

Regulatory Reform Subcommittee

Monday, March 8, 2021
10:00 AM – 12:00 PM
Sumner Hall (404 HOB)

Meeting Packet

Chris Sprowls
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee
Regulatory Reform Subcommittee

Chris Sprowls
Speaker

Bob Rommel
Chair

AGENDA

Tuesday, March 8, 2021
Webster Hall (212 Knott)
1:00 PM – 3:00 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

HB 21 by *Rep. Andrade*
Construction Defects

HB 339 by *Rep. Robinson, W.*
Business Organizations

HB 615 by *Rep. Rodriguez*
Community Association Assessment Notices

HB 665 by *Rep. McClure*
Homeowners' Association Rental Agreements

HB 823 by *Rep. Mariano*
Alarm System Contractors

HB 855 by *Rep. Morales*
Barber Services

HB 6053 by *Rep. Yarborough*
Doorstep Waste Containers

HB 6073 by *Rep. LaMarca*
Individual Wine Containers

IV. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4870 Fax: (850) 410-0096

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Reform Subcommittee

Start Date and Time:	Monday, March 08, 2021 10:00 am
End Date and Time:	Monday, March 08, 2021 12:00 pm
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 21 Construction Defects by Andrade
HB 339 Business Organizations by Robinson, W.
HB 615 Community Association Assessment Notices by Rodriguez
HB 665 Homeowners' Association Rental Agreements by McClure
HB 823 Alarm System Contractors by Mariano
HB 855 Barber Services by Morales
HB 6053 Doorstep Waste Containers by Yarborough
HB 6073 Individual Wine Containers by LaMarca

This meeting will be live-streamed on https://thefloridachannel.org/. Persons who wish to attend must register at www.myfloridahouse.gov, at least three hours before the meeting, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning one hour before the start of the meeting. Audience seating will be socially distanced and will be available on a first-come, first-served basis. Registration closes three hours before the meeting starts.

NOTICE FINALIZED on 03/04/2021 4:03PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 21 Construction Defects
SPONSOR(S): Andrade and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 270

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	10 Y, 8 N	Mawn	Jones
2) Regulatory Reform Subcommittee		Brackett	Anstead
3) Judiciary Committee			

SUMMARY ANALYSIS

A "construction defect" is a deficiency in, or arising out of, the design, specifications, surveying, planning, supervision, or observation of construction, or the construction, repair, alteration, or remodeling of real property ("property"), and includes a Florida Building Code violation. A property owner, including a subsequent purchaser or a community association ("claimant"), may bring a civil action alleging a construction defect claim against the person responsible for the construction defect ("respondent") in a court of competent jurisdiction. A claimant must bring such an action within four years after project completion or, in the case of a latent defect, within ten years of certain specified events.

At least 60 days before a claimant may bring a construction defect claim in court, or at least 120 days before bringing such a claim if it involves an association representing more than 20 parcels, the claimant must serve written notice of the claim on the respondent. The respondent then has the right to inspect the allegedly defective property and serve a copy of the notice of claim on any person the respondent believes is responsible for the alleged defect ("secondary respondent"). The respondent must respond to the notice with a written settlement offer or a statement disputing the claim. A settlement offer may include an offer to repair the defect, provide monetary payment, or a combination of both. If the respondent disputes the claim, or makes a settlement offer but does not timely follow through, the claimant may file suit without further notice.

HB 21:

- Limits actionable violations of the Florida Building Code to material violations.
- Requires a claimant to attempt to resolve a construction defect claim or Florida Building Code violation claim under any applicable warranty before sending a notice of claim or commencing legal action.
- Increases the specificity of detail a claimant must provide in the notice of claim and requires the claimant to include photographs of the damage and repair estimates or expert reports.
- Requires a claimant to affirm in the notice of claim that he or she has personal knowledge of the alleged defect and acknowledge that he or she is aware of the penalties for perjury.
- Requires a claimant to personally sign the notice of claim under penalty of perjury.
- Mandates that the respondent serve a copy of the notice of claim on each person the respondent believes is responsible for the defect.
- Requires a prevailing claimant to notify any mortgage company with a security interest in the property of the claim's outcome and the defect's repair.

The bill may have a positive insignificant fiscal impact on state government. The bill does not have a fiscal impact on local governments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Building Code

The Florida Building Code is the statewide building code for all construction in the state. The Florida Building Commission (Commission), housed within the DBPR, implements the Florida Building Code. The Commission reviews the International Code Council's I-Codes and the National Electric Code every three years to determine if it needs to update the Florida Building Code.[1]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act," which provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code that must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[2] The Florida Building Code is adopted, updated, and interpreted by the Commission, and is enforced by local governments.[3]

The main purpose of the Florida Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[4] The Florida Building Code sets minimum standards for the design, construction, erection, alteration, modification, repair, and demolition of buildings, structures, and facilities in the state.

Construction and Electrical Contractors

The Legislature has determined that it is "necessary in the interest of the public health, safety, and welfare" to regulate the construction, electrical, and alarm system industry.[5]

Construction contractors are either certified by or registered with the Construction Industry Licensing Board (CILB). The CILB is housed in DBPR and consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB is responsible for licensing, regulating, and disciplining certified construction contractors. Electrical contractors and alarm system contractors are certified by or registered with the Electrical Contractors' Licensing Board (ECLB). The ECLB is also housed in DBPR consists of 11 members who are appointed by the Governor and confirmed by the Senate. The ECLB is responsible for licensing, regulating, and disciplining certified electrical and alarm system contractors.[6]

The CILB and the ECLB may take action[7] against a certified contractor if they find the contractor is guilty of violating the contractor's practice act. Violations include:[8]

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[1] S. 553.73(7), F.S.
[2] *See* s. 553.72(1), F.S.
[3] Ss. 553.72, & 553.73, F.S.
[4] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 9, 2021).
[5] s. 489.101, F.S.
[6] *See generally* Ch. 489, F.S.
[7] The CILB and the ECLB may place a contractor on probation, reprimand him or her, revoke or suspend the contractor's certificate or registration, or deny the issuance of a renewal certificate or registration. The CILB and the ECLB may also require financial restitution to a consumer for financial harm directly related to a violation, require continuing education, or assess costs associated with investigation and prosecution. Ss. 489.129(1), 489.533(1), F.S.
[8] Ss. 455.227(1)(k), 489.129(1)(o), and 489.533(1), F.S.

- Abandoning a construction project;
- Committing financial mismanagement that causes financial harm to a customer;
- Failing to perform any statutory or legal obligation placed upon a licensee;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor;
- Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting; or
- Proceeding on a job without obtaining applicable local building department permits and inspections.

In addition to the CILB or ECLB disciplining a contractor, any licensee responsible for a material Florida Building Code violation who failed to correct the violation within a reasonable time may be fined by a local jurisdiction at least $500 but no more than $5,000. A failure to pay the fine will result in a suspension of the licensee's ability to pull building permits.[9]

A "material violation" is a violation existing within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.[10]

Statutory Civil Actions

Any person damaged by a Florida Building Code violation has a civil cause of action against the culpable party.[11]

There is no cause of action against a party who did not know and had no reason to know of the violation if:

- The party obtained the required building permit;
- The party receive government approval of the plans;
- The construction project passed all required inspections; and
- There was no personal injury or damage to other property.[12]

However, this does not apply if the culpable party **knew or should have known** that the violation existed.[13]

Construction Defect Claims

A "construction defect" is a deficiency in, or arising out of, the design, specifications, surveying, planning, supervision, or observation of construction, or the construction, repair, alteration, or remodeling of real property[14] ("property") resulting from:

- Defective material, products, or components used in the construction or remodeling;
- A Florida Building Code violation;
- A failure of real property's design to meet the applicable professional standards of care at the time of governmental approval; or
- A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction at the time of construction.[15]

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[9] S. 553.781, F.S.
[10] *Id.*
[11] S. 553.84, F.S.
[12] *Id.*
[13] *Id.*
[14] "Real property" means land that is improved and the improvements thereon, including fixtures, manufactured housing, or mobile homes. S. 558.002(8), F.S.
[15] S. 558.002(5), F.S.

A property owner, including a subsequent purchaser or a community association[16] ("claimant"), may bring a civil action alleging a construction defect claim against the contractor, subcontractor, supplier, or design professional[17] responsible for the construction defect ("respondent") in a court of competent jurisdiction.[18] A claimant must bring such action within four years after project completion or, in the case of a latent defect,[19] within ten years after the date of the later of:

- Actual possession by the owner;
- The issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.[20]

Notice of Claim

Florida law requires a claimant to serve a written notice of claim on the respondent at least 60 days before bringing a construction defect claim in court, or at least 120 days before bringing such claim if it involves an association representing more than 20 parcels. The notice of claim must describe in reasonable detail the alleged defect's nature and, if known, the damage or loss caused by the defect.[21] The notice of claim must also identify the alleged defect's location with enough detail to allow the respondent to easily locate the defect.[22]

Within 10 days after service of the notice of claim, or within 30 days after service if the claim involves an association representing more than 20 parcels, the respondent may serve a copy of the notice of claim ("notice copy") to each contractor, subcontractor, supplier, or design professional the respondent reasonably believes is responsible for each defect specified in the notice ("secondary respondent") and must note therein the specific defect for which he or she believes each secondary respondent is responsible.[23]

Inspection and Testing

Within 30 days after service of the notice of claim, or within 50 days after service if the claim involves an association representing more than 20 parcels, the respondent has a right to perform a reasonable inspection of the property to assess each alleged defect and the extent of any necessary repairs or replacements.[24] The claimant must give the respondent reasonable access to the property during normal working hours, and the respondent must reasonably coordinate the timing and manner of the inspections to minimize the number of inspections.[25] Each secondary respondent is also entitled to inspect the property.[26]

If the respondent determines that destructive testing is necessary to reveal the alleged defect's nature and cause, the respondent must give the claimant written notice describing the destructive testing to be performed, the person chosen to do the testing, the estimated amount of time needed for testing and repairs, and the money offered for repair costs.[27] If the claimant objects to the person chosen to

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[16] "Community associations" are condominium, cooperative, homeowners', and mobile home park homeowners' associations. S. 558.002(2), F.S.
[17] A design professional employed by a business entity or an agent thereof is not individually liable for damages resulting from negligence occurring within the course and scope of a professional services contract under certain conditions. S. 558.0035, F.S.
[18] S. 558.004, F.S.
[19] A "latent defect" is a hidden or concealed defect that could not be discovered by reasonable and customary observation or inspection made with ordinary care. Blacks Law Dictionary 611 (6th ed. 1996).
[20] S. 95.11(3)(c), F.S.
[21] S. 558.004(1), F.S.
[22] *Id.*
[23] S. 558.004(3), F.S.
[24] S. 558.004(2), F.S.
[25] *Id.*
[26] S. 558.004(3), F.S.
[27] S. 558.004(2)(a) and (b), F.S.

perform the testing, the respondent must provide the claimant with a list of three qualified persons from which the claimant may choose one person to perform the testing.[28] Any destructive testing must be done at a mutually agreeable time, must not make the property uninhabitable, and does not give the party performing the destructive testing or associated repairs construction lien[29] rights unless the claimant personally contracts with such party.[30] Additionally, the claimant has a right to observe the destructive testing.[31] However, if the claimant refuses to allow reasonable destructive testing, the claimant loses the right to claim damages which could have been avoided or mitigated by the destructive testing.[32]

Disclosures

A claimant and a respondent must exchange, within 30 days after service of a written request, any design plans; specifications; photographs and videos of the alleged defect; expert reports describing the alleged defect; subcontracts; purchase orders for the allegedly-defective work or materials; and maintenance records and other documents related to the alleged defect's discovery, investigation, causation, and extent.[33] A party may assert any claim of privilege[34] recognized in state law with respect to a requested disclosure.[35]

Settlement Offers

Within 15 days after service of a notice copy, or within 30 days of service if the claim involves an association with more than 20 parcels, the secondary respondent must give the respondent a written reply.[36] Such reply must include a report, if any, of the scope of any property inspections conducted by the secondary respondent and the findings and results of such inspections.[37] Additionally, within 45 days of service of the notice of claim, or within 75 days of service if the claim involves an association representing more than 20 parcels, the respondent must give the claimant a written reply.[38] Such reply must include a written:

- Offer to remedy the alleged defect at no cost to the claimant, a detailed description of proposed repairs, and a timetable for repair completion;
- Offer to compromise and settle the claim by monetary payment;
- Offer to compromise and settle the claim by a combination of repairs and monetary payment that includes a detailed description of proposed repairs and a timetable;
- Statement that the respondent disputes the claim and will not remedy the alleged defect or settle the claim; or
- Statement that a monetary payment will be determined by the respondent's insurer within 30 days after insurer notification.[39]

A claimant who receives a timely settlement offer must accept or reject the offer by serving written notice within 45 days after receiving the offer.[40] However, a claimant may, without further notice, bring

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[28] S. 558.004(2)
[29] Under Part I of ch. 713, F.S., a contractor, subcontractor, material supplier, laborer, or professional (such as an architect or landscape artist) may claim a lien on a property on or for which such person performed work or provided materials even where such person does not have a direct contract with the property owner.
[30] S. 558.004(2)(d), (f), and (g), F.S.
[31] S. 558.004(2)(e), F.S.
[32] S. 558.004(2)(g), F.S.
[33] S. 558.004(15), F.S.
[34] A claim of privilege protects certain information from disclosure or discovery. The Florida Evidence Code recognizes certain privileges, including the lawyer-client privilege, the husband-wife privilege, and the psychotherapist-patient privilege. *See* ch. 90, F.S.
[35] *Id.*
[36] S. 558.004(4), F.S.
[37] *Id.*
[38] S. 558.004(5), F.S.
[39] S. 558.004(4) and (5), F.S.
[40] S. 558.004(7), F.S.

an action against the respondent if the respondent disputes the claim and will not remedy the alleged defect or settle the claim, or does not timely respond to the notice of claim.[41]

If the claimant timely and properly accepts a repair offer, the claimant must give the respondent reasonable access to the property during normal working hours to perform the repairs by the agreed-upon completion date.[42] If the respondent completes the repairs or makes payment within the agreed time and in the agreed manner, the claimant cannot bring an action for the claim.[43] However, a claimant may, without further notice, bring an action against the respondent if the claimant timely and properly accepted a repair or payment offer but the repairs or payment are not made within the agreed time and in the agreed manner.[44]

Opt-Out Provision

The notice and cure provisions of ch. 558, F.S., described above, do not apply to a construction defect claim if the claimant and respondent have agreed in writing to opt out of such provisions.[45] This means that, if a contract is silent, the parties to the contract must comply with the notice and cure provisions; however, a contract may, by its terms, expressly opt out of such provisions and may provide an alternative dispute resolution mechanism applicable to claims arising under the contract.

New Home Warranties

New home warranties guarantee the repair or replacement of certain elements of a newly-constructed home, if necessary, within a specified time. Builders often back new home warranties; however, builders sometimes purchase warranties from independent companies that assume responsibility for the claims, and homeowners may purchase additional coverage from third-party warranty companies.[46]

The duration of coverage offered under a new home warranty varies based on the type of element at issue. Most new home warranties cover workmanship and materials, such as drywall and paint, for one year after construction.[47] Coverage for elements such as air conditioning, plumbing, and electricity typically lasts for two years, and some new home warranties cover major structural defects making a home unsafe for up to ten years.[48] However, new home warranties typically do not cover expenses a homeowner incurs due to a construction defect or repair, such as temporary relocation costs, or superficial defects, such as small cracks in tile or cement.[49]

Generally, a new home warranty contract specifies how a claim must be made under the warranty. Many new home warranties require mediation[50] of disputed warranty claims, followed by mandatory binding arbitration[51] if mediation is unsuccessful.[52]

Notice to Mortgagee or Assignee

A mortgage is any conveyance, obligation conditioned or defeasible, bill of sale, or other instrument of writing conveying or selling property to secure the payment of money.[53] In Florida, a mortgage gives the

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[41] S. 558.004(6), F.S.
[42] S. 558.004(8), F.S.
[43] *Id.*
[44] *Id.*
[45] S. 558.005, F.S.
[46] Federal Trade Commission ("FTC"), *Warranties for Newly Built Homes*, https://www.consumer.ftc.gov/articles/0186-warranties-newly-built-homes (last visited Feb. 9, 2021).
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] Mediation is a process whereby a neutral third person helps the parties discuss and try to voluntarily resolve their dispute.
[51] Mandatory binding arbitration is a process whereby parties to a contract agree to submit their disputes to a third party instead of to the courts, and there are no appellate rights.
[52] FTC, *supra* note 35.
[53] S. 697.01(1), F.S.

mortgagee or its assignee a specific lien on the property described in the mortgage but does not convey legal title or the right of possession to the property to the mortgagee or its assignee.[54]

Some mortgage contracts require the mortgagor to notify the mortgagee if the property is damaged. Additionally, many payments on a property insurance claim are made out to both the mortgagor and the mortgagee, giving the mortgagee notice of property damage even where such notice is not required by contract. However, Florida law does not currently require a mortgagor to notify the mortgagee of any construction defects to the mortgaged property.

Effect of the Bill

Statutory Civil Actions

The bill limits a statutory civil action, pursuant to s. 553.84, F.S., based on a violation of ch. 553, F.S., or the Florida Building Code to only allow suits based on "material" violations. The bill defines "material violation" means a violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or a system.

The bill also requires any person bringing such claim to first submit a claim for the alleged violation under any applicable warranty and have such claim denied or an unsatisfactory remedy offered by the warranty provider within the time limits provided in the warranty.

Construction Defect Claims

Notice of Claim

The bill prohibits a claimant whose contract is subject to ch. 558, F.S., from filing a notice of claim and commencing litigation on a construction defect claim before first submitting a claim for the alleged defect under any applicable warranty and having such claim denied or an unsatisfactory remedy offered by the warranty provider within the time limits provided in the warranty.

The bill also provides that a notice of claim must:

- Describe the alleged defect and its location in specific (instead of "reasonable") detail.
- Include any repair estimates or expert reports the claimant obtained relating to the alleged defect and, if the alleged defect is visible, at least one photograph of such defect.
- Affirm the claimant has personal knowledge of the alleged defect.
- Acknowledge the claimant is aware of the penalties for perjury.[55]
- Be signed by the claimant directly below a statement declaring that, under penalty of perjury, the claimant has read the notice of claim and the facts alleged are true to the best of his or her knowledge or belief.

Further, the bill requires a respondent to serve a notice copy on any secondary respondent and provides that a person who willfully includes a false statement in the notice of claim commits perjury and is subject to punishment as provided by law.

Inspection and Testing

The bill expressly provides that a secondary respondent may perform a reasonable inspection of the property and that a respondent must reasonably coordinate the timing of any property inspections with

[54] S. 697.02, F.S.

[55] Perjury is a false statement made under oath. Perjury not in an official proceeding is a first degree misdemeanor punishable by up to one year in the county jail and a $1,000 fine. Ss. 775.082, 775.083, and 837.012, F.S.

the secondary respondents to minimize the number of inspections. The bill also expressly requires a claimant to give a secondary respondent reasonable access to the property for defect inspections.

Disclosures

The bill modifies what the claimant and the respondent must exchange upon written request prior to the filing of a construction defect claim to exclude photographs and expert reports already provided in the notice of claim, so that the claimant does not have to make such disclosures twice.

Notice to Mortgagee or Assignee

The bill provides that, if a construction defect claim results in a monetary settlement or judgment in the claimant's favor, and a mortgagee or assignee has a security interest in the real property related to the claim, the claimant must, within 90 days, send written notice to the mortgagee or assignee of:

- The defect's specific nature;
- The claim's outcome, including the amount of any monetary settlement reached or judgment awarded; and
- Whether the defect was repaired and a repair description or, if repairs have not begun, the anticipated repair start date.

