


# Regulatory Reform & Economic Development Subcommittee

**Wednesday, November 8, 2023**
**9:00 AM – 11:30 AM**
**Webster Hall (212 Knott)**

## Meeting Packet

**Paul Renner**
**Speaker**

**Tyler Sirois**
**Chair**

# The Florida House of Representatives

**Commerce Committee**

**Regulatory Reform & Economic Development Subcommittee**

**Paul Renner**
**Speaker**

**Tyler Sirois**
**Chair**

## Meeting Packet

Wednesday, November 8, 2023
9:00 am – 11:30 am
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. HB 133 Professional Licensing Requirements for Barbers and Cosmetologists by Chambliss, Plakon

V. Presentations on Homeowners' Associations

VI. Panel Discussion on Homeowners' Associations

VII. Closing Remarks

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 133 Professional Licensing Requirements for Barbers and Cosmetologists
**SPONSOR(S):** Chambliss and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 42

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Regulatory Reform & Economic Development Subcommittee | | Wright | Anstead |
| 2) Commerce Committee | | | |

## SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) regulates and licenses several Florida professions, including barbers and cosmetologists. In 2019, the Legislature created a time-limited review process for considering the criminal history of applicants for licensure as a barber or cosmetologist. Under s. 455.213(3)(b)1., F.S., the Barbers' Board and Board of Cosmetology may only deny an application for licensure on the basis of an applicant's criminal history for:

- A conviction for a crime that occurred within five years of the date of the receipt of an application for licensure, or
- A criminal history record that includes a forcible felony or crime that would require a person, upon conviction, to register as a sexual predator, if such crime relates to the practice of the applicable profession.

The bill reduces the time frame to look back at and use a criminal conviction as grounds to deny an application for licensure as a barber or cosmetologist from five years to three years.

The bill allows a board to consider an applicant's criminal history, regardless of when a conviction occurred if the applicant was convicted of a crime at any time during the three-year period immediately preceding the application. Boards may also continue to consider forcible felonies and crimes that require a person to register as a sexual predator regardless of when they occurred if they relate to the practice of the profession as a barber or cosmetologist.

The bill requires the Barbers' Board and Board of Cosmetology to approve educational program credits received from vocational training programs or industry certification programs offered to inmates in any correctional institution or facility to satisfy training requirements for licensure as a barber or cosmetologist.

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

The bill has an effective date of July 1, 2024.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) has 12 divisions that regulate several Florida professions and businesses.[1] Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[2] Chapter 455, F.S., also provides general DBPR powers and sets forth the procedural and administrative framework for all professional DBPR boards.[3]

*Barbers*

The Barbers' Board under DBPR governs the regulation and licensing of barbers and barbershops in the state. A barber license is required to perform barbering services.[4] Barbering services include hair services and limited skin care services when done for compensation, but not for medical purposes.[5]

To be eligible for a barber license, an applicant must:[6]

- Be at least 16 years old,
- Complete the required training,
- Pass the written examination,
- Not have a disqualifying criminal record, and
- Pay an application fee.

*Cosmetologists*

The Board of Cosmetology under DBPR governs the licensing and regulation of cosmetologists, nail specialists, facial specialists, full specialists, and related salons in the state. A cosmetology license or a specialty registration is required to perform cosmetology services. Cosmetology services include hair services, nail services, and skin care services when done for compensation, but not for medical purposes.[7]

To be eligible for a cosmetology or specialty license, an applicant must:[8]

- Be at least 16 years old or have a high school diploma,
- Complete the required training,
- Pass the licensure examination (if applicable),
- Not have a disqualifying criminal record, and
- Pay an application fee.

Criminal History – Barbers and Cosmetologists

[1] The divisions include: Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology. S. 20.165, F.S.
[2] S. 455.01(6), F.S.
[3] DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. Ss. 455.203 and 455.221(1), F.S.
[4] S. 476.144(1), F.S.
[5] S. 476.034(2), F.S.
[6] S. 476.114, F.S.
[7] S. 477.013(4), F.S.
[8] S. 477.019(2), F.S.

In 2019, the Legislature created a time-limited review process for considering the criminal history of applicants for specified professions, including barbers and cosmetologists.[9] Section 455.213(3)(b)1., F.S., provides the Barbers' Board and Board of Cosmetology may only deny an application for licensure on the basis of an applicant's criminal history for:

- A conviction[10] for a crime that occurred within five years of the date of the receipt of an application for licensure, or
- A criminal history record that includes a forcible felony or a crime that would require a person, upon conviction, to register as a sexual predator, if such crime relates to the practice of the applicable profession.

*Sexual Predators*

A person is a sexual predator in Florida if he or she:

- Was convicted of a qualifying offense committed on or after October 1, 1993; and
- Has not received a pardon or otherwise had the conviction set aside for the qualifying offense.

Qualifying convictions for sexual predator designation include:

- Capital, life, or first degree felony kidnapping or false imprisonment, when the victim is a minor and there is a sexual component to the crime;[11]
- Capital, life, or first degree felony sexual battery;[12]
- Capital, life, or first degree felony lewd or lascivious battery or molestation;[13]
- Capital, life, or first degree felony selling or buying minors to engage in sexually explicit conduct;[14]
- An offense that would require registration as a sexual offender, other than transmission of child pornography by electronic device or transmission of material harmful to minors, by a person with a prior conviction for a sexual offense;[15] or
- A conviction for a similar offense committed in another jurisdiction.[16]

The court must make written findings designating a person who meets the criteria as a sexual predator.[17]

*Forcible Felonies*

Section 776.08, F.S., defines a forcible felony as any of the following crimes:

- Treason;
- Murder;
- Manslaughter;
- Sexual battery;
- Carjacking;
- Home-invasion robbery;
- Robbery;
- Burglary;
- Arson;
- Kidnapping;
- Aggravated assault;
- Aggravated battery;
- Aggravated stalking;

[9] Ch. 2019-167, Laws of Fla.
[10] For purpose of licensing, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardl ess of whether adjudication is withheld. S. 455.213(3)(b)1., F.S.
[11] Ss. 787.01 and 787.02, F.S.; *Raines v. State*, 805 So.2d 999 (Fla. 4th DCA 2001).
[12] S. 794.011, F.S.
[13] S. 800.04, F.S.
[14] S. 847.0145, F.S.
[15] S. 775.21(4)(a)1.b., F.S.
[16] S. 775.21(4), F.S.
[17] Ss. 775.21(4)(c) and 775.21(5), F.S.

- Aircraft piracy;
- Unlawful throwing, placing, or discharging of a destructive device or bomb; and
- Any other felony that involves the use or threat of physical force or violence against any individual.

Vocational Training in Correctional Facilities

The Florida Department of Corrections Bureau of Education partners with state colleges, technical colleges, and community education organizations to provide vocational training in 37 trades to incarcerated inmates.[18] Included in these vocational programs are barbering programs at Blackwater River Correctional Facility,[19] Graceville Correctional Facility,[20] and Lake City Correctional Facility,[21] as well as cosmetology programs at Lowell Correctional Institution,[22] Homestead Correctional Institution,[23] and Gadsden Correctional Facility.[24]

**Effect of Proposed Changes**

Criminal History – Barbers and Cosmetologists

The bill amends s. 455.213, F.S., to reduce the time frame, from five years to three years, that an applicable board may look back at and use a criminal conviction as grounds to deny an application for licensure as a barber or cosmetologist.[25]

The bill provides the applicable board may consider an applicant's criminal history, regardless of when a conviction occurred if, at any time during the three-year period immediately preceding the application, the applicant was convicted of a crime. Boards may also continue to consider forcible felonies and crimes that require a person to register as a sexual predator regardless of when they occurred if they relate to the practice of the profession as a barber or cosmetologist.

