

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 7044

INTRODUCER: Rules Committee; Regulated Industries Committee; and Senator Bradley

SUBJECT: Homeowners' Associations

DATE: February 14, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Oxamendi</u>	<u>Imhof</u>		<b>RI Submitted as Comm. Bill/Fav</b>
1.	<u>Oxamendi</u>	<u>Twogood</u>	<u>RC</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 7044 relates to the governance of homeowners' associations and the practice of the community association managers who manage those communities. Regarding community association managers (CAMs) and CAM firms, the bill requires CAMs and CAM firms to:

- Attend in person at least one member meeting or board meeting of the homeowners' association annually;
- Provide to community association members certain information, including the contact person and contact information, and the hours of availability;
- Provide the community's members upon request a copy of the contract between the association and the CAM or CAM firm; and
- Complete at least five hours of continuing education that pertains specifically to homeowners' associations, three hours of which must relate to recordkeeping.

Regarding the official records of a homeowners' association, the bill requires homeowners' associations with 100 or more parcels to:

- Effective January 1, 2026, maintain a digital copy of specified official records for download on the association's website or through an application on a mobile device;
- Require that official records be accessible through a secure portal and the username and password be made available to parcel owners upon request;
- Ensure that the private information and records that are not allowed to be accessible to parcel owners are not posted on the website or application or are redacted; and
- Provide a copy of records or otherwise make the records available that are subpoenaed by a law enforcement agency within five days of receiving a subpoena.

The bill provides the following criminal penalties related to homeowners' associations, including matters related to the official records of the association:

- Third degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept anything or service of value or kickback;
- First degree misdemeanor for knowingly and intentionally defacing or destroying required accounting records or knowingly and intentionally failing to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members;
- Second degree misdemeanor for any director or member of the board or association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association with the intent of causing harm to the association or one or more of its members; and
- Third degree felony to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

The bill also expands the current criminal prohibitions against fraudulent voting activity to provide that a person who performs any of the following actions commits a misdemeanor of the first degree:

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

The bill provides that a person commits theft by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

Under the bill, any officer or director charged with a criminal violation under ch. 720, F.S., is deemed removed from office and a vacancy declared.

Regarding the budgeting, the bill requires homeowners' associations with 1,000 or more parcels to have audited financial statements, and prohibits associations from reducing the required type of financial statement (compiled, reviewed, or audited financial statements) for consecutive years.

The bill provides education requirements for the officers and directors of homeowners' associations to:

- Require a newly elected or appointed director to, within 90 days after being elected or appointed to the board, complete and submit a certificate of having satisfactorily completed the educational curriculum administered by a department-approved education provider.
- Provide that the certification of completion is valid up to four years.

- Require that the educational curriculum must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements.
- Require a director of an association that has:
  - Fewer than 2,500 parcels to complete at least four hours of continuing education annually.
  - 2,500 or more parcels must complete at least eight hours of continuing education annually.

Regarding the enforcement of homeowners' association covenants and rules, the bill requires associations or an architectural, construction improvement, or other similar committee of the association to:

- Uniformly apply and enforce the architectural and construction improvement standards against all parcel owners authorized by the association's governing documents; and
- Provide written notice to the parcel owner stating with specificity the rule or covenant on which the association or its committee relied upon when denying the request or application for the construction of a structure or other improvement on a parcel.

The bill allows members of a homeowners' association to consent to electronic voting by using an electronic means of consent. Current law requires the consent to electronic voting to be made in writing.

The bill takes effect July 1, 2024.

## II. Present Situation:

### 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.<sup>1</sup>

A "homeowners' association" is defined as a:<sup>2</sup>

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.

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.<sup>3</sup>

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

<sup>2</sup> Section 720.301(9), F.S.

<sup>3</sup> Section 720.302(5), F.S.

Homeowners' associations are administered by a board of directors that is elected by the members of the association.<sup>4</sup> 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.<sup>5</sup> The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>6</sup>

Unlike condominium 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.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.<sup>7</sup>

The governing documents of a homeowners' association are:<sup>8</sup>

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.

Section 720.301(3), F.S., defines a "community" as the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term "includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto."

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<sup>4</sup> See ss. 720.303 and 720.307, F.S.

<sup>5</sup> See ss. 720.301 and 720.303, F.S.

<sup>6</sup> Section 720.303(1), F.S.

<sup>7</sup> Section 720.306(9)(c), F.S.

<sup>8</sup> Section 720.301(8), F.S.