If defect repairs are completed after the claimant sends such notice, the bill requires the claimant to supplement the notice within 30 days of repair completion.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 553.84, F.S., relating to statutory civil action.
Section 2: Amends s. 558.004, F.S., relating to notice and opportunity to repair.
Section 3: Creates s. 558.006, F.S., relating to notice to mortgagee or assignee.
Section 4: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have a positive insignificant impact on state government, as it may reduce the number of construction defect claims and statutory claims filed in the state court system.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce fraudulent construction defect claims and prevent costly litigation in cases where the builder is willing to repair the defect, resulting in savings for builders and contractors. However, the bill may increase costs to homeowners unable to bring civil actions and recover damages for "immaterial" Florida Building Code violations and who may, consequently, bear the cost of repairing any damage themselves.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."[56] In *Kluger v. White*, 281 So. 2d 1 (Fla. 1973), the Florida Supreme Court established a test to determine when the Legislature may restrict a judicial remedy. Where citizens have had a historical right of access to the courts, whether through statute or common law,[57] the Legislature can only eliminate a judicial remedy under two circumstances. First, if it asserts a valid public purpose, the Legislature may restrict access to the courts if it provides a reasonable alternative to litigation.[58] Second, if the Legislature finds that there is an overpowering public necessity and that there is no alternative method for meeting that necessity, it may restrict access to the courts.[59]

Section 553.84, F.S., created a statutory civil cause of action for certain violations of ch. 553, F.S., and the Florida Building Code. The bill limits actionable violations to only "material" violations. However, because s. 553.84, F.S., was not effective until 1974 – after the 1968 Florida Constitution's Declaration of Rights was adopted – there is no "historical right of access to the courts" in this area under *Kluger*; thus, the Legislature may restrict the right.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[56] Art. I, s. 21, Fla. Const.
[57] A historical right of access to the courts is a right provided by statutory law predating the adoption of the Florida Constitution's Declaration of Rights in 1968 or a right now part of the state's common law that existed in common law as of July 4, 1776. *See Kluger*, 281 So. 2d at 4.
[58] *Id.*
[59] *Id.*

A bill to be entitled

An act relating to construction defects; amending s. 553.84, F.S.; defining the term "material violation"; revising cause of action requirements for statutory civil actions relating to certain violations; providing requirements for bringing a cause of action; amending s. 558.004, F.S.; requiring that a claimant submit a construction defect claim to the warranty provider before serving a notice of claim; providing applicability; revising requirements for notices of claims; providing that a person who willfully includes a false statement in a notice of claim commits perjury; authorizing a person served with a copy of a notice of claim to perform a reasonable inspection of the property subject to the claim; requiring, instead of authorizing, a person served with a notice to serve a copy of the notice to specified persons under certain circumstances; creating s. 558.006, F.S.; requiring a claimant to notify a mortgagee or an assignee within a specified timeframe after a settlement or judgment of a construction defect claim; providing notice requirements; requiring a claimant to update the notice within a specified timeframe under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 553.84, Florida Statutes, is amended to read:

553.84 Statutory civil action.—

(1) For purposes of this section, the term "material violation" means a violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or a system.

(2) Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a material violation of this part or the Florida Building Code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation. ~~.~~ However, if the person or party obtains the required building permits and any local government or public agency with authority to enforce the Florida Building Code approves the plans, if the construction project passes all required inspections under the code, and if there is no personal injury or damage to property other than the property that is the subject of the permits, plans, and inspections, this section does not apply unless the person or party knew or should have known that the violation existed.

(3) A person or party may bring a cause of action under

this section only after the person or party has submitted a claim for the alleged material violation under an applicable warranty and the warranty provider denies the claim or offers a remedy that is unsatisfactory to the person or party within the time limits provided in the warranty.

Section 2. Subsections (1) through (4) and subsection (15) of section 558.004, Florida Statutes, are amended to read:

558.004 Notice and opportunity to repair.—

(1)(a) In actions brought alleging a construction defect, the claimant shall, at least 60 days before filing any action, or at least 120 days before filing an action involving an association representing more than 20 parcels, serve written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable, which notice shall refer to this chapter. If the construction defect claim arises from work performed under a contract, the ~~written~~ notice of claim must be served on the person with whom the claimant contracted. However, the notice of claim may be served only after the claimant properly submits a claim for the alleged construction defect under an applicable warranty and the warranty provider denies the claim or offers a remedy that is unsatisfactory to the claimant within the time limit provided in the warranty. This chapter provides a notice process for a construction defect claim that has been denied or not otherwise satisfied under an applicable warranty.

(b) The notice of claim must:

1. Describe in specific ~~reasonable~~ detail the nature of each alleged construction defect. ~~and~~

2. If the alleged construction defect or evidence thereof is visible, include at least one photograph of the alleged defect or evidence thereof, any repair estimates or expert reports obtained relating to the alleged defect, and a description of~~, if known,~~ the damage or loss resulting from the alleged defect, if known.

3. Based upon at least a visual inspection by the claimant or its agents, ~~the notice of claim must~~ identify the specific location of each alleged construction defect sufficiently to enable the responding parties to locate the alleged defect without undue burden. The claimant has no obligation to perform destructive or other testing for purposes of this notice.

4. Affirm that the claimant has personal knowledge of the alleged construction defect.

5. Acknowledge that the claimant is aware of the penalties for perjury imposed under chapter 837.

6. Be signed by the claimant and include the following statement directly above the claimant's signature line in 18-point uppercase and boldfaced type:

UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST

OF MY KNOWLEDGE AND BELIEF.

(c) A person who willfully includes a false statement in the notice of claim under this section commits perjury and, upon conviction, is subject to punishment as provided by law.

(d) ~~(c)~~ The claimant shall endeavor to serve the notice of claim within 15 days after discovery of an alleged construction defect, but the failure to serve notice of claim within 15 days does not bar the filing of an action, subject to s. 558.003. This subsection does not preclude a claimant from filing an action sooner than 60 days, or 120 days as applicable, after service of written notice as expressly provided in subsection (6), subsection (7), or subsection (8).

(e) ~~(d)~~ A notice of claim served under ~~pursuant to~~ this chapter shall not toll any statute of repose period under chapter 95.

(2) Within 30 days after service of the notice of claim, or within 50 days after service of the notice of claim involving an association representing more than 20 parcels, a ~~the~~ person served with the notice of claim under subsection (1), or a copy thereof under subsection (3), may ~~is entitled to~~ perform a reasonable inspection of the property or of each unit subject to the claim to assess each alleged construction defect. An association's right to access property for either maintenance or repair includes the authority to grant access for the

inspection. The claimant shall provide the person served with notice under subsection (1), or a copy thereof under subsection (3), and such person's contractors or agents reasonable access to the property during normal working hours to inspect the property to determine the nature and cause of each alleged construction defect and the nature and extent of any repairs or replacements necessary to remedy each defect. The person served with notice under subsection (1), or a copy thereof under subsection (3), shall reasonably coordinate the timing and manner of any and all inspections with the claimant to minimize the number of inspections. The inspection may include destructive testing by mutual agreement under the following reasonable terms and conditions:

(a) If the person served with notice under subsection (1) determines that destructive testing is necessary to determine the nature and cause of the alleged defects, the ~~such~~ person must ~~shall~~ notify the claimant in writing.

(b) The notice describes ~~shall describe~~ the destructive testing to be performed, the person selected to do the testing, the estimated ~~anticipated~~ damage and repairs to or restoration of the property resulting from the testing, the estimated amount of time necessary for the testing and to complete the repairs or restoration, and the financial responsibility offered for covering the costs of repairs or restoration.

(c) If the claimant promptly objects to the person

selected to perform the destructive testing, the person served with notice under subsection (1) must ~~shall~~ provide the claimant with a list of three qualified persons from which the claimant may select one such person to perform the testing. The person selected to perform the testing operates ~~shall operate~~ as an agent or subcontractor of the person served with notice under subsection (1) and shall communicate with, submit any reports to, and be solely responsible to the person served with notice.

(d) The testing must ~~shall~~ be done at a mutually agreeable time.

(e) The claimant or a representative of the claimant may be present to observe the destructive testing.

(f) The destructive testing may ~~shall~~ not render the property uninhabitable.

(g) There are ~~shall be~~ no construction lien rights under part I of chapter 713 for the destructive testing caused by a person served with notice under subsection (1) or for restoring the area destructively tested to the condition existing before ~~prior to~~ testing, except to the extent the owner contracts for the destructive testing or restoration.

If the claimant refuses to agree and thereafter permit reasonable destructive testing, the claimant has ~~shall have~~ no claim for damages which could have been avoided or mitigated had destructive testing been allowed when requested and had a

feasible remedy been promptly implemented.

(3) Within 10 days after service of the notice of claim, or within 30 days after service of the notice of claim involving an association representing more than 20 parcels, the person served with notice under subsection (1) must ~~may~~ serve a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional whom it reasonably believes is responsible for each defect specified in the notice of claim and shall note the specific defect for which it believes the particular contractor, subcontractor, supplier, or design professional is responsible. The notice described in this subsection may not be construed as an admission of any kind. Each such contractor, subcontractor, supplier, and design professional may inspect the property as provided in subsection (2).

(4) Within 15 days after service of a copy of the notice of claim under ~~pursuant to~~ subsection (3), or within 30 days after service of the copy of the notice of claim involving an association representing more than 20 parcels, the contractor, subcontractor, supplier, or design professional must serve a written response to the person who served a copy of the notice of claim. The written response must include a report, if any, of the scope of any inspection of the property and the findings and results of the inspection. The written response must include one or more of the offers or statements specified in paragraphs

(5)(a)-(e), as chosen by the responding contractor, subcontractor, supplier, or design professional, with all of the information required for that offer or statement.

(15) Upon request, the claimant and any person served with notice under ~~pursuant to~~ subsection (1) shall exchange, within 30 days after service of a written request that cites this subsection and includes~~, which request must cite this subsection and include~~ an offer to pay the reasonable costs of reproduction, any design plans, specifications, and as-built plans; videos and additional photographs ~~and videos~~ of the alleged construction defect identified in the notice of claim; expert reports not already provided which ~~that~~ describe any defect upon which the claim is made; subcontracts; purchase orders for the work that is claimed defective or any part of such materials; and maintenance records and other documents related to the discovery, investigation, causation, and extent of the alleged defect identified in the notice of claim and any resulting damages. A party may assert any claim of privilege recognized under the laws of the ~~this~~ state with respect to any of the disclosure obligations specified in this chapter. In the event of subsequent litigation, any party who fails ~~failed~~ to provide the requested materials is ~~shall be~~ subject to such sanctions as the court may impose for a discovery violation. Expert reports exchanged between the parties may not be used in any subsequent litigation for any purpose, unless the expert, or

a person affiliated with the expert, testifies as a witness or the report is used or relied upon by an expert who testifies on behalf of the party for whom the report was prepared.

Section 3. Section 558.006, Florida Statutes, is created to read:

558.006 Notice to mortgagee or assignee.—

(1) If a notice of claim alleging a construction defect under this chapter results in a monetary settlement or judgment in favor of the claimant, and a mortgagee or an assignee has a security interest in the real property subject to the claim, the claimant must, within 90 days after the resolution of the claim, notify the mortgagee or assignee, in writing, all of the following:

(a) The specific nature of the defect.

(b) The outcome of the claim, including the amount of any monetary settlement reached or judgment awarded.

(c) Whether the defect has been repaired and a description of any repairs made or, if repairs have not yet begun, the anticipated date on which the repairs will begin.

(2) If repairs relating to the defect are completed after the claimant notifies the mortgagee or assignee as required under subsection (1), the claimant must update the notice within 30 days after completion of the repairs.

Section 4. This act shall take effect July 1, 2021.

REGULATORY REFORM SUBCOMMITTEE

HB 21 by Rep. Andrade
Construction Defects

AMENDMENT SUMMARY
March 8, 2021

Amendment 1 by Rep. Andrade (strike-all):
The amendment:

- Provides that the construct defection alternative dispute resolution process provided in current law, **does not apply** unless the parties agree to **opt in** to the dispute resolution process.
- Changes the statutory standard for a cause of action based on a Building Code violation by removing the provision that allowed causes of action if the contractor or licensee knew or should have known of the violation.
- Clarifies that prior to bringing an action, if an applicable warranty exists then a person has to submit a construction defect claim under an applicable warranty prior to serving a notice of claim.
- Provides that a claimant does not have a cause of action for a construction defect, if the contractor offers to fix the repairs at no cost to the claimant within 90 days, and the claimant is satisfied with the repairs.
    - Allows a claimant to require the contractor to have an independent qualified third party make the repairs.
    - Allows a claimant to bring a cause of action if the claimant determines the repairs are unsatisfactory.
    - Tolls any statute of limitations, if the claimant accepts the contractor's offer.
- Provides that any applicable statute of limitations are tolled, if a claimant submits a construction defect claim under an existing applicable warranty.
- Requires a claimant to send a notice of claim alleging a construction defect and the resolution of the claim to a mortgagee or assignee within a certain time-period.

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Andrade offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 553.84, Florida Statutes, is amended to read:

553.84 Statutory civil action.—

(1) For purposes of this section, the term "material violation" means a violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in personal injury to a person or significant damage to the performance of a building or its system.

(2) Notwithstanding any other remedies available, any

person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a material violation of this part or the Florida Building Code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation.~~.~~ However, if the person or party obtains the required building permits and any local government or public agency with authority to enforce the Florida Building Code approves the plans, if the construction project passes all required inspections under the code, and if there is no personal injury or damage to property other than the property that is the subject of the permits, plans, and inspections, this section does not apply unless the violation resulted in significant damage to the property that is the subject of the permits, plans, and inspections or may reasonably result in personal injury to a person or significant damage to the performance of a building or its system ~~the person or party knew or should have known that the violation existed~~.

(3) If a defect is covered under an existing applicable warranty, a person or party may bring a cause of action under this section only after the person or party has submitted a written notice of claim for the alleged material violation under an existing applicable warranty and the warranty provider denies the claim or offers a remedy that is unsatisfactory to the person or party within the time limits provided in the warranty.

Section 2. Section 558.001, Florida Statutes, is amended

to read:

558.001 Legislative findings and declaration.—The Legislature finds that it is beneficial to have a statutorily defined ~~an~~ alternative method to resolve construction disputes that would reduce the need for litigation as well as protect the rights of property owners. An effective alternative dispute resolution mechanism in certain construction defect matters should involve the claimant filing a notice of claim with the contractor, subcontractor, supplier, or design professional that the claimant asserts is responsible for the defect, and should provide the contractor, subcontractor, supplier, or design professional, and the insurer of the contractor, subcontractor, supplier, or design professional, with an opportunity to resolve the claim through confidential settlement negotiations without resort to further legal process. If an agreement to provide construction services does not incorporate the dispute resolution mechanism provided in this chapter, or if the parties do not voluntarily agree to participate in the dispute resolution process, the Legislature finds that the right of contracting parties to contemplate and provide for the method of dispute resolution they deem to be most beneficial to their own unique circumstances should not be burdened by the statutorily defined dispute resolution mechanism provided in this chapter.

Section 3. Section 558.003, Florida Statutes, is amended to read:

558.003 Action; applicability and compliance.—

(1) Unless a party has entered into an agreement which affirmatively incorporates the dispute resolution mechanism provided in this chapter, or a party has voluntarily agreed to participate in the dispute resolution mechanism provided in this chapter, the provisions of s. 558.004 and s. 558.005 do not apply to a cause of action brought by or against a party.

(2) A claimant may not file an action subject to this chapter without first complying with the requirements of this chapter. If a claimant files an action subject to this chapter alleging a construction defect without first complying with the requirements of this chapter, on timely motion by a party to the action the court shall stay the action, without prejudice, and the action may not proceed until the claimant has complied with such requirements. The notice requirement is not intended to interfere with an owner's ability to complete a project that has not been substantially completed. The notice is not required for a project that has not reached the stage of completion of the building or improvement.

Section 4. Subsections (6) through (15) of section 558.004, Florida statutes, are renumbered (7) through (16), respectively, subsections (1) through (4) and new subsection (11) and (16) of that section are amended, subsection (6) is added, to read:

558.004 Notice and opportunity to repair.—

(1)(a) In actions brought alleging a construction defect, the claimant shall, at least 60 days before filing any action, or at least 120 days before filing an action involving an association representing more than 20 parcels, serve written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable, which notice shall refer to this chapter. If the construction defect claim arises from work performed under a contract, the ~~written~~ notice of claim must be served on the person with whom the claimant contracted. However, if a defect is covered under an existing applicable warranty, the notice of claim may be served only after the claimant properly submits a claim for the alleged construction defect under an existing applicable warranty and the warranty provider denies the claim or offers a remedy that is unsatisfactory to the claimant within the time limit provided in the warranty.

(b) The notice of claim must:

1. Describe in specific ~~reasonable~~ detail the nature of each alleged construction defect. ~~and~~

2. If the alleged construction defect or evidence thereof is visible, include at least one photograph of the alleged defect or evidence thereof, any repair estimates or expert reports obtained relating to the alleged defect, and a description of~~, if known,~~ the damage or loss resulting from the alleged defect, if known.

3. Based upon at least a visual inspection by the claimant

or its agents, ~~the notice of claim must~~ identify the specific location of each alleged construction defect sufficiently to enable the responding parties to locate the alleged defect without undue burden. The claimant has no obligation to perform destructive or other testing for purposes of this notice.

4. Affirm that the claimant has personal knowledge of the alleged construction defect.

5. Acknowledge that the claimant is aware of the penalties for perjury imposed under chapter 837.

6. Be signed by the claimant and include the following statement directly above the claimant's signature line in 18-point uppercase and boldfaced type:

UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

(c) A person who willfully includes a false statement in the notice of claim under this section commits perjury and, upon conviction, is subject to punishment as provided by law.

(d) ~~(c)~~ The claimant shall endeavor to serve the notice of claim within 15 days after discovery of an alleged construction defect, but the failure to serve notice of claim within 15 days does not bar the filing of an action, subject to s. 558.003. This subsection does not preclude a claimant from filing an

action sooner than 60 days, or 120 days as applicable, after service of written notice as expressly provided in subsection (7) ~~(6)~~, subsection (8) ~~(7)~~, or subsection (9) ~~(8)~~.

(e)~~(d)~~ A notice of claim served under ~~pursuant to~~ this chapter shall not toll any statute of repose period under chapter 95.

(2) Within 30 days after service of the notice of claim, or within 50 days after service of the notice of claim involving an association representing more than 20 parcels, a ~~the~~ person served with the notice of claim under subsection (1), or a copy thereof under subsection (3), may ~~is entitled to~~ perform a reasonable inspection of the property or of each unit subject to the claim to assess each alleged construction defect. An association's right to access property for either maintenance or repair includes the authority to grant access for the inspection. The claimant shall provide the person served with notice under subsection (1), or a copy thereof under subsection (3), and such person's contractors or agents reasonable access to the property during normal working hours to inspect the property to determine the nature and cause of each alleged construction defect and the nature and extent of any repairs or replacements necessary to remedy each defect. The person served with notice under subsection (1), or a copy thereof under subsection (3), shall reasonably coordinate the timing and manner of any and all inspections with the claimant to minimize

the number of inspections. The inspection may include destructive testing by mutual agreement under the following reasonable terms and conditions:

(a) If the person served with notice under subsection (1) determines that destructive testing is necessary to determine the nature and cause of the alleged defects, the ~~such~~ person must ~~shall~~ notify the claimant in writing.

(b) The notice describes ~~shall describe~~ the destructive testing to be performed, the person selected to do the testing, the estimated ~~anticipated~~ damage and repairs to or restoration of the property resulting from the testing, the estimated amount of time necessary for the testing and to complete the repairs or restoration, and the financial responsibility offered for covering the costs of repairs or restoration.

(c) If the claimant promptly objects to the person selected to perform the destructive testing, the person served with notice under subsection (1) must ~~shall~~ provide the claimant with a list of three qualified persons from which the claimant may select one such person to perform the testing. The person selected to perform the testing operates ~~shall operate~~ as an agent or subcontractor of the person served with notice under subsection (1) and shall communicate with, submit any reports to, and be solely responsible to the person served with notice.

(d) The testing must ~~shall~~ be done at a mutually agreeable time.

(e) The claimant or a representative of the claimant may be present to observe the destructive testing.

(f) The destructive testing may ~~shall~~ not render the property uninhabitable.

(g) There are ~~shall be~~ no construction lien rights under part I of chapter 713 for the destructive testing caused by a person served with notice under subsection (1) or for restoring the area destructively tested to the condition existing before ~~prior to~~ testing, except to the extent the owner contracts for the destructive testing or restoration.

If the claimant refuses to agree and thereafter permit reasonable destructive testing, the claimant has ~~shall have~~ no claim for damages which could have been avoided or mitigated had destructive testing been allowed when requested and had a feasible remedy been promptly implemented.

(3) Within 10 days after service of the notice of claim, or within 30 days after service of the notice of claim involving an association representing more than 20 parcels, the person served with notice under subsection (1) must ~~may~~ serve a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional whom it reasonably believes is responsible for each defect specified in the notice of claim and shall note the specific defect for which it believes the particular contractor, subcontractor, supplier, or design

professional is responsible. The notice described in this subsection may not be construed as an admission of any kind. Each such contractor, subcontractor, supplier, and design professional may inspect the property as provided in subsection (2).