Vocational Training in Correctional Facilities

The bill requires the Barbers' Board and Board of Cosmetology to approve educational program credits received from vocational training programs or industry certification programs offered to inmates in any correctional institution or facility to satisfy training requirements for licensure as a barber or cosmetologist.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 455.213, F.S., relating to general licensing provisions.
**Section 2:** Provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[18] Florida Department of Corrections, *Bureau of Education*, http://www.dc.state.fl.us/development/programs.html (last visited Nov. 1, 2023).
[19] Florida Department of Corrections, *Blackwater River Correctional Facility,* http://www.dc.state.fl.us/ci/185.html (last visited Nov. 1, 2023).
[20] Florida Department of Corrections, *Graceville Correctional Facility*, http://www.dc.state.fl.us/ci/159.html (last visited Nov. 1, 2023).
[21] Florida Department of Corrections, *Lake City Correctional Facility*, http://www.dc.state.fl.us/ci/219.html (last visited Nov. 1, 2023).
[22] Florida Department of Corrections, *Lowell Correctional Institution*, http://www.dc.state.fl.us/ci/314.html (last visited Nov. 1, 2023).
[23] Florida Department of Corrections, *Homestead Correctional Institution*, http://www.dc.state.fl.us/ci/419.html (last visited Nov. 1, 2023).
[24] Florida Department of Corrections, *Gadsden Correctional Facility*, http://www.dc.state.fl.us/ci/111.html (last visited Nov. 1, 2023).
[25] For purposes of calculating the recidivism rate for inmates released from custody, the Florida Department of Corrections uses the definition of "recidivism" in s. 945.041(2), F.S., which means an inmate's rearrest, reconviction, reincarceration, or probation revocation within a three-year time period following the inmate's release from incarceration.

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 allow more people to become licensed as barbers or cosmetologists by reducing disqualifications to licensure.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to professional licensing requirements for barbers and cosmetologists; amending s. 455.213, F.S.; providing a period of time when a conviction, or any other adjudication, for a crime may not be grounds for denial of licensure as a barber or cosmetologist; providing an exception; requiring the applicable board to approve certain educational program credits offered to inmates in certain institutions or facilities for purposes of satisfying training requirements for licensure as a barber or cosmetologist; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 455.213, Florida Statutes, is amended, paragraph (f) is added to that subsection, and paragraph (a) of that subsection is republished, to read:

455.213 General licensing provisions.—

(3)(a) Notwithstanding any other law, the applicable board shall use the process in this subsection for review of an applicant's criminal record to determine his or her eligibility for licensure as:

1. A barber under chapter 476;



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2. A cosmetologist or cosmetology specialist under chapter 477;

3. Any of the following construction professions under chapter 489:

a. Air-conditioning contractor;

b. Electrical contractor;

c. Mechanical contractor;

d. Plumbing contractor;

e. Pollutant storage systems contractor;

f. Roofing contractor;

g. Sheet metal contractor;

h. Solar contractor;

i. Swimming pool and spa contractor;

j. Underground utility and excavation contractor; or

k. Other specialty contractors; or

4. Any other profession for which the department issues a license, provided the profession is offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program.

(b)1. A conviction, or any other adjudication, for a crime more than 3 years before the date the application is received by the applicable board may not be grounds for denial of a license specified in subparagraph (a)1. or subparagraph (a)2. unless the applicant was convicted of a crime at any time during the 3-year period immediately preceding the application. A conviction, or

any other adjudication, for a crime more than 5 years before the date the application is received by the applicable board may not be grounds for denial of a license specified in subparagraph (a)3. or subparagraph (a)4. ~~paragraph (a).~~ For purposes of this paragraph, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. This paragraph does not limit the applicable board from considering an applicant's criminal history that includes a crime listed in s. 775.21(4)(a)1. or s. 776.08 at any time, but only if such criminal history has been found to relate to the practice of the applicable profession.

2. The applicable board may consider the criminal history of an applicant for licensure under subparagraph (a)3. if such criminal history has been found to relate to good moral character.

(f) The applicable board shall approve educational program credits offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program for purposes of satisfying applicable training requirements for licensure in a profession under subparagraph (a)1. or subparagraph (a)2.

Section 2. This act shall take effect July 1, 2024.



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

# Presentation 1

# DBPR HOMEOWNERS' ASSOCIATION ARBITRATION JURISDICTION

House Regulatory Reform & Economic Development Subcommittee

Deputy Secretary Brian McManus

November 8, 2023

# Condominiums, Timeshares, & Mobile Homes

The Division of Condominiums, Timeshares, and Mobile Homes (CTMH) has regulatory oversight of Condominiums, Cooperatives, Timeshares, Mobiles Homes, and Yacht & Ship Brokers

**Regulatory Program Areas**

- Bureau of Standards and Registration - Reviews proposed association governing documents and amendments for all program areas for consistency with the applicable law or rule.
- Bureau of Compliance - Investigates public complaints and ensures compliance with applicable laws or rules and also processes applications for licensure for yacht and ship brokers.
- Education Section - provides educational resources to condominium board members and unit owners.
- Arbitration - Provides alternative dispute resolution for certain condominium and cooperative disputes; also provides election and recall arbitration for homeowner association disputes.

# Statutory Jurisdiction

Chapter 720, Florida Statute – the "Homeowners' Association Act" ("HOA"), the Division of Condominiums, Timeshares, and Mobile Homes is authorized to arbitrate specific disputes which include:

- Recalls of association board members pursuant to Section 720.303(10), F.S.

- Election disputes pursuant to S. 720.306, F.S.

- Parties may also enter into arbitration conducted by the department to attempt to resolve disputes that could not be resolved in presuit mediation. Both parties must agree to arbitration.

# Community Association Managers

Community Association Managers (CAM) are licensed by DBPR pursuant to Ch. 468, F.S., and can be hired by HOAs to provide community association management services. The department licenses approximately 21,940 CAMs and CAM Firms.

The services provided by a CAM to a community association will vary by each association's needs. Services can include:

- Maintaining budgets and dispersing funds
- Assisting in noticing meetings and conducting meetings
- Determining association dues and collection of dues
- Drafting pre-arbitration demands, and
- Complying with the association's governing documents and requirements of law as necessary to perform such practices.

# TYPICAL ELECTION PROCESS LEADING TO ARBITRATION

- Homeowner(s) believe that the election was conducted in violation of the Association's governing documents or Ch. 720, F.S.
- Homeowner(s) send a pre-arbitration notice to the Association advising of the defects in the election process, demand that the Association correct those defects.
- Within 60 days of the election results, if the Association has not corrected the defects, the Homeowner(s) file a Petition for Arbitration of their election dispute.
- The Petition is assigned to an Arbitrator who handles the case on an expedited basis because the next annual election moots any pending election or recall dispute.

