

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 59 Provision Of Homeowners' Association Rules and Covenants

SPONSOR(S): Arrington and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 50

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|-----------|---------|--|
| 1) Regulatory Reform & Economic Development Subcommittee | 14 Y, 0 N | Larkin | Anstead |
| 2) Civil Justice Subcommittee | 14 Y, 0 N | Mawn | Jones |
| 3) Commerce Committee | | Larkin | Hamon |

SUMMARY ANALYSIS

A homeowners' association (HOA) is a community association in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and the association is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The HOA's declaration of covenants establishes the community's basic covenants and restrictions.

An HOA must maintain certain records which constitute the official records of the HOA, including a copy of the HOA's declaration of covenants, amendments thereto, and current HOA rules. The official records must be maintained within the state for at least 7 years and must be made available to a parcel owner for inspection or photocopying. An HOA may comply with these requirements by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

The bill requires an HOA to provide the following:

- Before October 1, 2024, a physical or digital copy of the HOA's rules and covenants to every member of the HOA.
- A physical or digital copy of the HOA's rules and covenants to every new member of the HOA.
- An updated copy of the amended rules or covenants, when an HOA's rules or covenants are amended, to every member of the association.

The bill also allows HOAs to adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A homeowners' association (HOA) is a community association in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and the association is authorized to impose assessments that, if unpaid, may become a lien on the parcel.¹ HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act).

Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA and its board include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.²

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located.³ No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.⁴

HOA Governing Documents

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.⁵

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.⁶ The articles of incorporation establish the HOA's existence, basic structure, and governance.⁷ The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.⁸

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.⁹ Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.¹⁰

Official Records

¹ S. 720.301(9), F.S.

² See generally ch. 720, F.S.

³ S. 720.303(1), F.S.

⁴ S. 720.311, F.S.

⁵ S. 720.301(8), F.S.

⁶ Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018),

<https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/> (last visited Feb. 1, 2024).

⁷ *Id.*

⁸ *Id.*

⁹ S. 720.306(1), F.S.

¹⁰ *Id.*

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:¹¹

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

The HOA bylaws must require the HOA to post all notices of board meetings in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency.¹²

¹¹ S. 720.303(4), F.S.

¹² S. 720.303(2)(c), F.S.

Access to Official Records

The official records must be maintained within the state for at least 7 years and be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the HOA is located within 10 business days after receipt by the board or its designee of a written request.¹³ An HOA may comply with these requirements by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, 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.¹⁴

If the HOA 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.¹⁵ However, an HOA may impose fees to cover the costs of providing copies of the official records.¹⁶ Further, an association must allow a member or 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 providing the member or authorized representative with a copy of such records.¹⁷ The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.¹⁸

The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with the records access requirements.¹⁹ Further, a member who is denied access to official records is entitled to the actual damages or minimum damages for the HOA's willful failure to comply.²⁰ The minimum damages are to be \$50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.²¹

The HOA 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.²² Further, the following records are not accessible to members or parcel owners:²³

- Any record protected by the lawyer-client privilege as described in s. 90.502, F.S., and any record protected by the work-product privilege.
- Information obtained in connection with the approval of the lease, sale, or other transfer of a parcel.
- Information obtained in a gated community in connection with guests' visits to parcel owners or community residents.
- Personnel records of HOA or management company employees.
- Medical records of parcel owners or community residents.
- Personal identifying information of a parcel owner other than as provided for HOA notice requirements, excluding the person's name, parcel designation, mailing address, and property address.

¹³ S. 720.303(5), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 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. *Id.*

¹⁷ *Id.*

¹⁸ S. 720.303(5), F.S.

¹⁹ S. 720.303(5)(a), F.S.

²⁰ *Id.*

²¹ S. 720.303(5)(b), F.S.

²² S. 720.303(5)(c), F.S.

²³ S. 720.303(5)(c)1.-9., F.S.

- Any electronic security measure that is used to safeguard data, including passwords.
- The software and operating system which allows the manipulation of data; however, the data is part of the official records.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.

Effect of the Bill

The bill requires an HOA to provide the following:

- Before October 1, 2024, a physical or digital copy of the HOA's rules and covenants to every member of the HOA.
- A physical or digital copy of the HOA's rules and covenants to every new member of the HOA.
- An updated copy of the amended rules or covenants, when an HOA's rules or covenants are amended, to every member of the association.

The bill also permits an HOA to adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants, and specifies that the requirements to provide copies may be met by posting a complete copy of the rules and covenants, or a direct link thereto, on the homepage of the HOA's website if:

- The website is accessible to association members, and
- The HOA sends notice to the members of its intent to utilize the website for this purpose.

The notice must be sent:

- via email if the HOA member has an email address on file and the HOA member has consented to receive notices by electronic transmission; and
- via mail to all other HOA members at the address identified as the members' mailing addresses in the official records of the HOA.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 2: 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:

The bill may have a positive economic impact on the private sector to the extent that it ensures an HOA member has knowledge of all applicable covenants, rules, and regulations by which he or she must live, and such knowledge leads to a financial benefit (such as the avoidance of fines and liens for rule violations) for the HOA member.

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