(4) Within 15 days after service of a copy of the notice of claim under ~~pursuant to~~ subsection (3), or within 30 days after service of the copy of the notice of claim involving an association representing more than 20 parcels, the contractor, subcontractor, supplier, or design professional must serve a written response to the person who served a copy of the notice of claim. The written response must include a report, if any, of the scope of any inspection of the property and the findings and results of the inspection. The written response must include one or more of the offers or statements specified in paragraphs (5)(a)-(e), as chosen by the responding contractor, subcontractor, supplier, or design professional, with all of the information required for that offer or statement.

(6) A claimant may not file an action subject to this chapter if the person served with the notice under subsection (1) offers to remedy the alleged construction defect at no cost to the claimant, and completes the repairs within 90 days of the claimant accepting the offer.

(a) The claimant may require the person served with the notice to have an independent qualified third party make the

repairs. The claimant may not deny access to the property to an independent qualified third party hired by the person served with the notice.

(b) A claimant is not barred from filing an action subject to this chapter or to accept another offer to repair, if the claimant determines the repairs are unsatisfactory.

(c) If a claimant accepts an offer to repair, it tolls the applicable statute of limitations relating to any person covered by this chapter, and any bond surety, until 90 days after the claimant accepts the offer.

(11)~~(10)~~ A claimant's service of a notice of claim for the alleged construction defect under an existing applicable warranty or the written notice of claim under subsection (1) tolls the applicable statute of limitations relating to any person covered by this chapter and any bond surety until the later of:

(a) Ninety days, or 120 days, as applicable, after service of a notice of claim for the alleged construction defect under an existing applicable warranty or the written the notice of claim pursuant to subsection (1); or

(b) Thirty days after the end of the repair period or payment period stated in the offer, if the claimant has accepted the offer. By stipulation of the parties, the period may be extended and the statute of limitations is tolled during the extension.

(16) ~~(15)~~ Upon request, the claimant and any person served with notice under ~~pursuant to~~ subsection (1) shall exchange, within 30 days after service of a written request that cites this subsection and includes~~, which request must cite this subsection and include~~ an offer to pay the reasonable costs of reproduction, any design plans, specifications, and as-built plans; videos and additional photographs ~~and videos~~ of the alleged construction defect identified in the notice of claim; expert reports not already provided which ~~that~~ describe any defect upon which the claim is made; subcontracts; purchase orders for the work that is claimed defective or any part of such materials; and maintenance records and other documents related to the discovery, investigation, causation, and extent of the alleged defect identified in the notice of claim and any resulting damages. A party may assert any claim of privilege recognized under the laws of the ~~this~~ state with respect to any of the disclosure obligations specified in this chapter. In the event of subsequent litigation, any party who fails ~~failed~~ to provide the requested materials is ~~shall be~~ subject to such sanctions as the court may impose for a discovery violation. Expert reports exchanged between the parties may not be used in any subsequent litigation for any purpose, unless the expert, or a person affiliated with the expert, testifies as a witness or the report is used or relied upon by an expert who testifies on behalf of the party for whom the report was prepared.

Section 5. Subsections (1), (5), and (6) of section 558.005, Florida Statutes, are amended to read:

558.005 Contract provisions; application.—

(1) Unless a claimant and a potential defendant have agreed in writing to opt in to ~~out of~~ the requirements of this section, the dispute resolution mechanism provided in ~~provisions of~~ this chapter shall not apply to any claim for legal relief for which the agreement to make the improvement was made after October 1, 2021 ~~2009~~, and for which the basis of the claim is a construction defect that has arisen after completion of a building or improvement.

(5) Notwithstanding the notice requirements of this section for contracts entered into on or after October 1, 2021 ~~2006~~, this chapter applies to all actions accruing before October ~~July~~ 1, 2021 ~~2004~~, but not yet commenced as of October ~~July~~ 1, 2021 ~~2004~~, and failure to include such notice requirements in a contract entered into before October ~~July~~ 1, 2021 ~~2004~~, does not operate to bar the procedures of this chapter from applying to all such actions.

(6) Notwithstanding s. 558.003, ~~unless the parties agree that this chapter does not apply,~~ after October 1, 2021 ~~2009~~, for the dispute resolution mechanism provided this chapter to apply, any written contract for improvement of real property entered into between an owner and a contractor, or between an owner and a design professional, must contain substantially the

following notice: "ANY CLAIMS FOR CONSTRUCTION DEFECTS ARISING FROM THIS CONTRACT ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES." The failure to include in the contract the notice provided in this subsection does not prohibit ~~subject~~ the contracting owner, contractor, or design professional from opting in to the dispute resolution mechanism provided in this chapter ~~to any penalty~~. The purpose of the contractual notice is to promote awareness of the desire of the parties to utilize the dispute resolution mechanism provided in this chapter ~~procedure~~, not to be a penalty.

Section 6. Section 558.006, Florida Statutes, is created to read:

558.006 Notice to mortgagee or assignee.—

(1) If a notice of claim alleging a construction defect under this chapter is made with respect to real property to which a mortgagee or an assignee has a security interest in the real property, the claimant must, within 30 days after service of the notice of the claim on the contractor, subcontractor, supplier, or design professional, serve the mortgagee or assignee with a copy of the notice of claim, via certified mail return receipt requested.

(2) If repairs relating to the defect are completed after the claimant notifies the mortgagee or assignee as required under subsection (1), or if any settlement, partial settlement, arbitration award, or judgment is obtained by the claimant, the

claimant must provide an additional notice to the mortgagee or assignee within 60 days after the completion of the repairs, or any settlement, partial settlement, arbitration award, or judgement, whichever is later, via certified mail return receipt requested.

Section 7. This act shall take effect July 1, 2021.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert: An act relating to construction defects; amending s. 553.84, F.S.; defining the term "material violation"; revising cause of action requirements for statutory civil actions relating to certain violations; providing requirements for bringing a cause of action; amending s. 558.001, F.S.; amending Legislative findings and declaration; amending s. 558.003, F.S.; requiring parties to agree to enter into certain statutory dispute resolution; amending s. 558.004, F.S.; requiring that a claimant submit a construction defect claim to the warranty provider before serving a notice of claim; providing applicability; revising requirements for notices of claims; providing that a person who willfully includes a false statement in a

notice of claim commits perjury; authorizing a person served with a copy of a notice of claim to perform a reasonable inspection of the property subject to the claim; requiring, instead of authorizing, a person served with a notice to serve a copy of the notice to specified persons under certain circumstances; prohibiting a person from filing an action in certain circumstances; tolling a statute of limitations in certain circumstances; amending s. 558.005, F.S.; requiring parties to agree to enter into certain statutory disputes; creating s. 558.006, F.S.; requiring a claimant to notify a mortgagee or an assignee within a specified timeframe after a filing a construction defect claim; providing notice requirements; requiring a claimant to update the notice within a specified timeframe under certain circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 339 Business Organizations
SPONSOR(S): Robinson, W.
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Wright	Anstead
2) Civil Justice & Property Rights Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

As of October 2020, Florida has approximately 2,500,212 active business entities in the state, regulated under the Florida Business Corporation Act (FBCA), The Florida Revised Limited Liability Company Act (FRLLCA), corporations not for profit laws, and limited partnership laws.

In 2014, the Corporations, Securities, and Financial Services Committee of the Florida Bar Business Law Section (FBBLS) organized a drafting task force to recommend revisions to Florida business entity laws. The task force's effort resulted in the Legislature passing a comprehensive revision to Florida's entity statutes. However, the task force subsequently identified issues that needed clarification, in addition to several errors in the enrolled bill, including grammar, punctuation, and cross reference errors, and statutory inconsistencies. Some issues were fixed in the 2020 Session, but additional issues have since been identified.

The bill clarifies issues related to the process by which certain shareholders may dissent to corporate or majority shareholder action by asserting their appraisal rights, which requires a corporation to buy the shareholders' stock at its "fair value."

The bill:

- amends several provisions related to reducing appraisal rights for minority shareholders and beneficial owners,
- allows prepayment in appraisal actions,
- makes correcting and conforming changes to corporation provisions, and
- makes correcting changes to not for profit corporation and limited liability company provisions.

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

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In 1950, the American Bar Association (ABA) promulgated the Model Business Corporations Act (MBCA), a body of laws designed to uniformly regulate United States corporations.[1] However, individual states may promulgate laws relating to the creation, organization, operation, and dissolution of corporations and other entities in their respective jurisdictions.[2]

Generally, Florida regulates the following entities:[3]

- business corporations;
- nonprofit corporation;
- general partnerships, including limited liability partnerships;
- limited partnerships, including limited liability limited partnerships;
- limited liability companies;
- declarations of trust; and
- foreign entities.

As of October 2020, Florida has approximately 2,500,212 active business entities in the state,[4] regulated under the Florida Business Corporation Act (FBCA),[5] The Florida Revised Limited Liability Company Act (FRLLCA),[6] corporations not for profit laws,[7] and limited partnership laws,[8] which are now largely modeled after the MBCA.[9] In 2014, the Corporations, Securities, and Financial Services Committee of the Florida Bar Business Law Section (FBBLS) organized a drafting task force to recommend revisions to Florida business entity laws, last overhauled in 1989, as the ABA was in the process of revising and modernizing the MBCA.[10] The task force's mission statement included a full FBCA study and the proposal of revisions to:

- Bring the laws in line with MBCA revisions,
- Maintain Florida's competitiveness with other jurisdictions,
- Fix issues in existing law, and
- Encourage the formation and use of Florida corporations.[11]

The task force's effort resulted in the Legislature passing a comprehensive revision to Florida's entity statutes[12] signed into law on June 7, 2019, with a January 1, 2020 effective date.[13] However, the task force subsequently identified issues that needed clarification, in addition to several errors in the

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[1] William H. Clark, Jr., *The Relationship of the Model Business Corporation Act to Other Entity Laws*, Law and Contemporary Problems Vol. 74, No. 57, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1609&context=lcp (last visited Feb. 28, 2021).
[2] *Id.*
[3] S. 605.0102(23), F.S; Title XXXVI, F.S.
[4] The Florida Department of State, Division of Corporations, *Yearly Statistics*, https://dos.myflorida.com/sunbiz/about-us/yearly-statistics/ (last visited Feb. 28, 2021).
[5] Ch. 607, F.S.
[6] Ch. 605, F.S.
[7] Ch. 617, F.S.
[8] Ch. 620, F.S.
[9] The Florida Bar Business Law Section, *Proposed Modifications to Chapter 607 (Florida Business Corporation Act)*, (Jan. 24, 2019).
[10] *Id.*
[11] *Id.*
[12] These included the Florida Revised Limited Liability Company Act of ch. 605, F.S., and the Florida Not for Profit Corporation Act of ch. 617, F.S.
[13] Ch. 2019-90, L.O.F., in CS/CS/HB 1009 (2019).

enrolled bill, including grammar, punctuation, cross reference errors, and statutory inconsistencies.[14] Some issues were fixed in the 2020 Session,[15] but additional issues have since been identified.[16]

Appraisal Rights for Corporation Shareholders

Triggers of Appraisal Rights for Minority Shareholders – Current Situation

Minority shareholders may dissent to corporate or majority shareholder action by asserting their appraisal rights, pursuant to ss. 607.1301-607.1340, F.S., which requires a corporation to buy the minority shareholders' stock at its "fair value."[17] This remedy is one of the few protections against actions that "... fundamentally change the nature of the shareholders' investments without the check and balance of informed shareholder approval, and [provide] the opportunity for dissenters to withdraw from the corporation."[18]

The appraisal process is effectuated through a judicial hearing, where a court appraises the fair value of the shareholder's interests and assesses the corporation for payment of both the fair value and any accrued interest, calculated according to s. 55.03, F.S.

A minority shareholder may assert his or her appraisal rights only in specific instances where a fundamental corporate change occurs, including (and subject to substantial restrictions and limits) the domestication or conversion to another type of business entity, a merger or share exchange, a disposition of all or substantially all of the corporation's assets, an amendment to the corporation's articles of incorporation that creates fractional shares, and in other cases involving a corporation's articles of incorporation, bylaws, or a resolution of its board of directors.[19, 20]

For example, in s. 607.1302(1)(g), F.S., shareholders are entitled to assert appraisal rights where an amendment to the articles of incorporation or bylaws adversely alters or abolishes the shareholder's voting rights or other rights.[21]

Also, in s. 607.1302(1)(h), F.S., a shareholder of a class of shares prescribed in an articles of incorporation prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, is entitled to appraisal rights if there is amendment of the articles of incorporation on which the shareholder is entitled to vote and such amendment would adversely affect such shareholder by certain actions to reduce shares, value of the shares, and voting rights.[22]

Triggers for Appraisal Rights for Minority Shareholders – Effect of the Bill

The bill narrows the instances that trigger a minority shareholder's appraisal rights by removing the provision that allows shareholders to assert appraisal rights where an amendment to the articles of incorporation or bylaws adversely alters or abolishes the shareholder's voting rights or other rights.

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[14] The Florida Bar Business Law Section, *White Paper for S.B. [838] & H.B. [495]: "An Act Relating to Business Organizations,"* (Oct. 21, 2019).
[15] Ch. 2020-32, L.O.F., in CS/SB 838 (2020).
[16] Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *White Paper for S.B. 602 & H.B. 339: An Act Relating to Corporations and Other Entities*, 1-2 (Feb. 2021).
[17] S. 607.1302(1), F.S.; S. 607.1301(5), F.S., defines "fair value" as the value of the corporation's shares immediately before the effectiveness of the corporate action in question, using commonly-used valuation concepts and techniques, without discounting for lack of marketability or minority status of the shares.
[18] Gregory Yadley and Christina Nethero, *Florida Corporate Practice: Appraisal Rights* s. 11:1 (2020); *see also, South End Improvement Group, Inc. by & through Bank of New York v. Mulliken*, 602 So. 2d 1327, 1332 (Fla. 4th DCA 1992).
[19] Section 607.1302(1), F.S.
[20] Gregory Yadley and Christina Nethero, *Florida Corporate Practice: Appraisal Rights* s. 11:2.C (2020).
[21] S. 607.1302(1)(g), F.S.
[22] S. 607.1302(1)(h), F.S.

The bill allows shareholders in a corporation with 100 or fewer shareholders, whose shares were authorized on, or after October 1, 2003, the same appraisal rights as granted in s. 607.1302(1)(h), F.S.

Minority shareholders may still assert their appraisal rights under several other bases enumerated in s. 607.1302(1), F.S.

Market Out Exception to Appraisal Rights – Current Situation

What is commonly called the "market out exception" simply means that appraisal rights are unavailable for certain shareholders in certain situations and must either accept the adverse corporate action or sell their shares in an organized market.[23] The theory behind the "market out" exception is that the shareholder, if dissatisfied with the proposed corporate action, can choose to sell the shares into an organized market that is liquid and where the value of the shares is reasonably calculated to arrive at a price reflective of an arm's length transaction.[24]

Thirty-eight states, including Florida, operate under the market out exception, which restricts the appraisal rights available to shareholders of stock in large or publicly traded corporations. "[P]ublic shareholders presumptively have an available market. [W]hen a public market exists..., public shareholders must employ market price instead of court-appraisal as the measure of their interests."[25]

In Florida, the market out exception excludes shareholders from asserting appraisal rights if:[26]

- Their triggering action is:
  - Consummation of a domestication or a conversion of such corporation, if shareholder approval is required for the domestication or the conversion;
  - Consummation of a merger to which such corporation is a party, in certain situations;
  - Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except any shareholder of the corporation with respect to any class or series of shares that is not acquired in the share exchange;
  - Consummation of a disposition of assets if the shareholder is entitled to vote on the disposition, including a sale in dissolution, in certain situations; or
  - An amendment of the articles of incorporation with respect to a class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or the right to repurchase such fractional share; and
- Their shares are:
  - a covered security;
  - are not a covered security, but are traded in an organized market; or
  - are issued by an open end management investment company that is registered with the Securities and Exchange Commission.

Whether the market out exception applies is determined as of:

- The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights, or the date of offer for a merger or share exchange; or
- If there will be no meeting of shareholders and no offer of a merger or share exchange is made, the close of business on the day before the consummation of the corporate action or the effective date of the amendment of the articles, as applicable.

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[23] FBBLS, *supra* note 16, at 4.
[24] *Id.*
[25] Gil Matthews, *The "Market Exception" in Appraisal Statutes*, (Mar. 30, 2020), https://corpgov.law.harvard.edu/2020/03/30/the-market-exception-in-appraisal-statues/ (last visited Mar. 5, 2021).
[26] S. 607.1302(2), F.S.

"Record date" means the date fixed for determining the identity of the corporation's shareholders and their share holdings. Unless another time is specified when the record date is fixed, the determination is made as of the close of business at the principal office of the corporation on the date so fixed.[27]

Market Out Exception to Appraisal Rights – Effect of the Bill

The bill broadens the market out exception by prohibiting appraisal actions that are asserted in connection with a corporation's merger, share exchange, or disposition of corporate assets (as permitted by the corporation's articles of incorporation or bylaws), or those that adversely affect a shareholder of a closely held corporation or a shareholder who holds shares issued prior to October 1, 2003.

The bill provides that the market out exception applies where the shares held are not a covered security, not traded in an organized market, but are subject to a "comparable trading process." The bill defines a "comparable trading process" as one where:

- the share's market price is determined at least quarterly based on an independent valuation and by following a formalized process that is designed to determine a value for the corporation's shares that is comparable to the value of a comparable publicly traded companies; and
- the corporation repurchases the shares at pricing set by its board of directors based on the independent valuation and subject to established terms and conditions that have been provided to the shareholders.

This will permit companies that meet these requirements to prohibit appraisal actions by their minority shareholders, and to instead apply the market out exception.

The bill clarifies that, in cases in which the triggering corporate action must be approved by shareholders' written consent, the applicability of the market share exception must be decided at the point at which the record date was fixed to determine which shareholders are entitled to sign the consent.

Assertion of Appraisal Rights by Nominees and Beneficial Owners - Current Situation

"Record shareholder" means:[28]

- The person in whose name shares are registered in the records of the corporation; or
- The person identified as a beneficial owner of shares in the beneficial ownership certificate on file with the corporation to the extent of the rights granted by such certificate.

"Beneficial shareholder" means a person who owns the beneficial interest in shares. Such person may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.[29] Generally, an intermediary or a nominee holds legal ownership of a security, including shares, while beneficial ownership is held by someone else who receives all dividends and other benefits of ownership.[30]

A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder:[31]

- objects with respect to all shares of the class or series owned by the beneficial shareholder or the voting trust beneficial owner, and

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[27] S. 607.01401(63), F.S.
[28] S. 607.01401(64), F.S.
[29] S. 607.01401(7), F.S.
[30] The Free Dictionary by Farlex, The Financial Dictionary, *Nominee*, https://financial-dictionary.thefreedictionary.com/nominee (last visited Mar. 5, 2021).
[31] S. 607.1303(1), F.S.

- notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted.

The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection are determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.[32]

A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:[33]

- Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in s. 607.1322(2)(b)2.
- Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

Currently, a shareholder who wishes to demand an appraisal rights payment from the corporation must take certain actions before the triggering corporate action is effectuated.[34] There is no specific requirement for when shares must have been beneficially owned to be able to demand payment.

FBBLS has identified perceived abuses associated with appraisal rights being simultaneously bought and sold (arbitrage), stemming from most of appraisal rights simultaneous buyers and sellers (arbitrageurs) not being historical shareholders of the corporation, but rather those who purchase their shares after the announcement date of, or record date for, the meeting at which the corporate action is to be voted upon, or the effective date of the written consent approving such corporate action.[35]

Assertion of Appraisal Rights by Nominees and Beneficial Owners – Effect of the Bill

The bill requires a beneficial shareholder who wishes to assert their appraisal rights and demand payment to have a beneficial ownership of their shares in the corporation by the record date established for the triggering corporate action.

The bill provides that a record shareholder asserting appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner may only do so if the beneficial shareholder or voting trust beneficial owner acquired all of their shares before the record date for the triggering corporate action.

Award of Accrued Interest in an Appraisal Action – Current Situation

Currently, "accrued interest" as it applies to interest on payments made pursuant to an assertion of one's appraisal rights is calculated at the statutory judgment interest rate as described in s. 55.03, F.S.[36] The interest rate is set by the Chief Financial Officer on December 1, March 1, June 1, and September 1 of each year, and is payable on judgments for the calendar quarter beginning January 1, and is adjusted quarterly on April 1, July 1, and October 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the averaged federal discount rate.[37]

Award of Accrued Interest in an Appraisal Action – Effect of the Bill

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[32] *Id.*
[33] S. 607.1303(2), F.S.
[34] S. 607.1321
[35] FBBLS, *supra* note 16, at 8.
[36] S. 607.1301(1) , F.S.
[37] S. 55.03(1), F.S.