# TYPICAL RECALL PROCESS LEADING TO ARBITRATION

- Homeowners decide that the Board is not performing their duties as desired.
- The CTMH approved ballot form is sent by the Homeowners' Representative, listing the Board Members they are seeking to have recalled along with a listing of replacement members, to all Homeowners.
- The Representative gathers the ballots and serves them to the Association. The Association has 5 business days to meet and either accept or reject the recall.
- If the Board rejects the recall, it has an additional 5 business days after their meeting to file a Petition for Arbitration requesting that their decision be upheld.
- If the Board fails to file a Petition, the unit owner representative, after giving pre-arbitration notice to the Association, can file a Petition within 60 days of the Board meeting challenging the Board's decision to not accept the recall.

# The Arbitration Process

**HOA Recall & Election Disputes – Ch. 720, F.S.**

Petitioner other than the Association must serve Respondent and subsequently file a pre-arbitration notice complying with S.718.1255(4)(b), F.S. Unit Owner, Recalled Board Member, or the Association submits Petition in the required format.

Step 1 Arbitration Petition Received. (Filing fee for HOA arbitration is $200)

Step 2 Assigned Arbitrator reviews petition and:

- Dismisses the Petition for lack of jurisdiction, or other failure to comply with statutory requirements; or
- Arbitrator issues a preliminary order requiring Petitioner to amend or supplement its Petition; or
- Arbitrator requires that the Respondent file an answer and defenses to the Petition.

Step 3 Arbitrator reviews the Answer from the Respondent and addresses any Motions filed by the Parties before holding a case management hearing.

# The Arbitration Process

Step 4 If there are no material issues of fact or law, the Arbitrator issues a Summary Final Order based on the evidence submitted by the Parties. Parties are given an opportunity to submit final briefs.

Step 5 If there are material issues of fact or law, the Arbitrator sets a Formal Hearing where the Parties have an opportunity to present witnesses and documentary evidence, and submit proposed post hearing findings of fact and conclusions of law.

Step 6 After the Formal Hearing the Arbitrator issues a Final Order.

| **HOA Arbitration Petitions** | |
|---|---|
| FY 2020-2021 | 81 Petitions |
| FY 2021-2022 | 98 Petitions |
| FY 2022-2023 | 91 Petitions |

- Additionally, over the last two Fiscal Years CTMH has received 270 complaints related to HOAs, a majority of which are outside of our jurisdiction. Complaints relating to election disputes and/or recalls are referred to the arbitration process.

# QUESTIONS?

**Presentation Point of Contact – Derek Miller**

Legislative Affairs Director

(850) 717-1580 | Derek.Miller@myfloridalicense.com

MyFloridaLicense.com

# Presentation 2

# Private Government, Public Authority: An Economist's Look at Homeowners Associations

Ron Cheung

Professor of Economics

Oberlin College

OBERLIN

COLLEGE & CONSERVATORY

# Motivation: The Blurry Line

- What is the line between the “public sector” and the “private sector”?
- Our expectations for what governments should/can do are changing.
- Increasingly blurry distinctions in residential development, especially in financially-constrained localities.

# Functions of a City Government

| | |
|---|---|
| *Provide public services* | • Police services<br>• Parks<br>• Roads<br>• Waste disposal |
| *Levy taxes and fees* | • Property taxes<br>• Sales taxes<br>• Permit fees |
| *Regulate development* | • Zoning ordinances<br>• Parking rules<br>• Other land-use regulations |

Since the 1960s, a new set of private institutions has taken off in popularity with very similar functions.

# Homeowners Associations (HOAs)

Private association of property owners that shares characteristics with

- Clubs and private institutions of collective decision-making;
- Corporations;
- Local governments.

# HOAs Are Found in



Gated communities



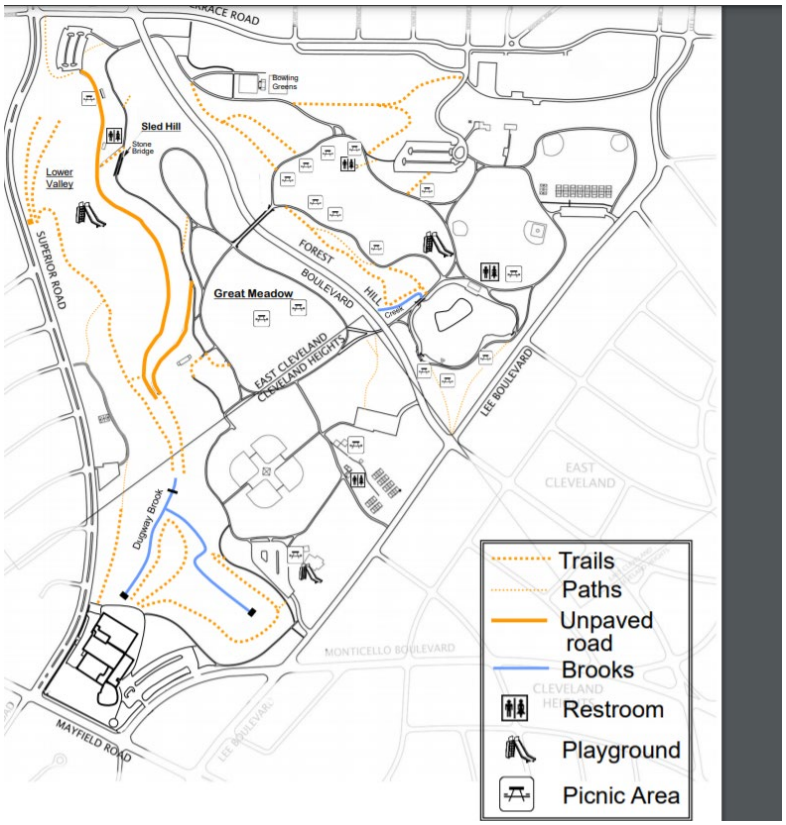

Planned developments

# HOAs Are Managed/Governed by






# A Small HOA: Forest Hill HOA, Cleveland Heights, OH




- 235 acres, 1000 homes
- Six tennis courts, playground, nature trails
- Easter egg hunts, 5K runs
- Proposed exterior alterations require committee review

# A Large HOA: The Villages, Sumter County, FL








- Over 100,000 senior citizen residents
- One of the fastest growing communities in the U.S.
- 50 golf courses, 100 recreation centers, archery ranges, polo stadium.

| | Local Governments | HOAs |
|---|---|---|
| *Provide public services* | • Police services<br>• Parks<br>• Roads<br>• Waste disposal | • Security patrols / gates<br>• Recreation & green space<br>• Private roads<br>• Sanitation |
| *Levy taxes and fees* | • Property taxes<br>• Sales taxes<br>• Permit fees<br>• Traffic fines | • Mandatory assessments on every household inside<br>• Fines for violating rules |
| *Regulate development* | • Zoning ordinances<br>• Parking rules<br>• Other land-use regulations | • Contractual obligations and restrictions (CC&Rs)<br>• Architectural controls |

HOAs can be thus thought of as “private governments.”

# Why Should Economists Care About HOAs?

1: Their sheer numbers = impact on economy.

2: The way they arose is a reflection of changing perceptions of government.