## **Other Relevant Topics**

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

### **III. Effect of Proposed Changes:**

#### **Community Association Managers**

##### *Present Situation*

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR or department) pursuant to part VIII of ch. 468, F.S.

Section 468.431(2), F.S., defines “community association management” to mean:

any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for persons who perform clerical or ministerial functions under the direct supervision and control of a licensed manager or who only perform the maintenance of a community association and do not assist in any of the management services.<sup>9</sup>

Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers (council). Five of the members must be licensed CAMs, one of whom must be a CAM for a timeshare. The other two must not be CAMs. Members are appointed to four-year terms by the Governor and confirmed by the Senate.<sup>10</sup>

To become licensed as a CAM, a person must apply to the department to take the licensure examination and submit to a background check. Upon determination that the applicant is of good moral character, the applicant must attend a department-approved in-person training prior to taking the examination.<sup>11</sup> Community association managers must successfully complete an exam and pay a fee to become licensed. They must also complete continuing education hours as approved by the council to maintain their licenses.<sup>12</sup>

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<sup>9</sup> Section 468.431(2), F.S.

<sup>10</sup> Section 468.4315(1), F.S.

<sup>11</sup> Section 468.433, F.S.

<sup>12</sup> Sections 468.4336 and 468.4337, F.S.

Section 468.4334, F.S., delineates the professional practice standards for CAMs and CAM firms, including the duty to “discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.”

In addition, if a CAM or CAM firm has a contract with a community association that has a building on the association’s property that is subject to s. 553.899, F.S., the CAM or firm must comply with that section as directed by the board.

A CAM or CAM firm may be disciplined, including a suspension or revocation of their license, or denial of a license renewal, for the grounds specified in s. 468.436, F.S., including contracting, on behalf of an association, with any entity in which the CAM or CAM firm has a financial interest that is not disclosed to the association.

### *Effect of Proposed Changes*

The bill amends s. 468.4334, F.S., to require CAMs and CAM firms to:

- Attend in person at least one member meeting or board meeting of the homeowners’ association annually;
- Provide to community association members:
  - The name and contact information for each CAM or representative of the CAM firm assigned to the community association.
  - The CAM’s or representative’s hours of availability.
  - A summary of the duties for which the CAM or representative is responsible.

The bill requires the CAM to post this information on the association’s website or make available through a mobile application. The CAM or CAM firm must update the community and its members within 14 business days after any change to such information.

Upon an association member’s request, the bill requires a CAM or CAM firm to provide the member a copy of the contract between the association and the CAM or CAM firm. In addition, the CAM or CAM firm must maintain the contract as an official record of the association.

The bill amends s. 468.4337, F.S., to require CAMs who provide services to a homeowners’ association to complete, every two years, at least five hours of continuing education that pertains specifically to homeowners’ associations, three hours of which must relate to recordkeeping.

## **Official Records – Homeowners’ Associations**

### *Present Situation*

Florida law specifies the official records that homeowners’ associations must maintain.<sup>13</sup> Generally, the official records must be maintained in Florida for at least seven years.<sup>14</sup> Certain types of these records must be accessible to the members of an association.<sup>15</sup> Additionally,

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<sup>13</sup> See s. 720.303(5), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.<sup>16</sup>

The official records that the association must make available to the members for inspection and copying include, in relevant part, a copy of the:<sup>17</sup>

- Bylaws of the association and of each amendment to the bylaws.
- Articles of incorporation of the association and of each amendment thereto.
- Declaration of covenants and a copy of each amendment thereto.
- Current rules of the homeowners' association.

### *Effect of Proposed Changes*

The bill amends ss. 720.303(4), F.S., to provide that homeowners' associations must maintain each of the required official records for at least seven years, unless the governing documents of the association require a longer period of time.

Effective January 1, 2025, the bill requires homeowners' associations with 100 or more parcels to have digital copies of the following official records available for download on a website or through an application on a mobile device:<sup>18</sup>

- The articles of incorporation of the association and each amendment thereto.
- The recorded bylaws of the association and each amendment thereto.
- The declaration of covenants and a copy of each amendment thereto.
- The current rules of the association.
- A list of all current executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year.
- The annual budget required by s. 720.303(6), F.S., and any proposed budget to be considered at the annual meeting.
- The financial report required by s. 720.303(7), F.S., and any monthly income or expense statement to be considered at a meeting.
- The association's current insurance policies.
- The certification of each director education required by s. 720.3033(1)(a), F.S.
- All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated homeowners' association or any other entity in which an association director is also a director or officer and financially interested.
- Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 720.3033(2), F.S.
- Notice of any meeting of members and the agenda for the meeting, as required by s. 720.306, F.S., no later than 14 days before the meeting. The notice must be posted in plain view on the homepage of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the homepage.

