy a fine to violations of the declaration, association's bylaws, or reasonable rules of the association.

The bill provides that a fine or suspension levied for a violation by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner at the designated mailing or e-mail address in the HOA's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The notice must include a description of the alleged violation, the specific action required to

¹³ S. 720.305(2), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ A suspension may not prohibit an owner or tenant of a parcel from having access a portion of common areas used to provide access or utility services to the parcel, or from having vehicular and pedestrian ingress to and egress from the parcel. S. 720.305(4), F.S.

¹⁷ S. 720.305(3), F.S.

¹⁸ S. 720.305(4), F.S.

¹⁹ S. 720.305(3), (4), F.S.

²⁰ S. 720.305(5), F.S.

cure such violation, and the date and location of the hearing. A parcel owner has the right to attend a hearing by telephone or other electronic means.

The bill requires the committee to provide written notice to the parcel owner at the designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, of the committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation after the hearing.

The bill requires, if a violation is found, that the proposed fine or suspension levied by the board is approved by the committee by a majority vote.

The bill requires the board to send written notice to the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery to the parcel owner's designated mailing or e-mail address in the association's official records for any suspension imposed for delinquent payment of any fee, fine, or other monetary obligation due to the HOA.

Official Records and Board Meeting Notices – Current Situation

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.²¹

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.²² The articles of incorporation establish the HOA's existence, basic structure, and governance.²³ The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.²⁴

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.²⁵ Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.²⁶

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:²⁷

- A copy of the HOA's governing documents:
 - declaration of covenants and each amendment,
 - bylaws and each amendment,
 - articles of incorporation and each amendment, and
 - current rules.
- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the HOA is obligated to maintain, repair, or replace.

²¹ S. 720.301(8), F.S.

²² Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), <https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/> (last visited Mar. 25, 2023).

²³ *Id.*

²⁴ *Id.*

²⁵ S. 720.306(1), F.S.

²⁶ *Id.*

²⁷ S. 720.303(4), F.S.

- The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.
- A **current roster** of all members and their mailing addresses and parcel identifications. The HOA must maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission must be removed from HOA records when consent to receive notice by electronic transmission is revoked. However, the HOA is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.
- All of the HOA's insurance policies, which must be retained for at least 7 years.
- A current copy of all contracts to which the HOA is a party, including, without limitation, any management agreement, lease, or other contract under which the HOA has any obligation or responsibility. Bids received by the HOA for work to be performed must also be considered official records and must be kept for a period of 1 year.
- The financial and accounting records of the HOA, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
 - Accurate, itemized, and detailed records of all receipts and expenditures.
 - A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
 - All tax returns, financial statements, and financial reports of the HOA.
 - Any other records that identify, measure, record, or communicate financial information.
- A copy of the disclosure summary.
- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.
- All other written records of the HOA which are related to the operation of the HOA.

The HOA bylaws must require the HOA to post all notices of board meetings in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency.²⁸

Official Records and Board Meeting Notices – Effect of the Bill

The bill amends what information must be kept as part of the **current roster** in the official records. The bill requires an HOA to keep a designated mailing address, which is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices.

The bill provides that the HOA must also maintain facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the HOA requesting that a different e-mail address be used for all required notices.

The bill requires all notices for board meetings to specifically identify agenda items for the meetings.

Commingling of HOA Funds – Current Situation

²⁸ S. 720.303(2)(c), F.S.

All HOA funds held by a developer must be maintained separately in the HOA's name. HOA reserve and operating funds must not be commingled prior to turnover except the HOA may jointly invest reserve funds if the funds are accounted for separately.²⁹

A developer in control of an HOA may not commingle any HOA funds with the developer's funds or with the funds of any other HOA or community association.³⁰

HOA funds may not be used by a developer to defend a civil or criminal action, administrative proceeding, or arbitration proceeding that has been filed against the developer or directors appointed to the HOA board by the developer, even when the subject of the action or proceeding concerns the operation of the developer-controlled HOA.³¹

Commingling of HOA Funds – Effect of the Bill

In addition to current requirements regarding commingling funds, the bill requires that if an HOA collects a deposit from a member to pay for expenses that may be incurred as a result of construction on a member's parcel, or other reason for such deposit, such funds must be maintained separately and may not be commingled with any other association funds. Upon completion of the member's construction project, or any other reason for such deposit, the member may request an accounting from the association of such funds that were deposited and the association must provide an accounting to the member within 7 days after the member's request. An association must remit payment of any and all unused funds to the member within 30 days after receiving notice that the member's construction project, or any other reason for which a deposit was collected, is complete.

The bill provides a short title, the "Homeowners' Associations Bill of Rights."

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:

²⁹ S. 720.303(8)(a), F.S.

³⁰ S. 720.303(8)(b), F.S.

³¹ S. 720.303(8)(c), F.S.

The bill may reduce fines paid by members to the HOA and provide greater fiscal responsibility of the officers and directors.

D. FISCAL COMMENTS:

None.