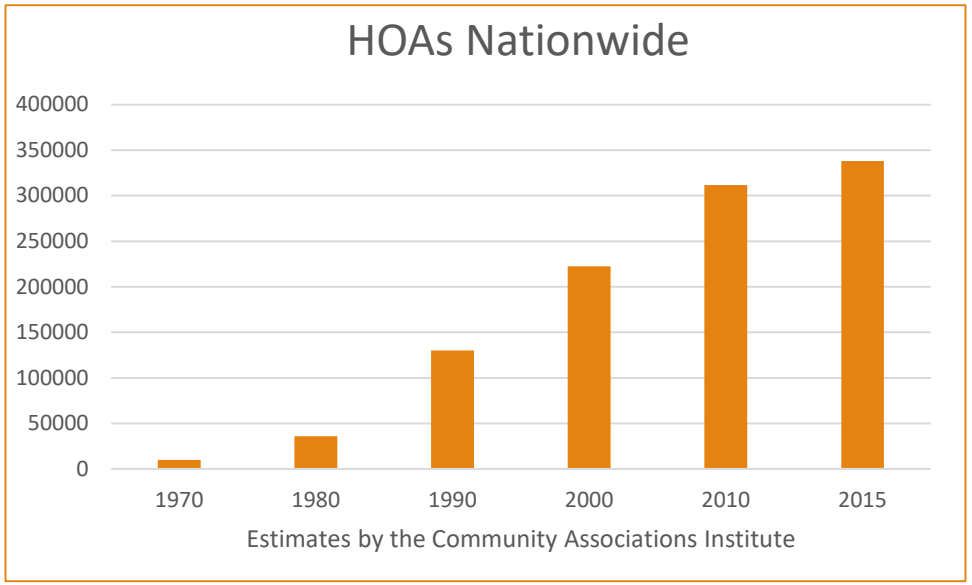
3: Their actions feed back to our traditional "public" governments.

Evidence from research I have conducted on each of these reasons.

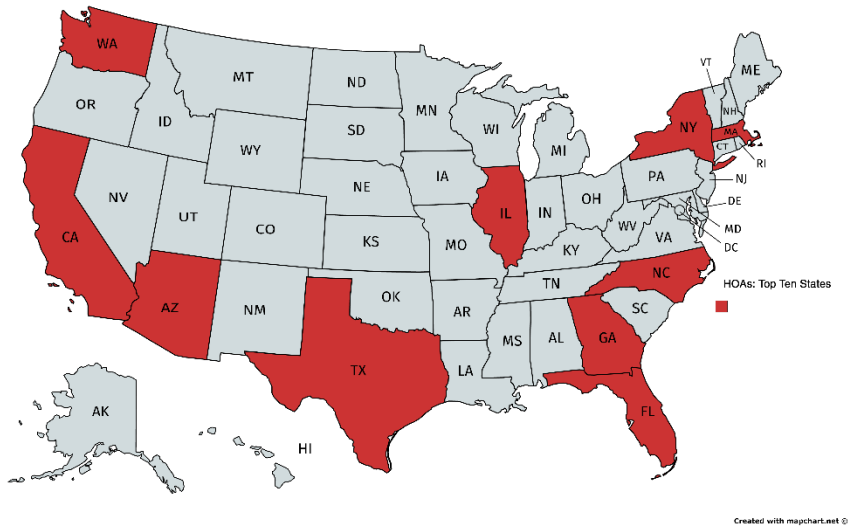
# The Growing Numbers

Half of new housing constructed in US incorporates an HOA.

At least **70 million Americans** live governed by one.




Top Ten States for HOAs



# Data Snapshot #1: California

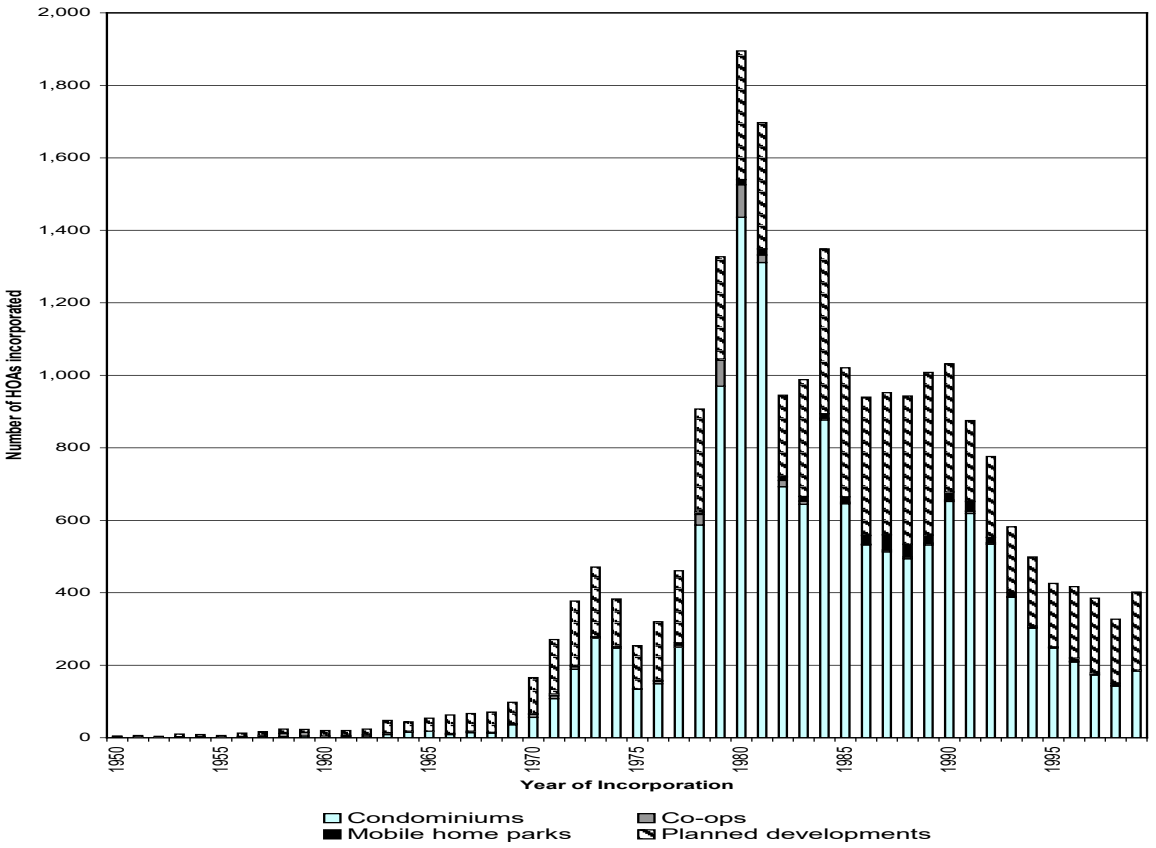
I have collected and worked extensively with data on HOAs in California and Florida.

California has over 40,000 HOAs in state, with over 1/3 of them planned developments.