<sup>16</sup> *Id.*

<sup>17</sup> Section 720.303(4), F.S.

<sup>18</sup> Section 718.111(12)(g), F.S., requires condominium associations with 150 or more units to have comparable information available for download on a website or through an application on a mobile device.

The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

- Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 720.303(3), F.S., which must be posted no later than the date required for notice under s. 720.303(3), F.S.

The application or website must have a subpage or portal inaccessible to the general public, and be accessible only to parcel owners and association employees, and the association must provide a username and password, upon request.

The association must protect information that is not accessible to unit owners, including redacting protected or restricted information, if needed. The bill provides that the association is not liable for disclosing information that is protected or restricted unless the disclosure was made with a knowing and intentional disregard of the protected or restricted nature of the information.

The bill requires associations to adopt written policies governing the method or policy by which records are to be retained.

The bill amends s. 720.303(5), F.S., to provide the following additional criminal prohibitions and penalties for violations related to the official records:

- Second degree misdemeanor<sup>19</sup> for any director or member of the board or association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to the inspection and copying of official records of an association with the intent of causing harm to the association or one or more of its members;
- First degree misdemeanor<sup>20</sup> to knowingly and intentionally deface or destroy required accounting records or knowingly and intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members; and
- Third degree felony<sup>21</sup> to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

The bill provides that officers and directors charged with a criminal violation created in the bill are deemed removed from office and a vacancy declared.

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<sup>19</sup> Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

<sup>20</sup> Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

<sup>21</sup> Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

The bill provides that, if an association receives a subpoena for records from a law enforcement agency, the homeowners' association must provide a copy of such records or otherwise make the records available to a law enforcement agency within five business days after receipt of the subpoena. The bill requires homeowners' associations to assist a law enforcement agency in its investigation to the extent permissible by law.

### **Budgets and Financial Reporting– Homeowners' Associations**

#### ***Present Situation***

Every homeowners' association is required to prepare an annual budget that sets out the annual operating expenses. The budget must:<sup>22</sup>

- Reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year.
- Set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person.

The homeowners' association must provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the homeowners' association is responsible.<sup>23</sup> Depending on the association's governing documents, an association's budget may provide for reserve accounts.<sup>24</sup> Upon approval by the membership, the board of directors must include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter.<sup>25</sup>

Section 720.303(7), F.S., provides the financial reporting requirements for homeowners' associations. Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the governing board of the association must complete, or contract with a third party to complete, the financial report. Within 21 days after the financial report is completed by the board or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

The association must deliver the financial report, by mail or hand delivery, to each unit owner at the last address furnished to the association by the unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial is available upon request at no charge to the member.

The type of financial reporting that an association must perform differs based on the association's total annual revenue. From the least stringent to the most stringent, an association that has a total annual revenue of:

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<sup>22</sup> Section 720.303(6)(a), F.S.

<sup>23</sup> Section 720.303(6)(b), F.S.

<sup>24</sup> Section 720.303(6)(d), F.S.

<sup>25</sup> Section 720.303(6)(c)(1), F.S.

- At least \$150,000 but less than \$300,000 must prepare *compiled* financial statements.<sup>26</sup>
- At least \$300,000 but less than \$500,000 must prepare *reviewed* financial statements.<sup>27</sup>
- \$500,000 or more must prepare *audited* financial statements.<sup>28</sup>

An association may prepare a more or less stringent type of financial report if approved by vote of the majority of the voting interest of the association.<sup>29</sup>

### ***Effect of Proposed Changes***

The bill amends s. 720.303(7), F.S., to:

- Require associations with 1,000 or more parcels to have audited financial statements; and
- Prohibit associations from reducing the required type of financial statement (compiled, reviewed, or audited financial statements) for consecutive years.

### **Debit Cards – Homeowners’ Associations**

#### ***Present Situation***

Section 718.111(15)(a), F.S., prohibits persons from using a debit card issued in the name of, or billed directly to, a condominium association for any expense. Section 718.111(15)(b), F.S., provides that any person from using an association debit card for an unlawful expense may be prosecuted for credit card fraud under s. 718.61, F.S. Chapter 720, F.S., does not have a comparable prohibition for the use of debit cards in homeowners’ associations.