The bill amends the definition of "accrued interest" to require the parties in an appraisal action either to agree to an interest rate between themselves, or to accept a rate determined by a court to be equitable. The court's rate may not exceed the statutory judgment rate described in s. 55.03, F.S. Additionally, this bill permits a court to prohibit the payment of interest where it finds that the shareholder who asserted his or her appraisal rights acted arbitrarily or not in good faith.

The bill also makes conforming changes to reflect both that the rate of interest is variable, and that a court may choose not to award accrued interest pursuant to the amended definition of the term.

Prepayment in an Appraisal Action – Current Situation

Currently, there is no provision allowing prepayment of the fair value of the shares that are subject a shareholder's appraisal action to a shareholder. FBBLS argues that allowing such prepayment would shorten the amount of time during which interest can accrue, and therefore mitigates risk to the corporation.[38]

Prepayment in an Appraisal Action – Effect of the Bill

The bill gives corporations the option to prepay the fair value of the shares that are subject a shareholder's appraisal action, and such shareholder must accept such prepayment. Specifically, the bill allows the corporation to prepay all, or any part of the amount, that it determines is due to the shareholder. If the corporation makes the prepayment within 90 days after the appraisal notice, then the corporation may only be liable for the accrued interest on any amount above what it prepaid to the shareholder. If the corporation makes a payment after the 90-day period, but before a judicial determination of the interest due, then the corporation must prepay at the statutory judgment rate provided for in s. 55.03, F.S., and may be liable for additional interest on any excess payment due, calculated from the date the corporate action became effective.

The bill makes conforming changes to acknowledge the prepayment options provided in the bill.

Name of a Dissolved Entity – Current Situation

Currently, the name of a dissolved corporation is not available for use by another corporation for 1 year after the effective date of dissolution, unless the dissolved corporation gives certain consent.[39] Previous to 2019, the time period was 120 days.[40] FBBLS indicates that the change was inadvertent and should go back to 120 days.[41]

Name of a Dissolved Entity – Effect of the Bill

The bill reverts to the 120-day period and makes a non-substantive conforming change.

Property Associations and Not-For-Profit Corporations

Committee Requirements – Current Situation

Section 617.0825, F.S., outlines requirements for not for profit corporation board and advisory committees. Such requirements do not apply to board or advisory committees established under:

- chapter 718, relating to condominium associations, to perform functions under s. 718.303(3), relating to levying fines for violating the declaration, bylaws, or rules;

[38] FBBLS, *supra* note 16, at 8.
[39] S. 607.1405, F.S.
[40] Ch. 2019-90, L.O.F.
[41] FBBLS, *supra* note 16, at 9.

- chapter 719, relating to cooperative associations, to perform the functions under s. 719.303(3), relating to levying fines for violating the documents or rules; or
- chapter 720, relating to homeowners' associations, to perform functions under s. 720.303(2), relating to board meetings; or s. 720.3035(1), relating to architectural and construction improvements.

Committee Requirements – Effect of the Bill

The bill revises the property association activity committees which are exempt from the not for profit corporation advisory committee requirements. The bill removes homeowners' association committees related to board meetings; and adds homeowners' association committees related to levying fines for violating the declaration, bylaws, or rules; and related to reviving covenants.

Application of Not For Profit Corporations Chapter to Community Associations – Current Situation

Currently, in the event of any conflict between the provisions of chapter 617 for not for profit corporations, and chapters regarding community associations (chapter 718 regarding condominiums, chapter 719 regarding cooperatives, chapter 720 regarding homeowners' associations, chapter 721 regarding timeshares, or chapter 723 regarding mobile home owners' associations), the provisions of the applicable community association chapter applies.[42]

Application of Not For Profit Corporations Chapter to Community Associations – Effect of the Bill

The bill clarifies language that chapter 617 applies to such community associations, except where there is a conflict, and then the chapters for community associations apply.

Access to Records for Limited Liability Companies – Current Situation

Currently, during regular business hours and at a reasonable location specified by the company, a member may inspect and copy:[43]

- The company records; and
- Full information regarding the activities, affairs, financial condition, and other circumstances of the company as is just and reasonable if:
  - The member seeks the information for a purpose reasonably related to the member's interest as a member; **or**
  - The member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information, and if the information sought is directly connected to the member's purpose.

Access to Records for Limited Liability Companies – Effect of the Bill

The bill clarifies that in order for a member to access full information regarding the activities, affairs, financial condition, and other circumstances of the company, such member must **both**:

- Seek the information for a purpose reasonably related to the member's interest as a member; **and**
- Make a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information, and if the information sought is directly connected to the member's purpose.

The bill updates cross-references to correct scrivener's errors.

The bill takes effect upon becoming law.

[42] S. 617.1703, F.S.
[43] S. 605.0410(3), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 605.0410, F.S.; relating to requirements relating to inspecting certain records of limited liability companies.
Section 2: Amends s. 607.1301, F.S.; relating to the definition of "accrued interest."
Section 3: Amends s. 607.1302, F.S.; relating to shareholder appraisal rights and certain payments.
Section 4: Amends s. 607.1303, F.S.; relating to triggers of shareholder appraisal rights.
Section 5: Amends s. 607.1321, F.S.; relating to triggers of shareholder appraisal rights.
Section 6: Amends s. 607.1322, F.S.; making a technical change.
Section 7: Amends s. 607.1326, F.S.; relating to corporate prepayments to shareholders.
Section 8: Amends s. 607.1330, F.S.; relating to proceedings for demands for payment.
Section 9: Amends s. 607.1405, F.S.; relating to applicability of not for profit corporation provisions to condominium, cooperative, and homeowners' associations.
Section 10: Amends s. 617.0825, F.S.; relating to applicability of not for profit corporation provisions to condominium, cooperative, and homeowners' associations.
Section 11: Amends s. 617.1703, F.S.;
Section 12: Provides an effective date.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to business organizations; amending s. 605.0410, F.S.; revising requirements relating to inspecting certain records of limited liability companies; amending s. 607.1301, F.S.; revising the definition of the term "accrued interest"; amending s. 607.1302, F.S.; revising the circumstances under which shareholders are entitled to appraisal rights and certain payments; revising limitations relating to such rights and payments; revising applicability; amending s. 607.1303, F.S.; revising the circumstances in which certain shareholders may assert specified appraisal rights; amending s. 607.1321, F.S.; revising requirements for shareholders who wish to assert appraisal rights relating to specified corporate actions; amending s. 607.1322, F.S.; making a technical change; amending s. 607.1326, F.S.; entitling corporations to prepay a shareholder if the shareholder makes a demand for payment; specifying when interest is applicable to such prepayments; making technical changes; amending s. 607.1330, F.S.; revising requirements for proceedings relating to unsettled demands for payment; revising the eligibility requirements for shareholders entitled to the fair value of shares during court proceedings;

making technical and conforming changes; amending s. 607.1405, F.S.; revising the requirements for eligible entities to use the name of a dissolved corporation; amending ss. 617.0825 and 617.1703, F.S.; revising applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (3) of section 605.0410, Florida Statutes, is amended to read:

605.0410 Records to be kept; rights of member, manager, and person dissociated to information.—

(3) In a manager-managed limited liability company, the following rules apply:

(b) During regular business hours and at a reasonable location specified by the company, a member may inspect and copy:

1. The records described in subsection (1); and

2. Full information regarding the activities, affairs, financial condition, and other circumstances of the company as is just and reasonable if:

a. The member seeks the information for a purpose reasonably related to the member's interest as a member; and ~~or~~

b. The member makes a demand in a record received by the company, describing with reasonable particularity the

information sought and the purpose for seeking the information, and if the information sought is directly connected to the member's purpose.

Section 2. Subsection (1) of section 607.1301, Florida Statutes, is amended to read:

607.1301 Appraisal rights; definitions.—The following definitions apply to ss. 607.1301-607.1340:

(1) "Accrued interest" means interest ~~from the date the corporate action becomes effective until the date of payment,~~ at the rate agreed to by the corporation and the shareholder asserting appraisal rights, or at the rate determined by the court to be equitable, which rate may not be greater than the rate of interest ~~of interest~~ determined for judgments pursuant to s. 55.03; however, if the court finds that the shareholder asserting appraisal rights acted arbitrarily or otherwise not in good faith, no interest shall be allowed by the court~~,~~ ~~determined as of the effective date of the corporate action~~.

Section 3. Subsections (1) and (2) of section 607.1302, Florida Statutes, are amended to read:

607.1302 Right of shareholders to appraisal.—

(1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(a) Consummation of a domestication or a conversion of

such corporation pursuant to s. 607.11921 or s. 607.11932, as applicable, if shareholder approval is required for the domestication or the conversion;

(b) Consummation of a merger to which such corporation is a party:

1. If shareholder approval is required for the merger under s. 607.1103 or would be required but for s. 607.11035, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remains outstanding after consummation of the merger where the terms of such class or series have not been materially altered; or

2. If such corporation is a subsidiary and the merger is governed by s. 607.1104;

(c) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except that appraisal rights shall not be ~~are not~~ available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not acquired in the share exchange;

(d) Consummation of a disposition of assets pursuant to s. 607.1202 if the shareholder is entitled to vote on the disposition, ~~including a sale in dissolution,~~ except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares or any class or series

if:

1. Under the terms of the corporate action approved by the shareholders there is to be distributed to shareholders in cash the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in ss. 607.1406 and 607.1407, within 1 year after the shareholders' approval of the action and in accordance with their respective interests determined at the time of distribution; and

2. The disposition of assets is not an interested transaction;

(e) An amendment of the articles of incorporation with respect to a class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or the right to repurchase the fractional share so created;

(f) Any other merger, share exchange, disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided as of the record date by the articles of incorporation, bylaws, or a resolution of the board of directors providing for appraisal rights, except that no bylaw or board resolution providing for appraisal rights may be amended or otherwise altered except by shareholder approval;

(g) ~~An amendment to the articles of incorporation or bylaws of the corporation, the effect of which is to alter or abolish voting or other rights with respect to such interest in~~

~~a manner that is adverse to the interest of such shareholder, except as the right may be affected by the voting or other rights of new shares then being authorized of a new class or series of shares;~~

~~(h)~~ An amendment to the articles of incorporation or bylaws of a corporation, the effect of which is to adversely affect the interest of the shareholder by altering or abolishing appraisal rights under this section;

(h) ~~(i)~~ With regard to a class of shares prescribed in the articles of incorporation in any corporation as to which that particular class of shares was in existence prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, and for classes of shares authorized on or after October 1, 2003, in any corporation with 100 or fewer shareholders ~~prior to October 1, 2003, including any shares within that class subsequently authorized by amendment~~, any amendment of the articles of incorporation if the shareholder is entitled to vote on the amendment and if such amendment would adversely affect such shareholder by:

1. Altering or abolishing any preemptive rights attached to any of his, her, or its shares;

2. Altering or abolishing the voting rights pertaining to any of his, her, or its shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares;

3. Effecting an exchange, cancellation, or reclassification of any of his, her, or its shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his, her, or its percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;

4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his, her, or its shares, or making any of his, her, or its shares subject to redemption when they are not otherwise redeemable;

5. Making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore been cumulative;

6. Reducing the stated dividend preference of any of the shareholder's preferred shares; or

7. Reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation;

(i) ~~(j)~~ An amendment of the articles of incorporation of a social purpose corporation to which s. 607.504 or s. 607.505 applies;

(j) ~~(k)~~ An amendment of the articles of incorporation of a

benefit corporation to which s. 607.604 or s. 607.605 applies;

(k) ~~(l)~~ A merger, domestication, conversion, or share exchange of a social purpose corporation to which s. 607.504 applies; or

(l) ~~(m)~~ A merger, domestication, conversion, or share exchange of a benefit corporation to which s. 607.604 applies.

(2) Notwithstanding subsection (1), the availability of appraisal rights under paragraphs (1)(a), (b), (c), (d), ~~and~~ (e), (f), and (h) shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

1. A covered security under s. 18(b)(1)(A) or (B) of the Securities Act of 1933;

2. Not a covered security, but traded in an organized market (or subject to a comparable trading process) and has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least $20 million, exclusive of the value of outstanding shares held by the corporation's subsidiaries, by the corporation's senior executives, by the corporation's directors, and by the corporation's beneficial shareholders and voting trust beneficial owners owning more than 10 percent of the outstanding shares; or

3. Issued by an open end management investment company

registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and which may be redeemed at the option of the holder at net asset value.

(b) The applicability of paragraph (a) shall be determined as of:

1. The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights, the record date fixed to determine the shareholders entitled to sign a written consent approving the corporate action requiring appraisal rights, or, in the case of an offer made pursuant to s. 607.11035, the date of such offer; or

2. If there will be no meeting of shareholders, no written consent approving the corporate action, and no offer ~~is~~ made pursuant to s. 607.11035, the close of business on the day before the consummation of the corporate action or the effective date of the amendment of the articles, as applicable.

(c) Paragraph (a) is not applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares where the corporate action is an interested transaction.

(d) For the purposes of subparagraph (a)2., a comparable trading process exists if:

1. The market price of the corporation's shares is determined at least quarterly based on an independent valuation

and by following a formalized process that is designed to determine a value for the corporation's shares that is comparable to the value of comparable publicly traded companies; and

2. The corporation repurchases the shares at the price set by its board of directors based upon the independent valuation and subject to certain terms and conditions established by the corporation and provides the corporation's shareholders with a trading market comparable to that typically available had the corporation's shares been traded in an organized market.

Section 4. Subsection (1) of section 607.1303, Florida Statutes, is amended, and paragraph (c) is added to subsection (2) of that section, to read:

607.1303 Assertion of rights by nominees and beneficial owners.—

(1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if:

(a) The record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder or the voting trust beneficial owner;

(b) The particular beneficial shareholder or voting trust beneficial owner acquired all such shares before the record date established under s. 607.1321 in connection with the applicable

corporate action; and

(c) The record shareholder ~~and~~ notifies the corporation in writing of its ~~the~~ name and address (if the record shareholder beneficially owns the shares as to which appraisal rights are being asserted) or notifies the corporation in writing of the name and address of the particular ~~of each~~ beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted.

The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(c) Acquired all shares of the class or series before the record date established under s. 607.1321 in connection with the applicable corporate action.

Section 5. Subsections (1), (2), and (3) of section 607.1321, Florida Statutes, are amended to read:

607.1321 Notice of intent to demand payment.—

(1) If a proposed corporate action requiring appraisal rights under s. 607.1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must have beneficially owned the shares of such class or series as of the record date for the shareholders' meeting at which the proposed corporate action is to be submitted to a vote;

(b) Must deliver to the corporation before the vote is taken written notice of the shareholder's intent, if the proposed corporate action is effectuated, to demand payment for all shares of such class or series beneficially owned by the shareholder as of the record date for the shareholders' meeting at which the proposed corporate action is to be submitted to a vote ~~if the proposed corporate action is effectuated~~; and

(c) ~~(b)~~ Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed corporate action.

(2) If a proposed corporate action requiring appraisal rights under s. 607.1302 is to be approved by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must have beneficially owned the shares of such class or series as of the record date established for determining who is entitled to sign a written consent;

(b) Must assert such appraisal rights for all shares of such class or series beneficially owned by the shareholder as of the record date for determining who is entitled to sign the written consent; and

(c) Must not sign a consent in favor of the proposed corporate action with respect to that class or series of shares.

(3) If a proposed corporate action specified in s. 607.1302(1) does not require shareholder approval pursuant to s. 607.11035, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must have beneficially owned the shares of such class or series as of the date the offer to purchase is made pursuant to s. 607.11035;

(b) Must deliver to the corporation before the shares are purchased pursuant to the offer a written notice of the shareholder's intent to demand payment if the proposed corporate action is effected for all shares of such class or series beneficially owned by the shareholder as of the date the offer to purchase is made pursuant to s. 607.11035; and

(c) ~~(b)~~ Must not tender, or cause or permit to be tendered, any shares of such class or series in response to such offer.

Section 6. Paragraph (a) of subsection (2) of section 607.1322, Florida Statutes, is amended to read:

607.1322 Appraisal notice and form.—

(2) The appraisal notice must be delivered no earlier than

the date the corporate action became effective, and no later than 10 days after such date, and must:

(a) Supply a form that specifies the date that the corporate action became effective and that provides for the shareholder to state:

1. The shareholder's name and address.

2. The number, classes, and series of shares as to which the shareholder asserts appraisal rights.

3. That the shareholder did not vote for or consent to the transaction.

4. Whether the shareholder accepts the corporation's offer as stated in subparagraph (b)4.

5. If the offer is not accepted, the shareholder's estimated fair value of the shares and a demand for payment of the shareholder's estimated value plus accrued interest, if and to the extent applicable.

Section 7. Section 607.1326, Florida Statutes, is amended to read:

607.1326 Procedure if shareholder is dissatisfied with offer.—

(1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant to s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s. 607.1322(1) of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus accrued

interest, if and to the extent applicable.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus accrued interest, if and to the extent applicable, under subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand payment under this section and shall be entitled only to the payment offered by the corporation pursuant to s. 607.1322(2)(b)4.

(3) With respect to a shareholder who properly makes demand for payment pursuant to subsection (1), at any time after the shareholder makes such demand, including during a court proceeding under s. 607.1330, the corporation shall have the right to prepay to the shareholder all or any portion of the amount that the corporation determines to be due under s. 607.1322(2)(b)3. and the shareholder shall be obligated to accept such prepayment.

(a) If such prepayment is made within 90 days after the earlier of the date on which the appraisal notice is provided by the corporation under s. 607.1322(1) or the deadline date by which the appraisal notice is required to be provided by the corporation under s. 607.1322(2), accrued interest will be payable, if at all, to the shareholder entitled to appraisal rights, calculated and accrued from the date on which the corporate action became effective and only on amounts that are

determined to be due to the shareholder and are above the amount so prepaid. Accrued interest will not be payable to the shareholder entitled to appraisal rights on the prepayment previously made to the shareholder by the corporation pursuant to this paragraph.

(b) If such prepayment is made more than 90 days after the earlier of the date on which the appraisal notice is provided by the corporation under s. 607.1322(1) or the deadline date by which the appraisal notice is required to be provided by the corporation under s. 607.1322(2), the prepayment must include accrued interest on the amount of the prepayment, calculated at the rate of interest determined for judgments pursuant to s. 55.03 and calculated and accrued from the date that the corporate action became effective through the date of the prepayment previously made to the shareholder by the corporation pursuant to this paragraph. In addition, accrued interest will be payable to the shareholder entitled to appraisal rights on such amounts, if any, determined to be due to the shareholder in excess of the prepaid amount, calculated and accrued from the date on which the corporate action became effective.

Section 8. Subsections (1) and (5) of section 607.1330, Florida Statutes, are amended to read:

607.1330 Court action.—

(1) If a shareholder makes demand for payment under s. 607.1326 which remains unsettled, the corporation shall commence

a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest, if and to the extent applicable, calculated and accrued from the date the corporate action became effective and taking into account the amount of any prepayment previously made to the shareholder by the corporation pursuant to s. 607.1326(3) ~~from the date of the corporate action~~. If the corporation does not commence the proceeding within the 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence the proceeding in the name of the corporation.

(5) Each shareholder entitled to appraisal rights who is made a party to the proceeding is entitled to judgment for the amount of the fair value of such shareholder's shares as found by the court, plus accrued interest, if and to the extent applicable and as found by the court, taking into account the amount of any prepayment previously made to the shareholder by the corporation pursuant to s. 607.1326(3).

Section 9. Subsection (5) of section 607.1405, Florida Statutes, is amended to read:

607.1405 Effect of dissolution.—

(5) Except as provided in s. 607.1422(4), the name of a dissolved corporation is not available for assumption or use by another eligible entity until 120 days ~~1 year~~ after the effective date of dissolution unless the dissolved corporation

provides the department with a record, signed as required by s. 607.0120, permitting the immediate assumption or use of the name by another eligible entity.

Section 10. Subsection (9) of section 617.0825, Florida Statutes, is amended to read:

617.0825 Board committees and advisory committees.—

(9) This section does not apply to a committee established under chapter 718, chapter 719, or chapter 720 to perform the functions set forth in s. 718.303(3), s. 719.303(3), s. 720.305(2), ~~s. 720.303(2), or~~ s. 720.3035(1), or s. 720.405, respectively.

Section 11. Section 617.1703, Florida Statutes, is amended to read:

617.1703 Application of chapter.—

(1)(a) This chapter is applicable to a corporation that is an association as defined in and regulated by any of chapter 718 regarding condominiums, chapter 719 regarding cooperatives, chapter 720 regarding homeowners' associations, chapter 721 regarding timeshares, or chapter 723 regarding mobile homeowners' associations, except:

1. For ~~In the event of~~ any conflict between the provisions of this chapter and chapter 718 ~~regarding condominiums~~, chapter 719 ~~regarding cooperatives~~, chapter 720 ~~regarding homeowners' associations~~, chapter 721 ~~regarding timeshares~~, or chapter 723; or

2. As otherwise provided for in chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723.

(b) If subparagraph (a)1. or subparagraph (a)2. applies ~~regarding mobile home owners' associations~~, the applicable provisions of such other respective chapters shall apply.