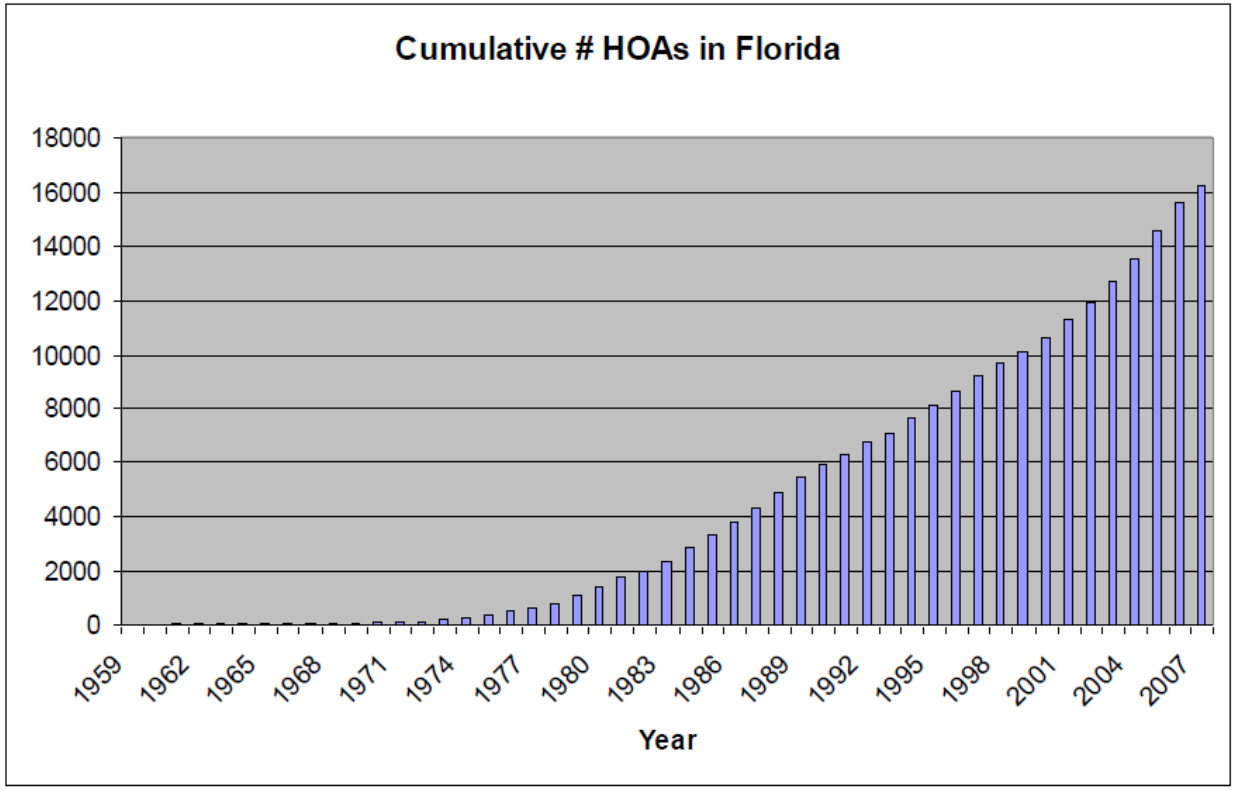
(Condominiums are covered under similar laws to PDs in CA.)

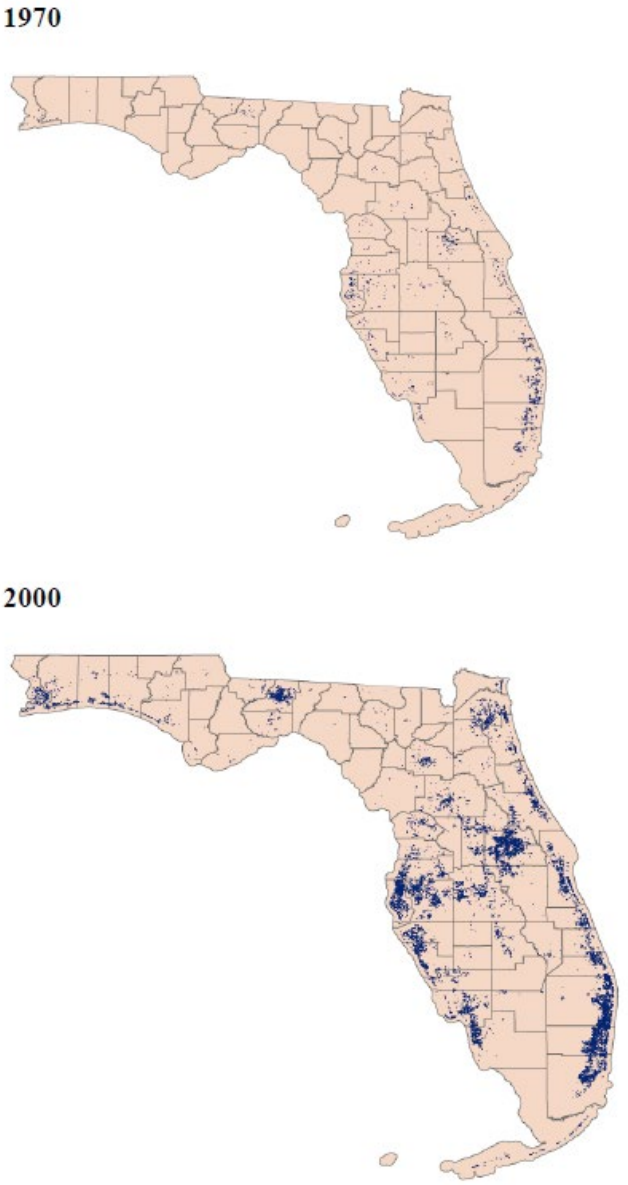
18% of PDs have more than 150 units.

Number of Annual HOA Incorporations - California



# Data Snapshot #2: Florida



# Reasons for Rapid Growth

**Industry Changes**:

- Economies of scale in large developments, esp. in fast-growing areas.

**Demographic Changes**:

- Dissatisfaction with local government services, the "secession of the successful."
- Demographic changes ➔ homeowners want "all-inclusive" communities.
- Desire for greater local control over development & property values.

**Regulatory/Government Changes**:

- Tax-constrained governments "offload" responsibilities to developers. Cheung (2008) focused on Proposition 13, the first statewide property tax limitation, as a causer of HOA growth in California.
- Later work from FL shows that some cities actively court HOA developers via development-friendly regulations.

# Why & Where Do They Form?

Cheung & Meltzer (2014) conducted a "duration analysis" to explore what factors predict when an *HOA first enters* a census tract in Florida.

Some factors associated with **sooner arrival of an HOA**:

- Percent white
- Less foreign born residents
- High income
- Further from city center
- Higher vacancy rates and newer housing
- Lower levels of public expenditures

# Their Impact on the Local Landscape

## Major Theme 1: *HOAs Affect Traditional Government*

- In California, Cheung (2008) found that a 10% increase in prevalence of HOAs in a city will reduce public expenditures by 1.5%.
- Specifically, expenditures are reduced in services that are *easily substitutable* with HOA services: parks and rec, garbage disposal, even public safety.
- There is *no effect* on more "public" goods like roads or government administration.
- Larger cities more prone to this "strategic substitution."

- Do HOAs affect cities' demand for land-use regulation?
  - Local governments view HOAs as regulatory *complements*: homeowners "want both more zoning and more private regulation," for instance to preserve property values.
  - Or as regulatory *substitutes*: reliance of internal land use controls.
- Cheung & Meltzer (2013) found that in Florida cities, more HOAs result in the use of **more** land-use management techniques.
- Particularly, these HOAs are associated with **more incentivizing** land use regulations (e.g. incentive zoning, performance zoning, cluster zoning).
- HOA developers seeking out cities with incentivizing climates

# Major Theme 2: *HOAs Affect Our Perception of Government*

- In recent work, Cheung, Salmon & Xie (2022) conducted an economic laboratory experiment that provides evidence that HOA membership can be seen as a form of partial "secession" from the city.
- Impact: Better organization might lead to increased power for HOAs, even as they might erode traditional role of governments.