#### ***Effect of Proposed Changes***

The bill creates s. 720.303(13), F.S., to prohibit persons to use a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

Under the bill, a person commits theft<sup>30</sup> by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association. The bill defines the term “lawful obligation of the association” as

<sup>26</sup> A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant’s (CPA) assurance as to conformity with Generally Accepted Accounting Principles (GAAP). Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron’s Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron’s 2000).

<sup>27</sup> A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

<sup>28</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

<sup>29</sup> See s. 720.303(7)(c) and (d), F.S.

<sup>30</sup> Theft is generally punishable based upon the value of the property stolen. Petit theft is generally a second degree misdemeanor or first degree misdemeanor. Section 812.014(3)(a) and (b), F.S. Grand theft is generally a third degree felony, second degree felony, or first degree felony. Section 812.014(1)(a)-(c), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. *Id.*

an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.

Under the bill, a person who violates this prohibition is deemed removed from office and a vacancy declared.

### **Officer and Director Education – Homeowners’ Associations**

#### ***Present Situation***

Within 90 days after being elected or appointed to the board, each director must certify in writing to the secretary of the association that he or she:<sup>31</sup>

- Has read the association's declaration of covenants, articles of incorporation, bylaws, and current written rules and policies;
- 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.

Instead of such written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved education provider within one year before or 90 days after the date of election or appointment.<sup>32</sup>

The written certification or educational certificate is valid for the uninterrupted tenure of the director on the board. A director who does not timely file the written certification or educational certificate shall be suspended from the board until he or she complies with the requirement. The board may temporarily fill the vacancy during the period of suspension.<sup>33</sup>

The homeowners’ association must retain each director's written certification or educational certificate for inspection by the members for five years after the director's election. However, the failure to have the written certification or educational certificate on file does not affect the validity of any board action.<sup>34</sup>

#### ***Effect of Proposed Changes***

The bill amends s. 720.3033(1), F.S., to revise the postelection educational requirements for officers and directors of homeowners’ associations. The bill:

- Requires newly elected or appointed director to, within 90 days after being elected or appointed to the board, complete and submit a certificate of having satisfactorily completed the educational curriculum administered by a department-approved education provider.
- Provides that the certification of completion is valid up to four years.
- Requires a director to retake the department-approved initial education every four years.
- Requires that the educational curriculum must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements.

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<sup>31</sup> Section 720.3033(1)(a), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 720.3033(1)(b), F.S.

<sup>34</sup> Section 720.3033(1)(c), F.S.

In addition, the bill requires a director of an association that has:

- Fewer than 2,500 parcels to complete at least four hours of continuing education annually.
- 2,500 or more parcels to complete at least eight hours of continuing education annually.

The bill requires the department to adopt rules to implement and administer the educational curriculum and continuing education requirements in the bill.

### **Kickbacks and Other Prohibited Activities - Homeowners' Association**

#### ***Present Situation***

The officers and directors of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>35</sup>

#### **Kickbacks Prohibition**

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 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. If the board finds that an officer or director has violated this condition, the board must immediately remove the officer or director from office.<sup>36</sup>

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.<sup>37</sup>

#### **Removal from Office for Certain Violations**

Section 720.3033(4), F.S., requires a board to immediately remove from office any officer or director who is charged with:

- Forgery of a ballot envelope or voting certificate used in a homeowners' association election punishable as a felony crime as provided in s. 831.01, F.S.;<sup>38</sup>
- Felony theft or embezzlement involving association funds;
- Destruction of or 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 is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.; or
- Obstruction of justice.

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<sup>35</sup> Section 720.303(1), F.S.

<sup>36</sup> Section 720.303(3), F.S.

<sup>37</sup> Section 720.3033(3), F.S.

<sup>38</sup> Section 831.01, F.S., relates to the crime of forgery. A forgery violation is a felony of the third degree. Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

A vacancy must be filled as provided by s. 720.306(9), F.S., 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.<sup>39</sup>

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

### ***Effect of Proposed Changes***

The bill amends s. 720.3033(3), F.S., to provide that an officer, director, or manager of an association who knowingly solicits, offers to accept, or accepts kickback commits a third degree felony.<sup>40</sup> The bill defines the term “kickback” to mean any thing or service of value for which consideration has not been provided for his 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. If the board finds that an officer or director has violated this prohibition, the officer or director is deemed removed from office and a vacancy declared.

The bill also amends s. 720.3033(4), F.S., to require the removal from office and a vacancy declared if an officer or director is charged by information or indictment with any criminal violation under ch. 720, F.S.