(2) The provisions of ss. 617.0605-617.0608 do not apply to corporations regulated by any of the foregoing chapters or to any other corporation where membership in the corporation is required pursuant to a document recorded in the county property records.

Section 12. This act shall take effect upon becoming a law.

REGULATORY REFORM SUBCOMMITTEE

HB 339 by Rep. Robinson, W.
Business Organizations

AMENDMENT SUMMARY
March 8, 2021

Amendment 1 by Rep. Robinson, W. (line 428):
The amendment provides that requirements to amend not for profit corporation articles of incorporation or bylaws in a way that changes quorum or voting requirements are not applicable to corporations that are condominium, cooperative, or homeowners' associations.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____ (Y/N)
ADOPTED AS AMENDED	____ (Y/N)
ADOPTED W/O OBJECTION	____ (Y/N)
FAILED TO ADOPT	____ (Y/N)
WITHDRAWN	____ (Y/N)
OTHER	

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Robinson, W. offered the following:

Amendment (with title amendment)

Between lines 428 and 429, insert:

Section 10. Section 617.0725, Florida Statutes, is amended to read:

617.0725 Quorum.—An amendment to the articles of incorporation or the bylaws which adds, changes, or deletes a greater or lesser quorum or voting requirement must meet the same quorum or voting requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater. This section does not apply to any corporation that is an association, as defined in s.

720.301, or a corporation regulated under chapter 718 or chapter 719.

T I T L E A M E N D M E N T

Between lines 28 and 29, insert:

amending s. 617.0725, F.S.; providing applicability;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 615 Community Association Assessment Notices
SPONSOR(S): Rodriguez
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 56

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Brackett DB	Anstead RA
2) Civil Justice & Property Rights Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

A condominium is a form of ownership of real property comprised of units which may be owned by one or more persons along with an undivided right of access to common elements. A cooperative is real property owned by the cooperative association, with individual units leased to the residents who own shares in the cooperative association. A homeowners' association ("HOA") is an association that is authorized to impose assessments, responsible for the operation of a community in which voting membership is made up of unit or parcel owners, and membership is a mandatory condition of unit or parcel ownership. Condominium associations, cooperative associations, and HOAs are collectively referred to as "associations."

The bill relates to an association's collection of assessments and notices to owners related to such, it requires:

- Associations to send account statements to owners.
- Associations to deliver written notice to every owner at least 30 days before changing its method of delivering account statements.
- Owners to affirmatively acknowledge that they understand the association has changed its method of delivering the account statements before a community association may change its method of delivery.
- Requires associations to maintain the owners' affirmative acknowledgments as an official record.

The bill prohibits associations from collecting attorney's fees related to delinquent assessments without first delivering a written notice of the delinquent assessments to the unit or parcel owner.

- An association must deliver the written notice at least 30 days before the association takes further action against the owner's unit or parcel.
- The written notice must specify the amount owed and provide the unit or parcel owner an opportunity to pay the delinquent assessments without paying attorney fees.

The bill also mirrors condominium and cooperative law to HOA law by increasing the period of time a condominium or cooperative unit owner has to pay a delinquent assessment after receiving an association's notice of intent to record a lien or foreclose on a lien from 30 days to 45 days.

The bill does not have a fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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 regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

Condominiums

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The board enacts bylaws which govern the administration of the association.

Cooperatives

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[3] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical to those regulating condominiums.

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, 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.[4] 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 includes the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those

[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 719.103(2)(26), F.S.
[4] S. 720.301(9), F.S.

documents. No state agency has direct oversight of HOAs. Florida law provides procedures and minimum requirements for operating and provides for a mandatory binding arbitration program, administered by the Division, only for certain election disputes.

Official Records

Condominiums, cooperatives, and HOAs (associations) are required to **maintain** official records for at least 7 years. The official records must include:[5]

- A copy of the articles of incorporation, declaration, bylaws, and rules of the association;
- Meeting minutes;
- A roster of all owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- Accounting records for the association, which includes:
    - Accurate, itemized, and detailed records of all receipts and expenditures.
    - **A current account and a periodic statement of the account** for each unit or parcel designating the name of the owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.
    - All audits, reviews, accounting statements, and financial reports of the association or condominium.
    - All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.
- All contracts for work to be performed, including bids for work, materials, and equipment. Cooperatives and HOAs are only required to maintain bids for one year;
- A copy of the plans, permits, warranties, and other items provided by the developer; and
- All other written records which are related to the operation of the association.

An association must maintain its official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the association is located.[6]

Unit owners may request to inspect and make copies of an association's official records. An association must make the records available for inspection within 10 business days of receiving a written request.[7] Failure to provide an owner or renter the requested records within 10 business days of receiving a request creates a rebuttable presumption that the association willfully failed to provide the records. A owner who is denied access to the records is entitled to damages and costs.[8]

An association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An association also has the option to make the official records available electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen.[9] Additionally, condominium associations with 150 or more units must maintain a website with digital copies of certain official records such as meeting notices, a copy of the articles of incorporation, declaration, bylaws, and rules of the association.[10]

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[5] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.
[6] Ss. 718.111(12)(b) and (c), 719.104(2)(b) and (c), and 720.303(5), F.S.
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] Ss. 718.111(12)(b), and (g), F.S.

However, the following records are not available for inspection by owners:[11]

- Records protected by the lawyer-client privilege;
- Information obtained by an association in connection with the transfer of a unit or parcel;
- Personnel records of association or management company employees;
- Unit owner medical records;
- Personnel identifying information such as social security numbers, driver license numbers, and credit card numbers;
- Electronic security measures that are used to safeguard data; and
- The software and operating system used by the association which allow the manipulation of data.

Statements of the Account

A statement of the account[12] is an account statement that details the outstanding amount that a unit or parcel owner owes to the association. Associations must maintain a current account and a periodic[13] statement of the account for each unit or parcel, which designates the name of the owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.[14]

Statements of the account for each unit or parcel owner are part of the official records, which are available for inspection.[15] Associations may also deliver statements of the account to the unit or parcel owners. However, current law does not specify how an association must deliver statements of the account to owners, e.g., by regular mail or email. Current law also does not provide a process to notify unit or parcel owners, if an association alters its method of delivering the statement of the account.

Assessments

Current law gives associations the ability to levy and collect assessments from the unit or parcel owners. This allows the association to carry out its responsibility for the management, operation, and maintenance of the community association.[16]

In addition to levying assessments, associations also have the power to establish the time when each assessment or assessment payment is due including when an assessment or assessment payment becomes delinquent.[17]

The most common assessments are those required to fund an association's common expenses in an association's annual budget. The amount to fund the common expenses and the assessments required to meet that amount are determined when an association's budget is adopted.[18] A special assessment is an assessment levied against unit or parcel owners for unexpected expenses that are over and above those anticipated by the annual budget.[19]

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[11] Ss. 718.111(12)(c), 719.104(2)(c), and 720.303(5), F.S.

[12] A statement of the account is different from an estoppel certificate. An estoppel certificate issued by an association certifies the total debt owed to the association for unpaid financial obligations by a parcel owner or unit owner as of a specified date. An association is legally bound by the amount stated in the estoppel certificate. A unit or parcel purchaser or a mortgage holder who relies on an estoppel certificate is protected from any assessments or other monies owed to the association that are not in the certificate. Ss. 718.116(8), 719.108(6), and 720.30851, F.S.

[13] Condominium and cooperative associations must maintain a monthly, bimonthly, or quarterly statement of the account. Ss. 718.111(12)(a), and 719.104(2), F.S.

[14] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.

[15] *Id.*

[16] S. 718.111(4), 719.104(5), 720.301(1), and 720.308(1)F.S.

[17] *See generally*, ch. 718, 719, and 720, F.S.

[18] Ss. 718.103(1), 718.112(2)(f), 719.103(9), and 719.106(1)(j), and 720.303(6)(a), F.S.

[19] Ss. 718.103(24), 718.116(10), 719.103(23), 719.108(9), and 720.303(6), F.S.

When the amount of assessments has been determined, the association must establish a payment schedule for the owners in accordance with the association's bylaws. For condominium and cooperative associations, payments must be made in advance and they must be paid at least quarterly. The payments must be sufficient to provide the funds necessary to pay all the anticipated operating expenses and all unpaid expenses previously incurred.[20]

A unit or parcel owner may not avoid paying assessments by waiving the use of common elements or common services in the association. No unit or parcel owner may be relieved from liability for all or any part of an assessment.[21] Boards must keep account of the assessments levied against every unit or parcel owner and the assessments paid by every owner. These records are a part of the official records.[22]

Liability for Assessments

A unit or parcel owner is liable for all assessments coming due while he or she is the owner of the unit or parcel. The unit or parcel serves as security for the payment of all assessments owed by an owner.[23]

If a unit or parcel is sold, the buyer becomes jointly and severally liable with the seller for all unpaid assessments due prior to the time of the sale. The buyer may attempt to recover the unpaid assessments from the seller, but the association may look to the seller and the buyer for the unpaid assessments.[24]

Assessments that are not paid on time bear interest at a rate provided in the declaration, which may not be higher than the highest rate allowed by law, or at a rate of 18 percent per year if no rate is provided. Interest begins accruing the date a payment becomes delinquent. Additionally, an association may levy a late fee for any payment that is delinquent. The amount of the late fee may not exceed $25 or five percent of the payment, whichever is greater. Associations are entitled to recover any attorney's fees and costs incurred in the collection of delinquent payments.[25]

If an association receives a payment for a delinquent assessment, the payment must first be applied to any accrued interest, then to any late fee, then to any attorney's fees or costs, and finally to the principle balance of the assessment.[26]

Currently, there is no requirement for associations to send a delinquent assessment notice prior to charging late fees, interest, or attorney's fees. According to news reports, this can result in unit or parcel owners being charged attorney's fees that exceed the delinquent assessment.[27] According to industry blogs, allowing associations to collect attorney's fees ensures associations are not left holding the bill when they take legal action.[28] However, industry blogs also state that sending a delinquent

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[20] S. 718.112(2)(g), 719.106(1)(g), and 720.30851(1), F.S.
[21] Ss. 718.111(4), and 718.116(1)(a), 719.108(1), and 720.3085(2)(a), F.S.
[22] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.
[23] Ss. 718.111(4), and 718.116(1)(a), 719.108(1), and 720.3085(2)(a), F.S.
[24] *Id.*; *Karpay v. Las Brisas Condominium Association, Inc.*, 517 So. 2d 756, 757 (Fla. 2nd DCA 1987).
[25] Ss. 718.116(3), 719.108(3), and 720.3085(3), F.S.
[26] *Id.*
[27] Fox 13 Tampa Bay, *FOX 13 Investigates: HOA attorney fees a homeowner's nightmare*, Fox 13 Tampa Bay (Jan. 20, 2016) https://www.fox13news.com/news/fox-13-investigates-hoa-attorney-fees-a-homeowners-nightmare (last visited Mar. 5, 2021); Todd Ulrich, *'They put me through hell': Homeowner battles HOA, gets thousands in settlement*, WFTV (Feb. 16, 2021) https://www.wftv.com/news/action9/they-put-me-through-hell-homeowner-battles-hoa-gets-thousands-settlement/YD26MECEZVBTTMX7E3HOS7JT2I/ (last visited Mar. 5, 2021).
[28] Jimerson Birr, *Condominium Association Recovery of Attorneys' Fees in Florida*, Jimerson Birr, (Dec. 29, 2015) https://www.jimersonfirm.com/blog/2015/12/condominium-association-recovery-of-attorneys-fees-in-florida/ (last visited Mar. 5, 2021).

assessment notice before taking any action against a unit or parcel owner can help remind owners of their payment obligation, and the majority of owners make a payment upon receiving the notice.[29]

Claim of Lien

An association has a lien for all unpaid assessments, but not unpaid fines[30]. An association may file a claim of lien for a delinquent assessment with the Clerk of Court in the county where the association is located. The claim of lien must state the legal description of the unit or parcel, the owner of the unit or parcel, the name and address of the association, and the assessment amount and the due date. An officer or agent of the association must sign the claim of lien. A filed claim of lien is valid for one year.[31]

Prior to filing a claim of lien, a community association must give a unit or parcel owner the opportunity to pay a delinquent assessment. At least **30 days** before filing a claim of lien, a condominium or cooperative association must provide written notice of the association's intent to file a lien to the unit owner. However, an HOA must provide a parcel owner the written notice at least **45 days** before filing the claim of lien. The notice must include the following information:[32]

- The amount owed on the owner's account;
- The interest rate for the amounts owed.
- A statement that the owner has 30 or 45 days to pay the amount owed or the association will file a claim of lien against the unit or parcel;
- A breakdown of the amount owed including:
    - Maintenance costs due;
    - Late fee;
    - Interest; and
    - Total amount owed.

The notice must be sent by first class and certified mail to the owner's address listed in the official records.[33] If the address is different than the unit or parcel address, the notice must also be sent to the unit or parcel. If the address is different than the unit or parcel address and the address is outside the United States, the association may send the notice by first class mail, instead of first and certified mail. Service is deemed delivered upon mailing the notice for condominium and cooperative associations.[34]

A unit or parcel owner may challenge a claim of lien by filing a notice of contest of lien with the Clerk of Court. After a unit owner files a notice of contest, an association has 90 days to commence enforcement of the lien. The grounds for which a unit owner may not pay an assessment are limited, such as when the assessment is discriminatory or has been improperly levied by the board.[35]

An association may bring an action to foreclose on a unit or parcel for unpaid assessments in circuit court in the same way that a mortgage on real estate is foreclosed. The homestead protections provided by Florida's Constitution do not prevent the foreclosure and sale of a unit or parcel. In addition to an action of foreclosure, an association may also bring a civil action to recover a money judgment for the unpaid assessments without waiving any claim of lien.[36]

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[29] Jimerson Birr, *Five Steps for Collecting Assessment Revenue Through a Condominium Assessment Lien*, Jimerson Birr, (Aug. 9, 2018) https://www.jimersonfirm.com/blog/2018/08/florida-condominium-assessment-lien/ (last visited Mar. 4, 2021); Christopher R. Moore, Step-By-Step Guide To The HOA Assessment Collections Process, Homeowners Protection Bureau, LLC, https://www.hopb.co/blog/guide-to-hoa-assessment-collections-process#notice-of-delinquency (last visited Mar. 4, 2021).

[30] An HOA has a lien on a parcel for a fine that is $1,000 or more. S. 720.305(2), F.S.

[31] Ss. 718.116(5), and 718.303(3), 719.108(4), 720.301(1), and (11), 720.305(2), and 720.3085(1), F.S.F.S.

[32] S. 718.121(4) and 718.108(4), 719.108(4), and 720.3085(4), F.S.

[33] A cooperative association is only required to send the written notice by certified mail. S. 719.108(4).

[34] *Id.*

[35] Ss. 718.116(5), 719.108(4), and 720.3085(1), F.S.; *Coral Way Condominium Investments, Inc. v. 21/22 Condominium Ass'n, Inc.*, 66 So. 3d 1038, 1041 (Fla. 3rd DCA 2011).

[36] S. 718.116(6)(a), 719.108(5), and 720.3085(1) F.S. *Bessemer v. Gersten* , 381 So. 2d 1344, 1347 (Fla. 1980).

Prior to foreclosing on a lien, a condominium association or an HOA must provide written notice to the owner of its intent to foreclose on the lien. A condominium association must provide the notice at least **30 days** before foreclosing on the lien. However, an HOA must give a parcel owner written notice at least **45 days** before foreclosing on the lien. The notice must include the following information:[37]

- A claim of lien has been filed against the owner's property for failing to pay an assessment(s);
- The association intends to foreclose on the lien in 30 or 45 days
- The total amount owed;
- The interest rate and the interest owed; and
- The contact information for the association's attorney/representative.

A condominium association must mail deliver the notice to the unit owner or mail the notice by certified mail to the unit owner's last known address. Service is deemed delivered upon mailing the notice.[38] The notice must be sent by first class and certified mail to the owner's address listed in the official records. If the address is different than the unit or parcel address, the notice must also be delivered to unit or parcel. If the address is different than the unit or parcel address and the address is outside the United States, the association may send the notice by first class mail.

Effect of the Bill

The bill requires associations to deliver a unit or parcel's statement of the account by first class mail or email to the owner's email address in the association's official records.

The bill provides that before an association changes the method of delivering the statement of the account, the association must deliver written notice of such change to every unit or parcel owner and a unit or parcel owner must acknowledge the association is changing its method of delivery. An owner may make the acknowledgement in writing or electronically. The written notice must:

- Be delivered to the owner at least 30 days before the association uses the new delivery method to send the statement of the account; and
- Be sent by first class mail to an owner's address listed in the official records. If the address is different than the unit or parcel address, the notice must also be delivered to the unit or parcel owner by first class mail.
    - Service is deemed delivered upon mailing the notice.

The bill provides that a unit or parcel owner's written acknowledgment becomes part of an association's officials records. However, the written acknowledgments are not available for inspection by the members of the association.

The bill mirrors condominium and cooperative law to HOA law by:

- increasing the period of time a condominium or cooperative association has to wait before filing a lien from **30 days** after delivering the written notice of intent to file a lien to **45 days** after delivering the notice; and
- increasing the period of time a condominium has to wait before foreclosing on a lien from **30 days** after delivering the written notice of intent to foreclose to **45 days** after delivering the notice.

The bill provides that a condominium association must send the notice of intent to file a lien by certified mail and first class mail to the unit owner's address regardless if the unit owner's address is outside the United States.

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[37] Ss. 718.116(6)(a) and 720.3085(5), F.S.

[38] *Id.*

The bill provides that before an association can require payment of attorney fees related to a delinquent assessment, the association must deliver written notice of the delinquent assessment to the unit or parcel owner. If the owner pays the delinquent assessment within 30 days, the association may not assess attorney fees. The written notice must include the following information:

- The amount owed on the owner's account;
- The interest rate for the amounts owed.
- A statement that the owner has 30 days to pay the amount owed or the association will take further collection action against the owner's property in 30 days;
- A breakdown of the amount owed including:
  - Maintenance costs due;
  - Late fee;
  - Interest; and
  - Total amount owed.

The bill requires that the written notice must be sent by first class mail to an owner's address listed in the official records. If the address is different than the unit or parcel, the notice must also be mailed to the unit or parcel by first class mail. Service is deemed delivered upon mailing the notice.

B. SECTION DIRECTORY:

Section 1. Amends s. 718.111, F.S., adding documents that are a part of a condominium association's official records.

Section 2. Amends s. 718.116, F.S., extending the time a condominium association must wait until it forecloses on a lien.

Section 3. Amends s. 718.121, F.S., relating to payments for assessments and lien claims.

Section 4. Amends s. 719.104, F.S., adding documents that are a part of a cooperative association's official records.

Section 5. Amends 719.108, F.S., relating to payments for assessments and lien claims.

Section 6. Amends s. 720.303, F.S., adding documents that are a part of a HOA's official records.

Section 7. Amends s. 720.3085, F.S., relating to payments for assessments and lien claims.

Section 8. Providing an effective date of July 1, 2021.

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:

The additional notice requirements, restrictions on collecting attorney fees, and increased notice period for a claim of lien may provide a net positive fiscal for community association residents.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide how a unit or parcel owner must acknowledge an association's written notice that the association is changing its delivery method for account statements. It also does not state what happens if a unit or parcel owner does not acknowledge an association's written notice.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to community association assessment notices; amending s. 718.111, F.S.; requiring condominium associations to maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to unit owners; amending s. 718.116, F.S.; revising timeframes for foreclosure judgments; conforming provisions to changes made by the act; amending s. 718.121, F.S.; requiring condominium associations to deliver certain statements of account to unit owners in a specified manner; requiring condominium associations to give notice to unit owners before changing the method of delivery for the statements of account; providing requirements for the notice; requiring unit owners to affirmatively acknowledge the changes in delivery methods; prohibiting condominium associations from requiring the payment of attorney fees relating to past due assessments without first providing a specified notice to unit owners; providing requirements for the notice; revising the timeframe for condominium associations to file liens against condominium units; conforming provisions to changes made by the act; amending s. 719.104, F.S.; requiring cooperative associations to

maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to unit owners; amending s. 719.108, F.S.; requiring cooperative associations to deliver certain statements of account to unit owners in a specified manner; requiring cooperative associations to give notice to unit owners before changing the method of delivery for the statements of account; providing requirements for the notice; requiring unit owners to affirmatively acknowledge the changes in delivery methods; prohibiting cooperative associations from requiring the payment of attorney fees relating to past due assessments without first providing specified notice to unit owners; providing requirements for the notice; revising the timeframe for cooperative associations to file liens against cooperative parcels; conforming provisions to changes made by the act; amending s. 720.303, F.S.; requiring homeowners' associations to maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to parcel owners; amending s. 720.3085, F.S.; requiring homeowners' associations to deliver certain statements of account to parcel owners in a specified manner;

requiring homeowners' associations to give notice to parcel owners before changing the method of delivery for the statements of account; providing requirements for the notice; requiring parcel owners to affirmatively acknowledge the changes in delivery methods; prohibiting homeowners' associations from requiring the payment of attorney fees relating to past due assessments without first providing specified notice to parcel owners; providing requirements for the notice; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (c) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or

responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners,

which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. ~~All other written records of the association not specifically included in the foregoing which are related to the operation of the association.~~

~~16.~~ A copy of the inspection report as described in s. 718.301(4)(p).