# Major Theme 3: *HOAs Affect Property Markets*

- In Florida, Meltzer and Cheung (2014) found that comparing similar non-HOA and HOA properties, HOA parcels sell for **4.9% more**.
- This differential dissipates over time: 15 years after HOA formation, the premium is gone.

**Table 1**
Summary statistics of key variables.

| Variable | Non-HOA property | HOA property |
|---|---|---|
| | Mean | |
| *Characteristics of HOA where parcel resides* | | |
| HOA formation yr | | 1991 |
| HOA size (# parcels) | | 408 |
| *Characteristics of parcel* | | |
| Sales price ($2008) | 196,079 | 226,443 |
| Year built | 1987 | 1994 |
| # buildings | 1.09 | 1.04 |
| Total sq. feet of lot (1000s) | 11.35 | 10.04 |
| Total sq. feet of living area (1000s) | 1.99 | 2.18 |
| Vacant | 0.07 | 0.09 |
| Improved quality | 0.76 | 0.48 |
| N | 487,587 | 95,546 |

- Premium is strongest for *smaller* HOAs. (Exclusivity sells.)
- Premium even spreads to nearby non-HOA parcels. (HOAs have spillover benefits.)

- In another study, Cheung, Cunningham and Meltzer (2014) find that HOAs seem to lessen the negative effects of nearby foreclosures during the housing bust.
- HOAs can provide positive remediation for homes in early stages of delinquency (30-day), but not for later ones.
- This makes sense given that HOAs may be able to address external or visible signs of homeowner distress.
- This time, the larger HOAs are ones who are in better position to remediate nearby distress.

# Some Unanswered Questions

- Although research has looked into the broad impacts of HOAs on different variables, there is still a lot we don't know about impacts of *specific services, rules or governance structures*.
- This is mainly due to a lack of systematic data on the **types of services HOAs provide**, **how much they spend, their governance structures** and **the motivations of board members.**
- We also have no information on the effectiveness or even the scope of tools that HOAs use to enforce their rules, such as **assessments, fines and liens.**

# Presentation 3

# HOT TOPICS IN HOMEOWNER ASSOCIATIONS:

## CHALLENGES AND PATHWAYS FORWARD

**Presented by Dania S. Fernandez, Esq**

DANIA S. FERNANDEZ
AND ASSOCIATES, P.A.



# Homeowner Association

**What Is an HOA?**
- A governing body for a residential community
- Enforces community rules and regulations

**HOA Roles and Purposes**
- Maintains communal property and amenities
- Upholds property values and community standards
- Collects and manages dues for upkeep and improvements

**HOA Governance Models**
- Self-managed by volunteer residents
- Outsourced to professional management companies
- Hybrid models combining volunteer and professional management

# Benefits of HOAs



- **Benefits of HOAs**
  - Access to shared amenities like gyms, pools, and community centers
  - Maintenance of common areas ensures neighborhood appeal and functionality
- **Property Value Protection**
  - Enforcing aesthetic standards preserves and can increase home values
  - Community rules prevent individual actions that could detract from neighborhood quality
- **Community Cohesion**
  - Organized events encourage a sense of belonging and community spirit
  - HOA boards can facilitate neighborly support systems and dispute resolution

# Struggles with HOAs



- **Struggles Within HOAs**
  - Balancing individual homeowner rights with community rules
  - Handling disputes over assessments and compliance with regulations
- **Common Struggles**
  - High fees and special assessments causing financial strain
  - Rigid enforcement of rules leading to homeowner discontent
- **Conflict Case Studies**
  - Disputes between homeowners and board decisions continue to rise
  - Legal battles stemming from enforcement of HOA covenants

# Transparency Issues

- **Transparency Issues in HOAs**
  - The need for transparent communication about decisions and finances
  - The effect of non-transparent operations on trust and contentment among residents
- **Consequences of Non-Transparent Practices**
  - Risk of mismanagement and uncontrolled board authority
  - Disenchantment and increased conflicts among residents
- **Strategies for Enhancing Transparency**
  - Consistent, comprehensive financial disclosures and accessible board meetings
  - Promoting resident participation in governance decisions





# Role of Management & Attorneys

- **Role of Management and Attorneys in HOAs**
  - Outsourcing to specialized firms for operational efficiency
  - Legal counsel for navigating HOA laws and homeowner disputes

- **Pros and Cons of Professional Management**
  - Expertise in property management versus costs
  - Delegation of duties can ease burden on volunteer board members

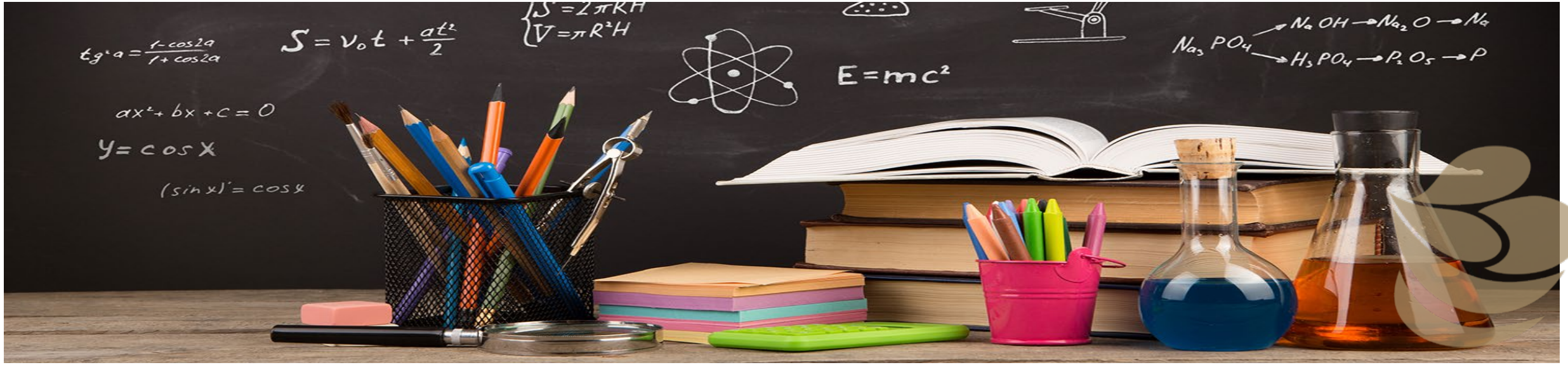
- **Legal Challenges**
  - Complexities of enforcing the Covenants, Conditions and Restrictions of the Association and handling litigation.
  - Importance of legal advice in protecting the HOA's and homeowners' interests

# Board of Director Inexperience & Education Gaps

- **Board of Directors: Inexperience and Education Gaps**
  - Impact of board member inexperience on community governance
  - The necessity for board education in effective HOA management

- **Importance of Board Education**
  - Training in financial, legal, and operational aspects of HOA management
  - Resources and workshops for continual learning

- **Enhancing Board Competency**
  - Implementing mentorship programs with experienced board members
  - Encouraging additional certification courses for new and existing board members






# Financial Concerns and Budgeting

- **Financial Management in HOAs**
  - Critical role of accurate budgeting for community health
  - Allocation of dues to maintenance, improvements, and reserve funds
- **Budgeting Challenges**
  - Anticipating and planning for large expenditures
  - Balancing short-term costs with long-term community investments
- **Effective Financial Tools**
  - Use of financial management software for transparency and accuracy
  - Regular audits to ensure financial integrity and trust