## **Architectural Control – Homeowners’ Associations**

### ***Present Situation***

If the governing documents allow a homeowners’ association or its architectural, construction improvement, or other similar committee (committee) may:<sup>41</sup>

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

The association or its committee may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.<sup>42</sup>

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<sup>39</sup> Section 720.306(9), F.S., relates to elections and vacancies on a board. It also prohibits convicted felons, including persons who’ve been convicted in another jurisdiction which would be considered a felony crime in Florida, of serving on a board for at least five years as of the date the person seeks election to the board, unless their civil rights have been restored.

<sup>40</sup> Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>41</sup> Section 720.3035(1), F.S.

<sup>42</sup> Section 720.3035(2), F.S.

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may not be unreasonably infringed upon or impaired by the association or its committee. If the association or its committee unreasonably, knowingly, and willfully infringes upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney's fees.<sup>43</sup>

A homeowners' association or committee may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.<sup>44</sup>

### ***Effect of Proposed Changes***

The bill amends s. 720.3035, F.S., to require homeowners' associations and their committees to

- Uniformly apply and enforce the architectural and construction improvement standards against all parcel owners authorized by the association's governing documents.
- Provide written notice to the parcel owner stating with specificity the rule or covenant on which the association or its committee relied when denying the request or application for the construction of a structure or other improvement on a parcel.

### **Fraudulent Voting Activities**

#### ***Present Situation***

Section 720.3065, F.S., provides that each of the following actions relating to homeowners' association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:<sup>45</sup>

- 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 provision does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of

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<sup>43</sup> Section 720.3035(4), F.S.

<sup>44</sup> S. 720.3035(5), F.

<sup>45</sup> Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

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.

### ***Effect of Proposed Changes***

The bill amends s. 720.3065, F.S, revising the list of actions that may constitute fraudulent voting activity. Under the bill, a person who performs any of the following actions relating to homeowners' association elections commits a misdemeanor of the first degree:<sup>46</sup>

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

These additional criminal prohibitions do not apply to a licensed attorney giving legal advice to a client.

## **Electronic Voting – Condominiums**

### ***Present Situation***

Section 720.317, F.S., relating to electronic voting in homeowners' associations, allows homeowners' associations to conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, in writing, to online voting and the specified requirements are met, including:

- The association provides each unit owner with:
  - A method to authenticate the unit owner's identity to the online voting system;
  - A method to confirm, at least 14 days before the voting deadline, which the unit owner's electronic device can successfully communicate with the online voting system; and
  - A method that is consistent with the election and voting procedures in the association's bylaws.
- The association uses an online voting system that is:
  - Able to authenticate the unit owner's identity;
  - Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit;
  - Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote;
  - For elections of the board of directors, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner, if the association's bylaws provide for secret ballots; and

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<sup>46</sup> *Id.*

- Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

Association members who vote electronically may be counted as attending the meeting for the purpose of determining a quorum.<sup>47</sup> An association member may opt-out of his or her consent to vote electronically.<sup>48</sup>

***Effect of Proposed Changes***

The bill amends s. 720.317, F.S., to allow members of a homeowners' association to consent to electronic voting by using an electronic means of consent.

**Effective Date**

The bill takes effect July 1, 2024.

**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.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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<sup>47</sup> Section 720.317(3), F.S.

<sup>48</sup> Section 720.317(5), F.S.

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: 468.4334, 468.4337, 720.303, 720.3033, 720.3035, 720.3065, 720.3085, and 720.317.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

**CS by Rules on February 14, 2024:**

The committee substitute:

- Requires homeowners' associations with 100 or more parcels to have digital copies of official records available for download on a website or through an application on a mobile device.
- Specifies the documents that must be made available for download on a website or through an application on a mobile device.
- Removes duplicative provisions stating that a director or an officer who commits specified crimes is deemed removed from office and a vacancy declared. (The bill requires the removal from office of a director or an officer if charged by information or indictment for a criminal violation under ch. 720, F.S.)
- Defines the term "kickback."
- Deletes the requirement that associations with 2,500 or more members must use an independent certified public accountant to prepare the association's annual budget, and must retain an attorney to advise the association and its members on procedural matters relating to the annual budget and to foster communications between the board and the members of the association.
- Requires an association with 1,000 or more parcels to have audited financial statements.
- Prohibits an association from reducing the required type of financial statement (compiled, reviewed, or audited financial statements) for consecutive years.
- Bases the threshold for the minimum number of education hours required for directors on 2,500 parcels instead of 2,500 members.
- Allows members of a homeowners' association to consent to electronic voting by using an electronic means of consent.

B. Amendments:

None.

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

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