16.~~17.~~ Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules.

The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

3. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws,

and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the

conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from

the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

Section 2. Paragraph (b) of subsection (6) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(6)

(b) No foreclosure judgment may be entered until at least 45 ~~30~~ days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. The notice must be in substantially the

following form:

DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the ...(type of assessment)... assessment to ...(name of association).... The association intends to foreclose the lien and collect the unpaid amount within 45 ~~30~~ days of this letter being provided to you.

You owe the interest accruing from ...(month/year)... to the present. As of the date of this letter, the total amount due with interest is $..... All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to ...(insert name, addresses, and telephone numbers of association representative)....

If this notice is not given at least 45 ~~30~~ days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded,

are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney ~~attorney's~~ fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his or her last known address; and, upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney ~~attorney's~~ fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a notice of contest of lien as provided in subsection (5). The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the unit owner.

Section 3. Subsection (4) of section 718.121, Florida Statutes, is amended, and subsections (5) and (6) are added to that section, to read:

718.121 Liens.—

(4)(a) The association must deliver a unit's statement of the account described in s. 718.111(12)(a)11.b. to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

(b) Before changing the method of delivery for the statement of the account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been given upon mailing as required by this paragraph.

(c) A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the statement of the account before the association may change the method of delivering the statement of the account. The unit owner may make the affirmative acknowledgment electronically or in writing.

(5) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the unit owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's

records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been given upon mailing as required by this subsection. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice of its intent to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

(6) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 45 ~~30~~ days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, ~~and~~ by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the unit address, by first-class United States mail to the unit address ~~of the association, if the address is within the United States, and delivered to the owner at the address of the unit if the owner's address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient~~. Delivery of the notice shall be deemed given upon mailing as required by this subsection. The notice must be in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be

paid within 45 ~~30~~ days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 45 ~~30~~ days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
Certified mail charges	$.....
Other costs	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

Section 4. Paragraphs (a) and (c) of subsection (2) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The e-mail addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the e-mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the

association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

14. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or

intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following

records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile

numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

8. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

Section 5. Subsections (3) and (4) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(3)(a) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing applies notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 719.303(4).

(b)1. The association must deliver a unit's statement of the account described in s. 719.104(2)(a)9.b. to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for the statement of the account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been given upon mailing as required by this subparagraph.

3. A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the statement of the account before the association may change the method of delivering the statement of the account. The unit owner may make the affirmative acknowledgment electronically or in writing.

(c) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the owner which specifies

the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been given upon mailing as required by this paragraph. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....

Interest through ...(dates)...* $.....

TOTAL OUTSTANDING $.....

*Interest accrues at the rate of .... percent per annum.

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 45 ~~30~~ days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail, and the notice must be in substantially the following form:

NOTICE OF INTENT

TO RECORD A CLAIM OF LIEN

RE: Unit ...(unit number)... of ...(name of cooperative)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 45 ~~30~~ days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 45 ~~30~~ days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
Certified mail charges	$.....
Other costs	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a

satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)...:

You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this .... day of ...., ...(year)....

Signed: ...(Owner or Attorney)...

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the

notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien. If the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. .... OF ...(NAME OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE

PUBLIC RECORDS OF .... COUNTY, FLORIDA.

...(Signature of Authorized Agent)... ...(Signature of Witness)...

...(Print Name)... ...(Print Name)...

...(Signature of Witness)...

...(Print Name)...

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public)...

...(Print, type, or stamp commissioned name of Notary Public)...

Personally Known .... OR Produced .... as identification.

Section 6. Present paragraph (l) of subsection (4) of section 720.303, Florida Statutes, is redesignated as paragraph (m), a new paragraph (l) is added to that subsection, and paragraph (c) of subsection (5) of that section is amended, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(4) OFFICIAL RECORDS.—The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(1) All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3.

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized

representative for the use of a portable device.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel

owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Any electronic security measure that is used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

8. All affirmative acknowledgments made pursuant to s.

720.3085(3)(c)3.

Section 7. Paragraphs (c) and (d) are added to subsection (3) of section 720.3085, Florida Statutes, to read:

720.3085 Payment for assessments; lien claims.—

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(c)1. The association must deliver a parcel owner's periodic statement of the account described in s. 720.303(4)(j)2. to the parcel owner by first-class United States mail or by electronic transmission to the parcel owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for the statement of the account, the association must deliver a written notice such change to each parcel owner. The written notice must be delivered to the parcel owner at least 30 days before the association sends the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must be sent by first-class United States mail to the parcel address. Notice is deemed to have been given upon

mailing as required by this subparagraph.

3. A parcel owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the statement of the account before the association may change the method of delivering the statement of the account. The parcel owner may make the affirmative acknowledgment electronically or in writing.

(d) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the parcel owner which specifies the amount owed the association and provides the parcel owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must be sent by first-class United States mail to the parcel address. Notice is deemed to have been given upon mailing as required by this paragraph. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Parcel .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days after the date of this letter. This letter shall serve as the association's notice to proceed with further collection action against your property no sooner than 30 days after the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

Section 8. This act shall take effect July 1, 2021.

REGULATORY REFORM SUBCOMMITTEE

HB 615 by Rep. Rodriguez
Community Association Assessment Notices

AMENDMENT SUMMARY
March 8, 2021

Amendment 1 by Rep. Rodriguez (strike-all):
The amendment:

- Provides that if associations provide account statements to their unit or parcel owners, they must comply with the delivery requirements provided in the bill.
- Creates a rebuttable presumption that an association mailed a notice of a late assessment if a board member, officer, agent of the association, or a licensed community association manager provides a sworn affidavit attesting to such mailing.

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Rodriguez offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (a) and (c) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. ~~All other written records of the association not specifically included in the foregoing which are related to the operation of the association.~~

~~16.~~ A copy of the inspection report as described in s. 718.301(4)(p).

16.~~17.~~ Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c)1. The official records of the association are open to inspection by any association member or the authorized

representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required

to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

3. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which

reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the

association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

Section 2. Paragraph (b) of subsection (6) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(6)

(b) No foreclosure judgment may be entered until at least 45 ~~30~~ days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. The notice must be in substantially the following form:

DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the ...(type of assessment)... assessment to ...(name of association).... The association intends to foreclose the lien and collect the unpaid amount within 45 ~~30~~ days of this letter being provided to you.

You owe the interest accruing from ...(month/year)... to the present. As of the date of this letter, the total amount due with interest is $..... All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to ...(insert name, addresses, and telephone numbers of association representative)....

If this notice is not given at least 45 ~~30~~ days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney ~~attorney's~~ fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his or her last known address; and, upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney ~~attorney's~~ fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a notice of contest of lien as provided in subsection (5). The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the unit owner.

Section 3. Subsection (4) of section 718.121, Florida Statutes, is amended, and subsections (5) and (6) are added to that section, to read:

718.121 Liens.—

(4)(a) If an association sends out an invoice for assessments or a unit's statement of the account described in s. 718.111(12), the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

(b) Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this paragraph.

(c) A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of

delivery of the invoice for assessments or the unit's statement of the account before the association may change the method of delivering the statement of the account. The unit owner may make the affirmative acknowledgment electronically or in writing.

(5) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the unit owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must also be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this subsection. A rebuttable presumption that an association mailed a notice in accordance with this subsection is established if a board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468, provides a sworn affidavit attesting to such mailing. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice of its intent to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

(6) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 45 ~~30~~ days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, ~~and~~ by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the unit address, by first-class United States mail to the unit address ~~of the association, if the address is within the United States,~~

~~and delivered to the owner at the address of the unit if the owner's address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient~~. Delivery of the notice shall be deemed given upon mailing as required by this subsection. The notice must be in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 45 ~~30~~ days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 45 ~~30~~ days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....

Interest through ...(dates)...*	$.....
Certified mail charges	$.....
Other costs	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

Section 4. Paragraphs (a) and (c) of subsection (2) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if

known, telephone numbers. The association shall also maintain the e-mail addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The e-mail addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the e-mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the

name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

14. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain

copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration,

articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative

proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the

name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

8. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

Section 5. Subsections (3) and (4) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(3)(a) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate

may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing applies notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 719.303(4).

(b)1. If an association sends out an invoice for assessments or a unit's statement of the account described in s. 719.104(2)(a)9.b., the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for an invoice for assessments or the statement of the account, the association

must deliver a written notice of such change to each unit owner. The written notice must be delivered to the unit owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if such address is not the unit address, must be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this subparagraph.

3. A unit owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the unit's statement of the account before the association may change the method of delivering the invoice for assessments or the statement of the account. The unit owner may make the affirmative acknowledgment electronically or in writing.

(c) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the owner which specifies the amount owed the association and provides the unit owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the unit owner at his or her last address as reflected in the association's records and, if

such address is not the unit address, must also be sent by first-class United States mail to the unit address. Notice is deemed to have been delivered upon mailing as required by this paragraph. A rebuttable presumption that an association mailed a notice in accordance with this subsection is established if a board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468, provides a sworn affidavit attesting to such mailing. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days of the date of this letter. This letter shall serve as the association's notice to proceed with further collection action against your property no sooner than 30 days of the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....

Interest through ...(dates)...* $.....
TOTAL OUTSTANDING $.....

*Interest accrues at the rate of .... percent per annum.

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 45 ~~30~~ days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail, and the notice must be in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit ...(unit number)... of ...(name of cooperative)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 45 ~~30~~ days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 45 ~~30~~ days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
Certified mail charges	$.....
Other costs	$.....
TOTAL OUTSTANDING	$.....

*Interest accrues at the rate of .... percent per annum.

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in

full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)...:

You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this .... day of ...., ...(year)....

Signed: ...(Owner or Attorney)...

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment

to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien. If the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. .... OF ...(NAME OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED

IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.

...(Signature of Authorized Agent)... ...(Signature of Witness)...

...(Print Name)... ...(Print Name)...

...(Signature of Witness)...

...(Print Name)...

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public)...

...(Print, type, or stamp commissioned name of Notary Public)...

Personally Known .... OR Produced .... as identification.

Section 6. Present paragraph (l) of subsection (4) of section 720.303, Florida Statutes, is redesignated as paragraph (m), a new paragraph (l) is added to that subsection, and paragraph (c) of subsection (5) of that section is amended, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(4) OFFICIAL RECORDS.—The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(1) All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3.

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the

association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded

782 governing documents, to ensure their availability to members and
783 prospective members. Notwithstanding this paragraph, the
784 following records are not accessible to members or parcel
785 owners:
786 1. Any record protected by the lawyer-client privilege as
787 described in s. 90.502 and any record protected by the work-
788 product privilege, including, but not limited to, a record
789 prepared by an association attorney or prepared at the
790 attorney's express direction which reflects a mental impression,
791 conclusion, litigation strategy, or legal theory of the attorney
792 or the association and which was prepared exclusively for civil
793 or criminal litigation or for adversarial administrative
794 proceedings or which was prepared in anticipation of such
795 litigation or proceedings until the conclusion of the litigation
796 or proceedings.
797 2. Information obtained by an association in connection
798 with the approval of the lease, sale, or other transfer of a
799 parcel.
800 3. Personnel records of association or management company
801 employees, including, but not limited to, disciplinary, payroll,
802 health, and insurance records. For purposes of this
803 subparagraph, the term "personnel records" does not include
804 written employment agreements with an association or management
805 company employee or budgetary or financial records that indicate

the compensation paid to an association or management company employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Any electronic security measure that is used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

8. All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3.

Section 7. Paragraphs (c) and (d) are added to subsection (3) of section 720.3085, Florida Statutes, to read:

720.3085 Payment for assessments; lien claims.—

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(c)1. If an association sends out an invoice for assessments or a parcel's statement of the account described in s. 720.303(4)(j)2., the invoice for assessments or the parcel's statement of account must be delivered to the parcel owner by first-class United States mail or by electronic transmission to the parcel owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice such change to each parcel owner.

The written notice must be delivered to the parcel owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must be sent by first-class United States mail to the parcel address. Notice is deemed to have been delivered upon mailing as required by this subparagraph.

3. A parcel owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the statement of the account before the association may change the method of delivering the statement of the account. The parcel owner may make the affirmative acknowledgment electronically or in writing.

(d) An association may not require payment of attorney fees related to a past due assessment without first delivering a written notice of late assessment to the parcel owner which specifies the amount owed the association and provides the parcel owner an opportunity to pay the amount owed without the assessment of attorney fees. The notice of late assessment must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must also be sent by

first-class United States mail to the parcel address. Notice is deemed to have been delivered upon mailing as required by this paragraph. A rebuttable presumption that an association mailed a notice in accordance with this subsection is established if a board member, officer, or agent of the association, or a manager licensed under part VIII of chapter 468, provides a sworn affidavit attesting to such mailing. The notice must be in substantially the following form:

NOTICE OF LATE ASSESSMENT

RE: Parcel .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days after the date of this letter. This letter shall serve as the association's notice to proceed with further collection action against your property no sooner than 30 days after the date of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....

TOTAL OUTSTANDING $.....

*Interest accrues at the rate of .... percent per annum.

Section 8. This act shall take effect July 1, 2021.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:
An act relating to community association assessment notices; amending s. 718.111, F.S.; requiring condominium associations to maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to unit owners; amending s. 718.116, F.S.; revising timeframes for foreclosure judgments; conforming provisions to changes made by the act; amending s. 718.121, F.S.; requiring condominium associations to deliver certain invoices for assessments or statements of account to unit owners in a specified manner; requiring condominium associations to give notice to unit owners before changing the method of delivery for the invoices for assessments or statements of account; providing requirements for the notice; requiring unit owners to affirmatively

acknowledge the changes in delivery methods; prohibiting condominium associations from requiring the payment of attorney fees relating to past due assessments without first providing a specified notice to unit owners; providing requirements for the notice; establishing a rebuttable presumption relating to mailing the notice if a certain requirement is met; revising the timeframe for condominium associations to file liens against condominium units; conforming provisions to changes made by the act; amending s. 719.104, F.S.; requiring cooperative associations to maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to unit owners; amending s. 719.108, F.S.; requiring cooperative associations to deliver certain invoices for assessments or statements of account to unit owners in a specified manner; requiring cooperative associations to give notice to unit owners before changing the method of delivery for the invoices for assessments or statements of account; providing requirements for the notice; requiring unit owners to affirmatively acknowledge the changes in delivery methods; prohibiting cooperative associations from requiring the payment of attorney fees relating to

past due assessments without first providing specified notice to unit owners; providing requirements for the notice; establishing a rebuttable presumption relating to mailing the notice if a certain requirement is met; revising the timeframe for cooperative associations to file liens against cooperative parcels; conforming provisions to changes made by the act; amending s. 720.303, F.S.; requiring homeowners' associations to maintain specified affirmative acknowledgments as official records of the association; specifying that such acknowledgments are not accessible to parcel owners; amending s. 720.3085, F.S.; requiring homeowners' associations to deliver certain invoices for assessments or statements of account to parcel owners in a specified manner; requiring homeowners' associations to give notice to parcel owners before changing the method of delivery for the invoices for assessments or statements of account; providing requirements for the notice; requiring parcel owners to affirmatively acknowledge the changes in delivery methods; prohibiting homeowners' associations from requiring the payment of attorney fees relating to past due assessments without first providing specified notice to parcel owners; providing requirements for the notice; establishing a rebuttable presumption

relating to mailing the notice if a certain requirement is met; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 665 Homeowners' Association Rental Agreements
SPONSOR(S): McClure
TIED BILLS: **IDEN./SIM. BILLS:** SB 872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Thompson	Anstead
2) Civil Justice & Property Rights Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Chapter 720, F.S., also known as the "Homeowners' Association Act," is the chapter of Florida law that governs homeowners' associations (HOAs) in Florida. The powers and duties of an HOA include the powers and duties provided in ch. 720, F.S., and in the HOA governing documents, including, but not limited to, amendments to those documents, which generally apply to all owners.

When an HOA adopts an amendment to its governing documents to restrict members from renting parcels, such restrictions apply to all parcel owners, regardless of when the title was acquired. However, when a condominium (condo) association adopts a rental restriction, the restriction applies only to condo unit owners who consent, or who acquire title after the restriction is imposed. As a result, this "grandfathering" provision allows certain condo unit owners to rent their units without the burden of rental restrictions that are imposed prospectively. This provision does not exist for HOAs.

The bill provides that in HOAs with more than 15 parcels, HOA amendments to governing documents restricting rental for six months or more only apply to:

- Owners who acquire title after the effective date of the governing document; or
- Owners who consent to such amendment.

However, the bill allows HOAs with more than 15 parcels to amend their governing documents to prohibit or regulate rental agreements for less than six months, and prohibit rentals more than three times a year, and have such amendments apply to all owners.

The bill provides for change of ownership criteria to be used to determine whether the HOA amendments to governing documents related to rentals for six months or more apply to certain owners.

The bill is not expected to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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 regulated communities through education, complaint resolution, mediation, arbitration, and developer disclosure. The Division has regulatory authority over:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).[1]

Homeowners' Associations (HOAs)

Chapter 720, F.S., also known as the "Homeowners' Association Act," is the chapter of Florida law that governs certain types of HOAs in Florida. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.[2] The law provides requirements for notices of meetings,[3] recordkeeping, including which records are accessible to the members of the association,[4] and financial reporting.[5]

An HOA is defined as an association of residential property owners in which voting membership is:

- Made up of "parcel owners;"
- A mandatory condition of parcel ownership; and
- Authorized to impose assessments that, if unpaid, may become a lien on the parcel.[6]

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S.[7] Like a condominium or cooperative, an HOA is administered by an elected board of directors.[8] 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.[9]

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

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[1] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes Complaints/Investigations*, http://myfloridalicense.custhelp.com/app/answers/detail/a_id/2220/~/division-of-florida-condominiums%2C-timeshares%2C-and-mobile-homes (last visited Mar. 3, 2021).
[2] S. 720.302(1), F.S.
[3] S. 720.303(2), F.S.
[4] S. 720.303(4), F.S.
[5] S. 720.303(7), F.S.
[6] S. 720.301(9), F.S.
[7] *Id.*
[8] Ss. 720.303 and 720.307, F.S.
[9] Ss. 720.301 and 720.303, F.S.

disputes,[10] but no state agency has direct oversight of HOAs. For HOAs, the Division's authority is limited to the arbitration of recall election disputes.[11]

HOA Rental Restrictions

Unless otherwise provided in the governing documents or required by law, the governing document of a HOA may be amended by the affirmative vote of two-thirds of the voting interests of the association.[12] **Amendments to governing documents generally apply to all owners in the HOA**, except that HOAs with 15 or fewer parcels may only enforce restrictions against a parcel owner that were in place at the time the owner acquired his or her parcel.[13]

Current law does not prevent an HOA from adopting an amendment to its governing documents to restrict members from renting parcels. If such a provision is adopted by an HOA, the restriction applies to all parcel owners **regardless of when they obtained title to their property** or whether they voted against the restriction.

Condominium Association Rental Restrictions

Conversely, in a condominium association, certain rental restrictions **do not apply to all condo unit owners.** Specifically, a condo association rental restriction that alters the duration of the rental term, or specifies or limits the number of times a unit owner is entitled to rent their unit during a specified period, applies only to the following:

- Unit owners who consent to the amendment, and
- Unit owners who acquire title to their units after the effective date of the restriction.[14]

This type of provision does not exist for HOA parcel owners.

Effect of the Bill

HOA Rental Restrictions

The bill provides that any HOA governing document, or amendment to a governing document, enacted after July 1, 2021, in an HOA with more than 15 parcels, that prohibits or regulates rental agreements for rentals of six months or more, applies only to:

- HOA parcel owners who acquire title to the parcel after the effective date of the governing document or amendment; or
- HOA parcel owners who consent, individually or through a representative, to the governing document or amendment.