# Rising Assessments and Homeowner Impact

- **Trend in Assessment Increases**
  - Data on the rise of HOA fees and special assessments over time
  - Comparing average costs across similar communities
- **Impact on Homeowners**
  - Financial strain leading to difficult choices for residents
  - Foreclosure due to inability to meet increased fees
- **Mitigation Policies**
  - Establishing clear guidelines for fee increases
  - Financial assistance programs and payment plans for affected homeowners



# Communication Breakdown

- **The Crucial Role of Communication**
  - Ensuring timely and clear information flow from the board to residents
  - Addressing the negative impact of poor communication on community morale

- **Common Communication Failures**
  - Examples of misunderstandings leading to disputes
  - The need to address misinformation promptly

- **Best Practices for Effective Communication**
  - Utilizing multiple channels: newsletters, emails, community meetings
  - Encouraging resident feedback and participation in discussions



# Recall movement and Board Turnover

- **Understanding Recall Movements**
  - The process and legal grounds for recalling an HOA board
  - Reasons behind initiating a recall: dissatisfaction, mismanagement, or malfeasance

- **Impact of Successful Recalls**
  - Changes in governance and policy direction
  - Restoration of homeowner confidence and community stability

- **Dynamics of Board Turnover**
  - Challenges and opportunities during transition periods
  - The importance of strategic planning and communication for new boards

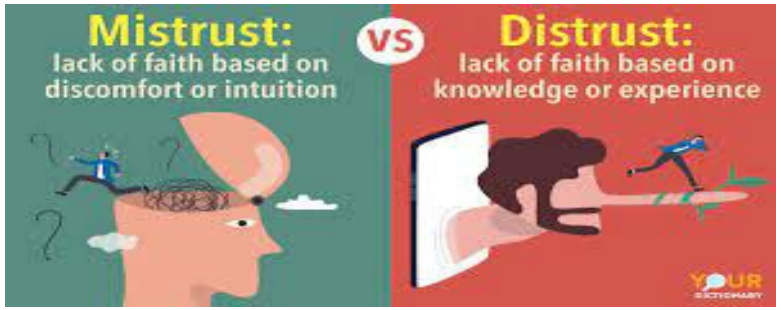
# Impact of New Legislation and Educational Needs

- **HOA Reforms**
  - Overview of recent legislative changes "Homeowners' Association Bill of Rights"
  - Objectives of these reforms in enhancing oversight and accountability
- **Bridging Knowledge Gaps**
  - Addressing the disconnect between HOA board members' expertise and business management requirements
  - Emphasizing the importance of ongoing education and support for board members
- **Addressing Language Barriers**
  - Recognizing the diversity in HOAs and the need for multilingual resources
  - Implementing inclusive communication strategies to ensure all members understand HOA policies and their rights



# Residual Mistrust and Accountability Concerns Post-Reform

- **Enduring Mistrust**
  - Homeowners remain skeptical of the board's integrity despite new HOA regulations
- **Transparency Shortfalls**
  - Community members continue to voice the need for clearer, more open board actions
  - Ongoing demands for verifiable transparency to combat fears of hidden agendas




- **Suspicions of Financial Misconduct**
  - Accusations of financial misdeeds persist, with calls for more stringent financial oversight
  - Residents express concerns that increased assessments may not be justified and could be fraudulent
- **Communication Deficiencies**
  - A significant gap in communication fuels discontent and suspicion among the community
  - Urgent calls for the board to engage in honest, regular dialogue with homeowners
- **Recall and Reform**
  - Strong momentum for recalling board members as a means to restore trust
  - The community's push for new leadership reflects a desire for radical change and accountability

# Embracing Change: A Path Forward for HOAs

- **Education: The Cornerstone of Change**
  - Emphasizing the vital role of educational initiatives in reforming HOA governance
  - Committing to ongoing learning as a pathway to rebuild trust and enhance transparency
- **Enlightened Financial Stewardship**
  - Promoting financial literacy programs for board members and residents
  - Initiating workshops on budgeting, assessments, and fraud prevention
- **Commitment to Transparency**
  - •Highlighting the imperative of clear, accessible information to dispel doubts and foster trust
  - •Pledging to hold open forums and ensure financial disclosures are straightforward and timely

- **•Enhanced Communication**
  - Stressing the importance of regular, open dialogue to bridge the gap between homeowners and the board
  - Implementing a robust communication strategy to address and alleviate concerns proactively

- **•Overcoming Mistrust and Distrust**
  - Understanding the roots of mistrust stemming from past actions and working diligently to restore confidence
  - Differentiating between the general unease of mistrust and the more profound suspicion of distrust; addressing both with equal seriousness





# Office of the State Attorney
# KATHERINE FERNANDEZ RUNDLE

# THE HAMMOCKS

## EMBLEM OF THE HOA CRISIS

John Perikles
Deputy Chief Assistant of Special Prosecutions
Economic Crimes/Insurance Fraud/
Elder and Vulnerable Adult Task Force




# WHAT IS THE HAMMOCKS COMMUNITY ASSOCIATION?

Master Association pursuant to FS 720 made up of 40 smaller self managed communities

2nd Largest HOA in Florida

Over 6,500 single family homes, apartments, and townhouses

50,000+ residents spread across 3,800 acres

Exists much like a small city

6 volunteer elected board members (currently in receivership)

4+ million in annual revenues

Responsible for maintenance of common areas including parks, beaches, sports courts, pools, sidewalks, and lighting

# INVESTIGATION BEGINS: HOMEOWNER COMPLAINTS JUNE 2017

- "Missing" Funds
- Questionable Billing from Vendors
- No Invoices
- No Board Meetings
- No Board Minutes
- Incomplete Records provided to requests
- Election Fraud
- Intimidation and Harassment by security hired by the Board



# HOA Laws Ignored

720.303(3)(f) – Written minutes of meetings required

720.303(3)(i) – Copies of HOA contracts

720.303(3)(j)1 – Accurate, itemized, and detailed records of all receipts and expenditures

720.303(5) – Must make records available for inspection and copying

720.303(6)(a) – Associations shall prepare an annual budget (accurate)

720.303(7)(a)3 – Must prepare timely audited financial statements

720.3033(3) – Officers may not solicit or accept kickbacks(civil penalty)

# Laws Used to Target HOA Crimes

812.014 – Theft

817.034 – Scheme to Defraud

896.101 – Money Laundering

895.03 – Racketeering (rarely)

720.3065 – HOA Election Fraud (brand new)

# 2018 SAO INVOLVEMENT
## THE BATTLE FOR HOA RECORDS

- 3 subpoenas served between May 2018 and June 2021- no voluntary compliance
- Service blocked by:
  - Switching registered agents
  - Law firm agent refusing service
  - Law firm claims that service needed to be directly upon the custodian of record- but refused to identify the custodian of records
- State Attorney served Association President
- **Personal criminal attorney** for Association president (paid by HOA)motions to block 2018 subpoena
- Association fights new subpoenas, demands $50,000 for collecting records
- Association sued police detectives & State attorney to block subpoenas
- State Attorney insisted on going forward and fighting lawsuits