The bill allows HOAs with more than 15 parcels, to amend their governing documents to prohibit or regulate rental agreements for a term of less than six months. Such amendments apply to all parcel owners.

The bill allows HOAs with more than 15 parcels, to prohibit the rental of a parcel for more than three times in a calendar year. Such amendments apply to all parcel owners.

Change of Ownership

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[10] S. 720.306(9)(c), F.S.
[11] *See* s. 720.306(9)(c), F.S.
[12] S. 720.306(1), F.S.
[13] S. 720.303(1), F.S.
[14] S. 718.110(13), F.S.

The bill specifies change of ownership criteria for purposes of determining whether the HOA amendments to governing documents that prohibit rentals for six months or more apply to certain owners.

The bill provides that a change of ownership **does occur,** with respect to a parcel owner that is a business entity, when each person that owned an interest in the entity at the time of the enactment of the amendment or rule conveys its interest in the business entity to an unaffiliated party.

The bill provides that a change of ownership **does not occur**, with respect to a parcel owner that is a business entity, when a parcel owner conveys the parcel to an affiliated entity or when beneficial ownership of the parcel does not change.

The bill defines "affiliated entity" as an entity that:

- Controls, is controlled by, or is under common control with the parcel owner; or
- Becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests.

For a conveyance to be recognized as one made to an affiliated entity, the bill requires the entity to furnish to the HOA a document certifying that these provisions apply, along with any organizational documents for the parcel owner and the affiliated entity which support the representations in the certificate, as requested by the HOA.

B. SECTION DIRECTORY:

Section 1: Amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 2: Provides an effective date of July 1, 2021.

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:

The bill appears to ensure that HOA parcel owners who acquire title prior to the HOA adopting long term rental restrictions, would not be subject to the restriction unless they consent.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to effect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 50-55 regarding a change of ownership may need to be amended to clarify what was intended when it specifies that a change of ownership does occur when "each person" that owned an interest in the entity at the time of the enactment of the amendment or rule conveys its interest in the business entity to an unaffiliated party. Does this mean a change of ownership occurs when "any" person (on an individual basis) who owned an interest conveys its interest, or must "all" persons who owned an interest convey their interest?

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to homeowners' associations rental agreements; amending s. 720.306, F.S.; providing applicability for governing documents and amendments relating to rental agreements which are enacted after a specified date; providing an exception; providing applicability; specifying when a change of ownership does or does not occur for certain purposes; defining the term "affiliated entity"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (h) is added to subsection (1) of section 720.306, Florida Statutes, to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(h)1. Except as otherwise provided in this paragraph, any governing document, or amendment to a governing document, that is enacted after July 1, 2021, and that prohibits or regulates rental agreements applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment, or to a parcel owner who consents, individually or through a representative, to the governing

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

document or amendment.

2. Notwithstanding subparagraph 1., an association may amend its governing documents to prohibit or regulate rental agreements for a term of less than 6 months and may prohibit the rental of a parcel for more than three times in a calendar year, and such amendments shall apply to all parcel owners.

3. This paragraph does not affect the amendment restrictions for associations of 15 or fewer parcel owners under s. 720.303(1).

4. For purposes of this paragraph, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity or when beneficial ownership of the parcel does not change. For purposes of this subparagraph, the term "affiliated entity" means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests. For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish to the association a document certifying that this paragraph applies and provide any organizational documents for the parcel owner and the affiliated entity which support the representations in the certificate, as requested by the association.

5. For purposes of this paragraph, a change of ownership

does occur when, with respect to a parcel owner that is a business entity, each person that owned an interest in the entity at the time of the enactment of the amendment or rule conveys its interest in the business entity to an unaffiliated party.

Section 2. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 823 Alarm System Contractors
SPONSOR(S): Mariano
TIED BILLS: **IDEN./SIM. BILLS:** SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Brackett DB	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified by or registered with the Electrical Contractors' Licensing Board (ECLB) of the Department of Business and Professional Regulation (DBPR). Certified contractors can practice statewide and are licensed and regulated by the ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality. Registered contractors are also required to register their license with the ECLB.

An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, **fire**, robbery, or medical emergency.

The Florida Building Code (Building Code) must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. Local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare, and to enforce the Building Code. It is unlawful for a person or corporation to construct, alter, repair, or demolish a building without obtaining a permit from the local enforcing agency.

Current law requires an electrical and alarm system contractor to obtain a building permit before installing, replacing, or **repairing** a fire alarm system until they obtain a building permit.

Current law also requires electrical and alarm system contractors to include their license number in every offer of service, business proposal, or advertisement, regardless of medium. However, advertisement does not include business stationery or any promotional novelties such as balloons, pencils, trinkets, or articles of clothing.

The bill:

- Provides that an alarm system contractor does not have to include their license number in an advertisement, if the advertisement directs consumer's to the contractor's website and the website includes their license number.
- Provides that an electrical or alarm system contractor is not required to obtain a fire alarm permit before beginning repairs on a fire alarm system, if the contractor applied for a fire alarm permit prior to beginning the repairs.
- Clarifies that repairs to a fire alarm system are not considered complete until the required fire alarm permit has been obtained and approved by the local enforcement agency.

The bill does not have a fiscal impact on state and local governments

The bill provides for an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Contractors are regulated by ch. 489, F.S., which outlines the law pertaining to contractors in the state of Florida. Part I of ch. 489, F.S., covers contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers contracting regulated by the Electrical Contractors' Licensing Board (ECLB). Both boards are housed in the Department of Business and Professional Regulation (DBPR).

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified by or registered with the ECLB. Certified contractors can practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality.[1]

Electrical contractors may work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form.[2]

Alarm system contractors may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems. An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[3]

Electrical certified specialty contractors are contractors whose scope of work is limited to a particular phase of electrical contracting, such as electrical signs. Certified electrical specialty contractors can practice statewide. The ECLB creates electrical certified specialty contractor licenses through rulemaking, and has created the following certified specialty contractor licenses:[4]

- Lighting maintenance specialty contractor;
- Sign specialty electrical contractor;
- Residential electrical contractor;
- Limited energy systems specialty contractor;
- Utility line electrical contractor; and
- Two-Way Radio Communications Enhancement Systems contractor.

The scope of work for certified electrical contractors includes any work that an alarm system contractor is able to perform.[5]

Registered electrical contractors may install raceways for alarm systems.[6] They may also bid on electrical contracts, which include alarm systems as part of the contract, but they must subcontract the work on such alarm systems to an alarm system contractor.[7]

State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal (Division within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633,

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[1] *See generally* s. 489.505, F.S.
[2] S. 489.505(12), F.S.
[3] S. 489.505(1)-(2), F.S.
[4] Ss. 489.505(19), and 489.511(4), F.S; Rule 61G6-7.001, F.A.C.
[5] 489.537(7), F.S.
[6] A "raceway" is an enclosed channel designed to hold wires, cables, or busbars. Mike Holt, Understanding Raceways, EC&M (Feb. 13, 2018) https://www.ecmweb.com/national-electrical-code/code-basics/article/20903368/understanding-raceways#:~:text=The%20NEC%20defines%20a%20raceway,permitted%20in%20this%20Code%20%5BArt. (last visited Mar. 3, 2021).
[7] 489.537(2)(b), F.S.

F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[8] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.[9]

The State Fire Marshall adopts a new edition of the Fire Code every three years. When adopting a new edition of the Fire Code, the State Fire Marshal must adopt the most recent version of the National Fire Protection Association (NFPA) Standard 1, Fire Prevention Code, and the NFPA 101 Life Safety Code.[10]

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[11] Each county, municipality, and special district with fire safety enforcement responsibilities must employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.[12]

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[13]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[14] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[15]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. [16]

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[8] S. 633.104, F.S.
[9] Ss. 633.202(1) and (2), F.S.
[10] *Id.* The NFPA is the National Fire Protection Association. Founded in 1896, the NFPA delivers information and knowledge through no more than 300 consensus codes and standards, research, training, education, outreach and advocacy. NFPA, *About NFPA*, https://www.nfpa.org/about-nfpa (last visited Feb. 4, 2021).
[11] The Florida Building Code is the statewide building code for all construction in the state. Every local government must enforce the Florida Building Code and issue building permits. *See generally* ch. 553, F.S.
[12] S. 633.216(1), F.S.
[13] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 15, 2021).
[14] *Id.*; DBPR, *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited on Feb. 15, 2021).
[15] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 21, 2021).
[16] *See* S. 553.72(1), F.S.

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the DBPR, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,[17] the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[18]

Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[19] Every local government must enforce the Florida Building Code and issue building permits.[20]

Current law also requires State universities, Florida College System institutions, and public school districts to enforce the Building Code for their building projects, including conducting plan review and inspections. State universities, Florida College System institutions, and public school districts must use or contract with licensed building officials, inspectors, and plan examiners, and may elect to use a local government's building department to review plans and perform inspections.[21]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[22]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[23] A building official is a local government employee or a person contracted by a government entity who supervises building code activities, including plans review, enforcement, and inspection.[24] Any construction work that requires a building permit also requires plans and inspections by the building official to ensure the work complies with the Building Code.[25] Generally speaking, a permit that passes the required inspections is considered completed or closed.[26]

Time-Period to Review Building Permit Applications

Fire protection systems, including fire alarms, must be installed, repaired, operated, and maintained in accordance with the Fire Code and the Building Code.[27]

Current law requires local governments to review certain building permit applications within a specific time-period of receiving the applications. Current law has established time-periods for local governments to review applications for the following building permits:[28]

- accessory structure;
- **alarm permit**;

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[17] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Feb. 21, 2021).
[18] Ss. 553.73, & 553.74, F.S.
[19] S. 553.72, F.S.
[20] Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.
[21] S. 553.80(6), F.S.
[22] *See* Ss. 125.56(4)(a) & 553.79(1), F.S.
[23] S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).
[24] S. 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code (Building).
[25] Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building (Building).
[26] Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Mar. 15, 2019).
[27] Sections 202 and 901.2 of the Seventh edition of the Florida Building Code (Building).
[28] S. 553.792(2), F.S.

- nonresidential buildings less than 25,000 square feet;
- electric;
- irrigation permit;
- landscaping;
- mechanical;
- plumbing;
- residential units other than a single family unit;
- multifamily residential not exceeding 50 units;
- roofing;
- signs;
- site-plan approvals and subdivision plats not requiring public hearings or public notice; and
- lot grading and site alteration associated with the permit application set forth in this subsection.

When a local government receives an application for one of the above building permits, it must:[29]

- Inform the applicant within **10 days** of receiving the application, what information, if any, is needed to complete the application.
    - If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.
- Notify the applicant within **45 days** of the application being deemed complete, if additional information is necessary to determine the sufficiency of the application;
    - If additional information is needed the local government must specify what additional information is necessary.
    - The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.
- Approve, approve with conditions, or deny the application within **120 days** following receipt of the completed application.
    - This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

These time-periods do not apply when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.[30]

Uniform Fire Alarm Permit

During the 2019 Legislative Session, the Legislature passed HB 1393, which created a uniform fire alarm permit application. An electrical or alarm system contractor must file a uniform fire alarm permit application with a local enforcement agency in order to obtain a fire alarm permit.[31]

A local enforcement agency is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the Building Code.[32]

The Uniform Fire Alarm Permit Application must include the following information:[33]

- The name and address of the owner of the property;
- The name, address, and license number of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description;
- A description of the work being performed; and

[29] S. 553.792(1), F.S.
[30] *Id.*
[31] 553.7921(1); *See* House Analysis of 2019 House Bill 1393 (Jun. 27, 2019).
[32] 553.71(5), F.S.
[33] 553.7921(2), F.S.

- The owner and the contractor's signature.

HB 1393 also provided that an electrical or alarm system contractor cannot install, replace, or **repair** a fire alarm until they obtain a fire alarm permit. This resulted in electrical and alarm system contractors being unable to begin repairs on fire alarms until they obtained a permit.[34]

Advertisements

Current law requires construction contractors and electrical and alarm system contractors to have their license number in every offer of service, business proposal, or **advertisement**, regardless of medium. However, advertisement does not include business stationery or any promotional novelties such as balloons, pencils, trinkets, or articles of clothing.[35]

According to DBPR, if an advertisement does not include a contractor's license number, it is a warning sign that the contractor may be an unlicensed contractor.[36]

According to industry members, many states require contractors to include their license number in their advertisements. This results in alarm system companies that operate in multiple states having to create separate advertisements, including television, radio, and print ads, for each state or having to list all of their license numbers in an advertisement.[37]

Effect of the Bill

An electrical or alarm system contractor is not required to obtain a fire alarm permit before beginning repairs on a fire alarm system if:

- the fire alarm was previously permitted by the local enforcement agency; and
- the contractor applied for a fire alarm permit prior to beginning the repairs.

The bill clarifies that repairs to a fire alarm system are not considered complete until the required fire alarm permit has been obtained and approved by the local enforcement agency.

The bill provides that an alarm system contractor does not have to include their license number in an advertisement[38] if:

- The alarm system contractor maintains a website that contains his or her license number; and
- The alarm system contractor's advertisement directs consumers to the contractor's website.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.521, F.S., providing an exemption to having to include a license number in an alarm system advertisement.

Section 2. Amends s. 553.7921, F.S., provides that a contractor may begin repairs on a fire alarm system under certain conditions.

Section 3. Providing an effective date of July 1, 2021.

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[34] 553.7921(1); *See* House Analysis of 2019 House Bill 1393 (Jun. 27, 2019).
[35] Ss. 489.119(5), and 489.521(7)(b), F.S.
[36] Any person without a license who advertises himself or herself or a business organization as available to practice electrical or alarm system contracting commits unlicensed contracting. S. 489.531(1)(b), F.S.; DBPR, *Tips for Hiring a Contractor*, http://www.myfloridalicense.com/dbpr/reg/documents/Construction-Brochure-English.pdf?x40199 (last visited Mar. 3, 2021).
[37] Email from Holly Borgmann, Vice President of Government Affairs, ADT, RE: ADT one pager on advertising, (Mar. 4, 2021).
[38] "Advertisement" includes newspaper, magazine, flyer, billboard, phone book, Internet, and broadcast advertisements.

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:

The bill may have a positive impact on the private sector by allowing electrical and alarm system contractors to begin repairs on fire alarm systems without having to wait to obtain a permit, and allowing companies to advertise in multiple states using the same advertisement.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill exempts alarm system contractors from having to include their license number in advertisements under certain conditions. However, certified electrical contractors may also work on alarm systems. The sponsor may want to clarify that an electrical contractor does not have to put their license number on advertisements for alarm system contracting under certain conditions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to alarm system contractors; amending s. 489.521, F.S.; providing that advertisements for an alarm system contractor do not have to include the contractor's registration or certification number under certain circumstances; amending s. 553.7921, F.S.; authorizing a contractor to begin repairing a specified fire alarm system under certain conditions; providing that a repaired fire alarm system is not compliant with the law until certain conditions are met; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (7) of section 489.521, Florida Statutes, is amended to read:

489.521 Business organizations; qualifying agents.—

(7)

(b) The registration or certification number of a contractor shall be stated in each offer of services, business proposal, or advertisement, regardless of medium, used by that contractor. For the purposes of this part, the term "advertisement" does not include business stationery or any promotional novelties such as balloons, pencils, trinkets, or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

articles of clothing. This paragraph does not apply to a newspaper, magazine, flyer, billboard, phone book, Internet, or broadcast advertisement for an alarm system contractor as long as the contractor maintains an Internet website that contains the contractor's registration or certification number and the advertisement directs consumers to the contractor's Internet website.

(c) The board shall assess a fine of not less than $100 or issue a citation to any contractor who fails to include that contractor's certification or registration number when submitting an advertisement for publication, broadcast, or printing. In addition, any person who claims in any advertisement to be a certified or registered contractor, but who does not hold a valid state certification or registration, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Section 553.7921, Florida Statutes, is amended to read:

553.7921 Fire alarm permit application to local enforcement agency.—

(1) A contractor must file a Uniform Fire Alarm Permit Application as provided in subsection (2) with the local enforcement agency and must receive the fire alarm permit before~~:~~

~~(a)~~ installing or replacing a fire alarm if the local

enforcement agency requires a plan review for the installation or replacement. If the local enforcement agency requires a fire alarm permit in order to repair~~; or~~

~~(b) Repairing~~ an existing alarm system that was previously permitted by the local enforcement agency, a contractor must file a Uniform Fire Alarm Permit Application as provided in subsection (2) but may begin work before receiving the permit ~~if the local enforcement agency requires a fire alarm permit for the repair~~. A repaired fire alarm system is not in compliance with the law until the required permit has been issued and the local enforcement agency has approved the repair.

(2) A Uniform Fire Alarm Permit Application must be submitted with any drawing, plan, and supporting documentation required by a local enforcement agency for a project for which a plan review or fire alarm permit is required under subsection (1). The application may be submitted electronically or by facsimile and must be signed by the owner, or the owner's authorized representative, and the contractor, or the contractor's agent. The application must contain the following information, in a substantially similar form:

UNIFORM FIRE ALARM

PERMIT APPLICATION

Tax Folio No..... Application No.....

Owner's or Representative's Name.....

Property Address.....

City..... State..... Zip.....
Phone Number.....
Fee Simple Titleholder's Name (if other than owner).....
.....
Fee Simple Titleholder's Address (if other than owner).....
.....
Description of Work.....
....
New Install..... Replacement.....
Addition..... Other.....
Construction Type.....
Proposed Use.....
Alarm Contractor's Name.....
Alarm Contractor's Address.....
City..... State..... Zip.....
Phone Number.....
Alarm Contractor's License Number.....
Application is hereby made to obtain a permit to do the work or installation as indicated. I certify that ~~no work or installation has commenced before the filing of this permit application and that~~ all of the foregoing information is true

and accurate.

...(Signature of Owner or Owner's Representative)...

Printed Name.....

...(Signature of Contractor or Agent)...

Printed Name.....

Section 3. This act shall take effect July 1, 2021.

REGULATORY REFORM SUBCOMMITTEE

HB 823 by Rep. Mariano
Alarm System Contractors

AMENDMENT SUMMARY
March 8, 2021

Amendment 1 by Rep. Mariano (line 28):
The amendment:

- Clarifies that **electrical contractors** that are performing alarm system contracting, in addition to alarm system contractors, are not required to include their license number in an advertisement, if the advertisement includes the contractor's website and the website includes the contractor's license number.

Amendment 2 by Rep. Mariano (line 60):
The amendment:

- Clarifies that a repaired alarm system is not compliant with the Florida Building Code, Florida Fire Code, and any other applicable codes, until the local enforcement agency has approved the repair.

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Mariano offered the following:

Amendment (with title amendment)

Remove line 28 and insert:

broadcast advertisement for alarm system contracting as long

T I T L E A M E N D M E N T

Remove lines 3-4 and insert:

s. 489.521, F.S.; providing that advertisements for alarm system contracting do not have to include the

Amendment No. 2.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Mariano offered the following:

Amendment (with title amendment)

Remove line 60 and insert:

with applicable codes and standards until the required permit has been issued and the

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T I T L E A M E N D M E N T

Remove line 10 and insert:

Compliant with applicable codes and standards until certain conditions are

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 855 Barber Services
SPONSOR(S): Morales and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Wright	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

Barbers and barbershops are regulated by the Barbers' Board (board) under the Department of Business and Professional Regulation (DBPR). A barber license is required to perform barbering services, and arrangements for such services must be made through a registered barbershop.

Generally, all barber services must performed in registered barbershops, except services provided:

- in a location other than a registered barbershop, including, but not limited to, a nursing home, hospital, or residence, for a client of ill health.
- in connection with the motion picture, fashion photography, theatrical, or television industry; or a manufacturer trade show demonstration.

The bill allows barbers to shampoo, cut, or arrange hair in a location other than a registered barbershop without making arrangements to do so through a registered barbershop.

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

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Barbering

Barbers and barbershops are regulated by ch. 476, F.S., and licensed by the Barbers' Board (board) under the Department of Business and Professional Regulation (DBPR).

'Barbering' means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances."[1]

A barber license is required to perform barbering services.[2] To be eligible for licensure, barbers must:[3]

- be at least 16 years old,
- complete the required training for barbers, which is between 600 and 900 hours,[4]
- pass the written examination,[5] and
- pay a $218.50 application fee,[6] plus a $5 unlicensed activity fee.[7]

There are 11,713 barbers and 5,434 restricted barbers in the state. For the 2019-2020 Fiscal Year, DBPR received 845 complaints against barbers, and took 112 disciplinary actions.[8]

Barbershops

In Florida, barbershops must be registered.[9] Barbershops are inspected periodically by DBPR, in accordance with sanitary standards set forth by the board.[10]

Generally, all barber services must performed in registered barbershops, except services provided:[11]

- in a location other than a registered barbershop, including, but not limited to, a nursing home, hospital, or residence, for a client of ill health who is unable to go to a registered barbershop. Arrangements for the performance of such barber services must be made through a registered barbershop.
- in connection with the motion picture, fashion photography, theatrical, or television industry; or a manufacturer trade show demonstration.