# CRIMINAL INVESTIGATION

- June 2017 Homeowners report to Miami Dade Police Department
- September 2017 Miami Dade State Attorney's Office becomes involved
- Investigation focuses on Association board members and questionable vendors
- Association fights every subpoena using HOA funded lawyers
- Through legal delays, took the SAO & the police years to gather necessary evidence
- Vendors refuse to cooperate with subpoenas
- SAO/police obtain third party records from banks and credit card companies
- Interview numerous witnesses

# First Arrest, April 2021

Association funds used for:

- Payment of private investigator to investigate the police detectives
- Conducting surveillances on political board opponents
- Performing surveillance on her own property outside the Hammocks
- Use of Association  credit card to pay for clearly personal expenses

Marglli Gallego
Board President



CHARGED WITH ORGANIZED SCHEME TO DEFRAUD OVER $50,000 AND GRAND THEFT 2ND DEGREE

CRIMINAL LAWYERS FOR THIS CASE WERE PAID FOR OUT OF ASSOCIATION FUNDS

# THE INVESTIGATION CONTINUES…

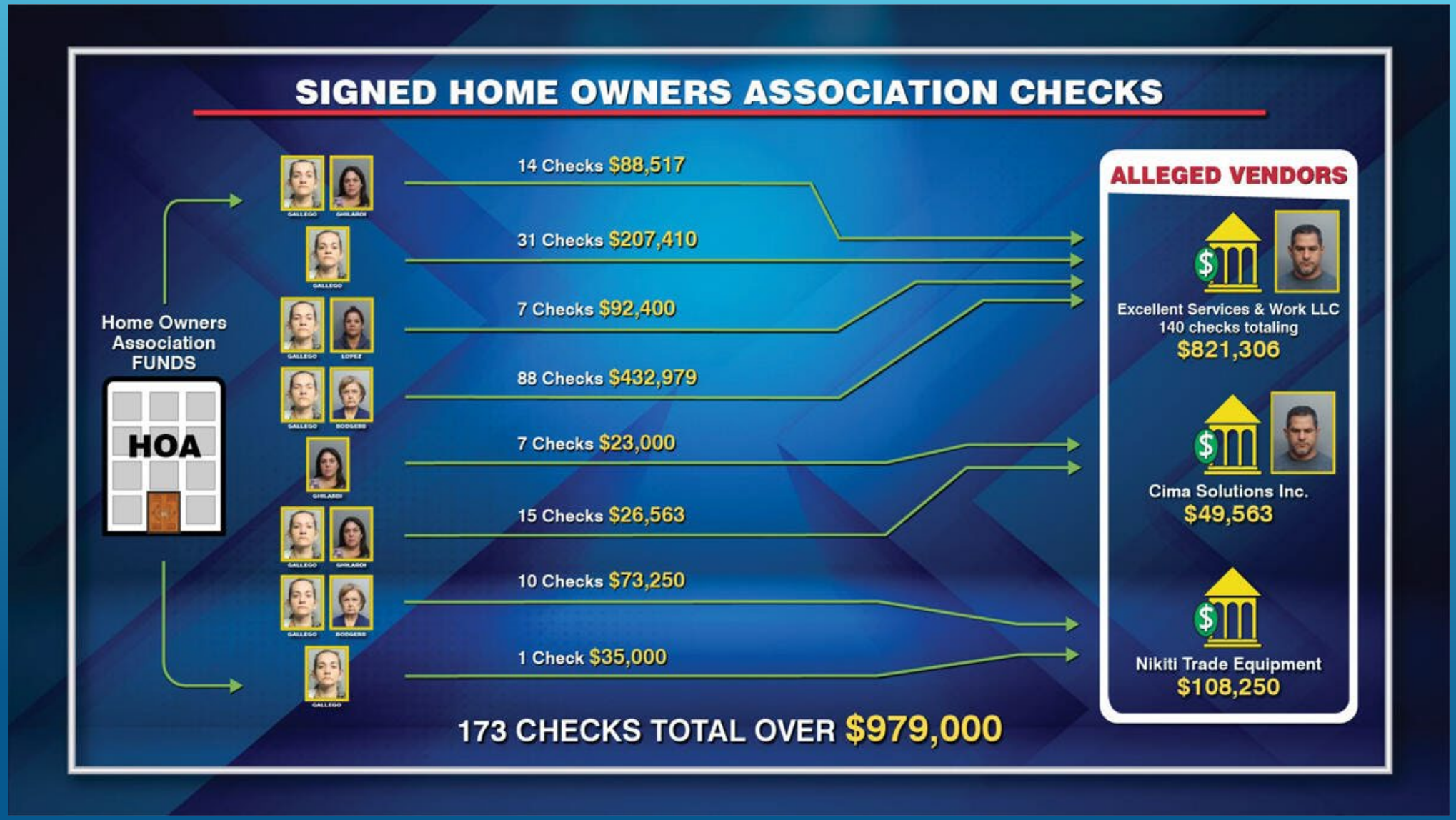
- After the President's Arrest, she was removed from office
- Despite removal, evidence showed she continued to exercise control
- Police and SAO Investigators continued to collect evidence of where money went and why
- In January of 2022, another Board election was held
  - Limited voting hours for hundreds of owners lined up
  - Election ended abruptly and early with claims of a bomb threat- Association Attorney refused to cooperate with police and the SAO to investigate this "bomb threat"
- This election was counted, and the old board was "reelected"
  - Once reelected, board imposed a 300% increase on Association dues to cover budget shortfalls
- Multiple civil actions ensued- resulting in receivership
  - Against the election
  - Against the unfounded increases

# SECOND ARREST




- In between the first arrest of the Board President and the civil actions that resulted in the receivership the police and the SAO continued to investigate
- This investigation led to the arrest of 5 people- 3 current board members, 1 prior board member, and the spouse of a prior board member on November 15, 2022.
- Charges: Racketeering, Grand Theft, Scheme to Defraud, Money Laundering

# Examples of where some of the money went



# DAYS AFTER ARREST COURT APPOINTED A RECEIVER TO RUN AFFAIRS OF THE HAMMOCKS

- Receiver cooperated with Law Enforcement by providing records that have been sought since May of 2018
- Hired proper financial professionals to sort out records
- Lawsuits filed to "claw back" money paid to multiple lawyers for services provided that were for the Association Board members rather than the Association itself
- Fired old security personnel and hired new security firm
- Hired forensic accountants who have uncovered more fraud
- Ended meritless lawsuits
- Filed fifth supplemental report to Court on October 16, 2023, outlining progress
- Continued work with ASA to further ongoing investigations

# STATE ATTORNEY KATHERINE FERNANDEZ RUNDLE PROPOSED CHANGES TO STRENGTHEN HOA LAWS

- Pursuant to FS 720, HOA's are not regulated by any government agency - Owners must file expensive lawsuits to enforce basic rules designed to guarantee transparency (limited regulation by DBPR for elections and recalls)
- There are no personal consequences for not keeping, hiding, or destroying records
- No specific requirement to keep vendor invoices, and other records detailing expenditures
- Board members are usually inexperienced and there is limited training
- Boards can take out huge loans without owner approval
- No specific criminal sanctions for kickbacks
- The Ombudsman has no power to monitor HOA elections (although DBPR can deal with disputes)
- Require HOAs put records online. This would cut down on storage and retrieval costs and improve transparency
- Prohibit HOA to pay criminal defense attorneys. Only permit reimbursement if charges are not proven
- Require an official designated custodian of records