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[1] S. 476.034(2), F.S.
[2] S. 476.144(1), F.S.
[3] S. 476.114, F.S.
[4] Barbers are eligible to take the examination after 600 hours. If their examination is not successful, the full 900 hours must be completed. S. 476.114(2)(c), F.S. There is also an option to be a barber with a restricted license, which is 600 hours training in total and restricts such barbers from applying chemical solutions or preparations to hair. S. 476.144(6), F.S.; R. 61G3-16.006, F.A.C.
[5] R. 61-35.006, F.A.C.
[6] Email from Conner Mann, Legislative Affairs Coordinator, Florida Department of Business and Professional Regulation, RE: Barbers (Mar. 1, 2021).
[7] S. 455.2281, F.S.
[8] DBPR, *supra* note 6.
[9] S. 476.184(1), F.S.
[10] S. 476.184(2), F.S.
[11] S. 476.188, F.S.

Cosmetology and Cosmetology Salons

Cosmetologists, nail specialists, facial specialists, full specialists, and related salons in the state are regulated in accordance with ch. 477, F.S., and licensed by the Board of Cosmetology under DBPR. A cosmetology or specialty license is required to perform cosmetology services.[12]

In Florida, cosmetology and specialty salons must be licensed.[13] Such salons are inspected periodically by DBPR, in accordance with sanitary standards set forth by the Board of Cosmetology.[14]

Currently, cosmetology services must be performed by a cosmetologist or specialist in a licensed cosmetology or specialty salon, except:[15]

- services provided for a special event.[16]
- hair shampooing, hair cutting, hair arranging, nail polish removal, nail filing, nail buffing, and nail cleansing performed at any time outside of a salon, regardless of whether the service is in connection with a special event.
- services provided for a client who for reasons of ill health is unable to go to a licensed salon. Arrangements for the performance of such cosmetology services must be made through a licensed salon.
- services provided for a motion picture, fashion photography, theatrical, or television industry; a photography studio salon; a manufacturer trade show demonstration; or an educational seminar.

Prior to 2020, a cosmetologist or specialist was required to work through a salon for special events, similar to current requirements for barbers.[17] CS/HB 1193[18] allowed cosmetologists and specialists to perform cosmetology services for a special event without making such arrangements through a salon.

CS/HB 1193 also allowed hair shampooing, hair cutting, hair arranging, nail polish removal, nail filing, nail buffing, and nail cleansing to be performed **outside of a salon** by a cosmetologist or specialist, regardless of whether the service is in connection with a special event, and without making such appointment through a salon.[19]

Effect of the Bill

The bill allows barbers to shampoo, cut, or arrange hair in a location other than a registered barbershop without making arrangements to do so through a registered barbershop.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 476.188, F.S.; providing an exception to the requirement to make outside bookings through a registered barbershop.

Section 2: Provides an effective date.

[12] S. 477.014, F.S.
[13] S. 477.025(1), F.S.
[14] S. 477.025(9), F.S.; Ch. 61G5-20, F.A.C.
[15] S. 477.0263(1)-(4), F.S.
[16] Defined by board rule as a wedding or fashion show. R. 61G5-20.0015(1), F.A.C.
[17] S. 477.0263(4), F.S. (2019).
[18] Ch. 2020-160, L.O.F.
[19] *Id.*

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:

The bill will allow barbers to practice shampooing, hair cutting, or hair arranging without needing to perform such services in a barbershop or make appointments for such services through a barbershop, which will bring them in line with current cosmetology requirements. This will provide barbers with more flexibility to offer their customers more services outside a barbershop.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to barber services; amending s. 476.188, F.S.; authorizing a barber to shampoo, cut, or arrange hair in a location other than a registered barbershop without specified arrangements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 476.188, Florida Statutes, is amended to read:

476.188 Barber services to be performed in registered barbershop; exception.—

(2) Pursuant to rules established by the board, barber services may be performed by a licensed barber in a location other than a registered barbershop, including, but not limited to, a nursing home, hospital, or residence, when a client for reasons of ill health is unable to go to a registered barbershop. Arrangements for the performance of barber services in a location other than a registered barbershop shall be made only through a registered barbershop. However, a barber may shampoo, cut, or arrange hair in a location other than a registered barbershop without such arrangements.

Section 2. This act shall take effect July 1, 2021.

CODING: Words stricken are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6053 Doorstep Waste Containers
SPONSOR(S): Yarborough
TIED BILLS: **IDEN./SIM. BILLS:** SB 904

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Brackett	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Code) by rule every three years. The Fire Code sets forth fire safety standards (including certain national codes) for property, and is enforced by local fire officials within each local government in the state. The Fire Code provides that a person may not place combustible waste and refuse in a building's means of egress, which includes a building's exit access corridors.

Currently, there are various providers offering doorstep waste collection services to apartment complexes throughout the state. Residents in these complexes place waste outside their front door, and the provider picks it up. An apartment complex resident's front door usually opens to a hallway, corridor, or walkway, which may be or lead to the building's exit access.

During the 2018 Legislative Session, the Legislature temporarily allowed residents in apartment buildings to place combustible waste and refuse in an exit access corridor if certain conditions were met. These statutory changes were not adopted by the State Fire Marshal in the Fire Code. Current law allows waste containers to be placed in an apartment building's exit access corridors if:

- Waste, which is in a container, is not in an exit access corridor for a single period greater than 5 hours;
- Containers do not exceed 13 gallons for apartment buildings with enclosed corridors and interior or exterior stairs, or exceed 27 gallons for apartment buildings with open air corridors and exterior stairs or balconies with exterior exit stairs;
- Containers are not in an exit access corridor for a single period greater than 12 hours for apartment buildings with enclosed corridors and interior or exterior stairs;
- Containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- Containers can stand upright on their own and do not leak fluids when standing upright; and
- The apartment's management staff have written policies and procedures to ensure compliance with the above conditions.

Apartment complexes were given a phase-in period to comply with these requirements, which ended on December 31, 2020.

The provisions allowing the placement of waste and refuse containers in an exit access corridor expire on July 1, 2021.

The bill repeals the July 1, 2021 expiration date for the statutory provisions, thus allowing residents in apartment complexes to continue placing waste outside their front door for pick up by waste collection services, which may conflict with the Fire Code.

The bill is not expected to have a significant fiscal impact on state or local government.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[1] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

Adoption and Interpretation of the Florida Fire Prevention Code

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

The State Fire Marshal adopts a new edition of the Fire Code every three years.[2] When adopting the Fire Code the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:

- NFPA's Fire Code (1);
- Life Safety Code (101); and
- Guide on Alternative Approaches to Life Safety (101A).[3]

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.[4]

The most recent Fire Code is the 7th edition, which is referred to as the 2020 Florida Fire Prevention Code. The 7th edition of the Fire Code took effect on December 31, 2020.[5]

The State Marshal has authority to interpret the Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.[6]

Fire Safety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in

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[1] S. 633.104, F.S.
[2] S. 633.202, F.S.
[3] S. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, http://www.nfpa.org/about-nfpa (last visited on Feb. 28, 2021).
[4] *Id.*
[5] Division of State Fire Marshal, *Florida Fire Prevention Code (FFPC)*, https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm (last visited Feb. 28, 2021).
[6] S. 633.104(6), F.S.

conjunction with the Florida Building Code.[7] These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.[8]

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.[9] Each county, municipality, and special district with fire safety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.[10]

Section 633.208(5), F.S. states "With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Fire Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety."

Pursuant to s. 633.208(5), F.S., local fire officials must apply the Fire Code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.

Florida Building Code

The Florida Building Code (Building Code) is the statewide building code for all construction in the state. The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation (DBPR), implements the Building Code. The Commission reviews the International Code Council's I-Codes and the National Electric Code every three years to determine if it needs to update the Building Code.[11]

Means of Egress

A means of egress is a path available for a person to leave a building. A means of egress is made up of three parts, which includes the following:[12]

- Exit access;
- Exit; and
- Exit discharge.

The exit access is a path, such as a hallway or corridor, from any location in the building to an exit. The exit is usually a door leading outside, or in a multi-story building, an enclosed stairway. The exit discharge is a path from the exit to a space that is dedicated to public use such as a street or alley.[13]

The Fire Code provides that a building's means of egress must be a certain width determined by the number of occupants in the building and the use of the building.[14] The Fire Code further provides that a building's means of egress must be free of all obstructions or impediments in case of fire or other emergency.[15]

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[7] Ss. 633.108 and 633.208, F.S.
[8] Ss. 633.208 and 633.214(4), F.S.
[9] S. 633.118, F.S.
[10] S. 633.216(1), F.S.
[11] S. 553.73(7)(a), F.S.
[12] Section 3.3.182 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[13] Section 202 of the 7th edition of the Florida Building Code (Building); Richmond ICC, *2018 Annual Conference Education Sessions, Session: 2018 IBC Essentials – Means of Egress & Fire Protection*, https://www.iccsafe.org/wp-content/uploads/2018-IBC-Essentials-%E2%80%93-Means-of-Egress-Fire-Protection.pdf (last visited Feb. 28, 2021).
[14] *See* Section 7.3.4 of the 7th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).
[15] Section 7.1.10.1 of the 7th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).

The Building Code also provides that a building's means of egress must be a certain width determined by the number of occupants in the building.[16] The Building Code provides that the *required width* of a building's means of egress must be free of all obstructions and impediments.[17]

However, the Building Code provides that maintenance of a building's means of egress must be in accordance with the Fire Code.[18] DBPR has interpreted this to mean that the Fire Code takes precedence when it comes to people placing objects, such as a trashcan, in a building's means of egress.[19]

Combustible Waste and Refuse

The Fire Code defines "combustible waste" as any combustible or loose waste material that is generated by an establishment or process and, if salvageable, is retained for scrap or reprocessing on the premises where generated or transported to a plant for processing.[20]

The Fire Code defines "combustible refuse" as a combustible or loose rubbish, litter, or waste materials generated by an occupancy that are refused, rejected, or considered worthless and are disposed of by incineration on the premises where generated or periodically transported from the premises.[21]

Combustible waste and refuse may be stored in an apartment building if the combustible waste and refuse is:[22]

- Stored in a container less than 1.5 cubic yards (302 gallons) or in an enclosed area with a 1 hour fire resistance rating and an automatic sprinkler system;
- Removed from the building once a day unless the waste and refuse is stored in a noncombustible room; and
- Not stored in the building's exit(s).

Private Doorstep Collection Providers

Currently, there are various providers offering doorstep refuse and recycling collection services to apartment complexes throughout the state. The basic business model requires the residents of an apartment building to place their waste outside of their doorstep, in a specified container approved by the provider. The doorstep refuse and recycling collection providers then come by and collect the waste at a specified time.[23]

An apartment complex resident's front door opens to a hallway, corridor, or walkway, which is usually the building's exit access and therefore part of the building's means of egress. According to DFS, apartments that contract with the doorstep refuse and recycling collection providers are violating the Fire Code by allowing residents to place combustible waste and refuse in their buildings' means of egress.[24]

In 2016, the State Fire Marshal issued declaratory statements determining that apartments may not allow residents to place waste containers outside their front doors regardless of the size of the container or if the waste is removed daily. The State Fire Marshal determined that the Fire Code prohibits apartment

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[16] Section 1005 of the 7th edition of the Florida Building Code (Building).
[17] Section 1018.1, 1020.3, and 1024.2 of the 7th edition of the Florida Building Code (Building).
[18] Section 1001.3 of the 6th edition of the Florida Building Code (Building).
[19] Email from Vicky Summerhill, Office of Legislative Affairs, Department of Business and Professional Regulation, FW: Florida Building Code questions (Mar. 4, 2021).
[20] Section 3.3.63 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[21] Section 3.3.62 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[22] Section 10.18.4 and 19.2.1 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[23] Department of Financial Services, Agency Analysis of 2018 House Bill 529, p. 1 (Nov. 29, 2017).
[24] *Id.*

residents from placing any type of waste container outside their door because the residents are placing an obstruction in a building's means of egress and combustible waste in a building's exit.[25]

During the 2018 Legislative Session, the Legislature temporarily allowed refuse and recycling containers to be placed in exit access corridors in apartment buildings if the following conditions are met:[26]

- Waste, which is in a doorstep refuse and recycling collection container, is not placed in an exit access corridor for a single period greater than 5 hours;
- Doorstep refuse and recycling containers do not exceed 13 gallons for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not exceed 27 gallons for apartment buildings with open air corridors and exterior stairs or balconies with exterior exit stairs;
- Doorstep refuse and recycling collection containers are not in an exit access corridor for a single period greater than 12 hours for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- Doorstep refuse and recycling collection containers are able to stand upright on their own and may not leak fluids when standing upright; and
- The apartment's management staff have written policies and procedures to ensure compliance with the above conditions. Management staff must enforce the policies and must provide a copy of the policies to the authority having jurisdiction upon request.

Apartment complexes were given a phase in period to comply with these requirements. Apartments had to comply with the requirements by December 31, 2020. Local fire marshals were given authority to approve alternative containers or storage arrangements that are equivalent to these requirements.[27] However, these requirements sunset on July 1, 2021. The purpose of the sunset date was to give the various providers time to work with the State Fire Marshal to develop an amendment to the Fire Code, which is the State Fire Marshal's preferred method for amending the Fire Code.[28]

According to DFS, the State Fire Marshal adopted an amendment to the Fire Code, which took effect when the 7th edition of the Fire Code became effective on December 31, 2020, intended to allow the various doorstep refuse and recycling collection providers to keep operating.[29] The amendment provides that waste and refuse may be placed in exits, exit passageways, enclosures for stairs or ramps, corridors, elevator lobbies, or egress balconies if:[30]

- Waste, which is in a doorstep refuse and recycling collection container, is not placed in an exit access corridor for a single period greater than 5 hours;
- Doorstep refuse and recycling containers do not exceed 15 gallons;
- Doorstep refuse and recycling collection containers are not in an exit access corridor for a single period greater than 15 hours;
- Doorstep refuse and recycling collection containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- Management staff have written policies and procedures to ensure compliance with the above conditions. Management staff must enforce the policies and must provide a copy of the policies to the authority having jurisdiction upon request; and

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[25] *See In the matter of: William Harrison, Fire Marshal Clermont Fire Department*, Case No.: 188696-16-DS (Fla. DFS) (June 21, 2016); *In the matter of: Steve Strong, Fire Marshal Clearwater Fire & Rescue*, Case No.: 196979-16-DS (Fla. DFS) (Dec. 23, 2016).
[26] S. 633.202(20), F.S.; *See* House Analysis of 2018 House Bill 529 (Apr. 9, 2018).
[27] *Id.*
[28] *See* The Florida Channel, 1/9/18 House Careers and Competition Subcommittee, https://thefloridachannel.org/videos/1-9-18-house-careers-competition-subcommittee/ (last visited Feb. 28, 2021).
[29] Department of Financial Services, Agency Analysis of 2021 House Bill 6053, p. 1 (Mar. 2, 2021).
[30] Sections 10.18.4.1 and 10.18.4.1.1 of the 7th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

- Waste or refuse must be placed completely inside one or more containers with a closed lid.

After July 1, 2021, the following provisions in the amendment to the Fire Code take effect:[31]

- Containers and lids located in an area that is not protected by fire sprinklers must be **made entirely of noncombustible materials** that comply with the Fire Code.[32]
- Containers and lids located in an area that is protected by fire sprinklers does not have to made entirely of noncombustible materials that comply with the Fire Code.

Proponents of repealing the sunset date argue that the amendment to the Fire Code requires apartment complex residents and doorstep refuse and recycling collection providers to use refuse and recycling containers that are not readily available. Opponents of repealing the sunset date argue that repealing the sunset date will allow refuse and recycling containers, which do not comply with the Fire Code, to be placed in apartment access corridors.[33]

Effect of the Bill

The bill repeals the sunset date of July 1, 2021. Thus leaving the provisions in s. 633.202(20), F.S., that allow refuse and recycling containers to be lawfully placed in exit access corridors just as they have been since the adoption of the provisions in 2018.

The bill also repeals the phase in period, which provisions had to be complied with by December 31, 2020.

B. SECTION DIRECTORY:

Section 1. Amends s. 633.202, F.S., repealing a sunset date and a phase in period

Section 2. Provides an effective date of July 1, 2021.

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:

[31] *Id.*

[32] Noncombustible materials must meet a peak rate of heat release not exceeding 150 kW/m² when tested in accordance with ASTME 1354 at an incident heat flux of 50kW/m² in the horizontal orientation. Containers and lids must be listed or have a label from an approved agency that the container or lid meets the Fire Code's requirement. *Id.*

[33] *See* The Florida Channel, 3/3/21 Senate Committee on Community Affairs, https://thefloridachannel.org/videos/3-3-21-senate-committee-on-community-affairs/ (last visited Mar. 4, 2021).

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DFS, removing the sunset date and the phase in period would create a conflict between Florida Statutes and amendments to the Fire Code.

> "The proposed bill language would allow trash containers with no fire-rated requirements and located in the hallways used for egress, to obstruct the means of egress which would cause obstacles to life safety in case of emergency. All of subsection (20) needs to be repealed in accordance with the sunset provisions set forth in the law because it is in conflict with and would cause confusion with the 7th edition of the Florida Fire Prevention Code, which became effective December 31, 2020."[34]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[34] Department of Financial Services *supra* note 29.

A bill to be entitled

An act relating to doorstep waste containers; amending s. 633.202, F.S.; deleting an obsolete provision; removing the scheduled repeal of certain provisions regulating the use of containers in exit access corridors; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (d) and (e) of subsection (20) of section 633.202, Florida Statutes, are amended to read:

633.202 Florida Fire Prevention Code.—

(20)

~~(d) The authority having jurisdiction shall allow apartment occupancies a phase-in period until December 31, 2020, to comply with this subsection.~~

~~(e) This subsection is repealed on July 1, 2021.~~

Section 2. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6073 Individual Wine Containers
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Thompson	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Current law addressing limitations on the size of individual wine containers provides the following:

- The sale of wine in an individual container that holds more than one gallon of wine is prohibited.
- Wine may be sold in a reusable container of 5.16 gallons.
- Distributors and manufacturers are allowed to sell wine to other distributors and manufacturers in containers of any size.
- Except for restaurants in certain situations, wine sold or offered for sale by a licensed vendor to be consumed off the premises must be in the unopened original container.
- Violations are a second-degree misdemeanor.

The bill repeals the law relating to limitations on the size of individual wine containers.

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

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

The license and registration classifications used in the Beverage Law include the following:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[5]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."[6]

Wine Container Limitations

"Wine" is defined as all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.[7]

Current law prohibits the sale of wine in an individual container that holds more than one gallon. However, wine may be sold in a reusable container of 5.16 gallons.[8]

Distributors and manufacturers are authorized to sell wine to other distributors and manufacturers in containers of any size.[9]

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[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] S. 563.01, F.S.
[5] S. 561.01(5), F.S.
[6] S. 561.14, F.S.
[7] S. 564.01(1), F.S.
[8] S. 564.05, F.S.
[9] *Id.*

Except for restaurants in certain situations,[10] wine sold or offered for sale by a licensed vendor to be consumed off-premises must be in the unopened original container.[11]

Violations are a second-degree misdemeanor, punishable by a maximum $500 fine[12] and 60 days in prison.[13]

Effect of the Bill

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

B. SECTION DIRECTORY:

Section 1 Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 2 Provides for an effective date.

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:

The bill will allow the sale of wine in an individual container of any size. This may have a positive fiscal impact on businesses that sell wine.

D. FISCAL COMMENTS:

None.

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[10] S. 564.09, F.S. The exception allows restaurant patrons to leave the premises with "one unsealed bottle of wine for consumption off the premises," provided certain conditions are met. The wine bottle must be partially consumed with a full course meal, securely resealed by the licensee or one of its employees, secured in a bag or container, wrapped in a way that shows it was previously opened, attached to a dated receipt indicating the full course meal, and transported in a locked vehicle glove compartment, locked trunk, or behind the last upright seat of a motor vehicle that is not equipped with a trunk.

[11] S. 564.05, F.S.

[12] S. 775.083(1)(e), F.S.

[13] Section 775.082(4)(b), F.S.

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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to individual wine containers; repealing s. 564.05, F.S., relating to the limitation of size of individual wine containers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 564.05, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.