

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 547 Residential Association Board of Directors

**SPONSOR(S):** Borrero

**TIED BILLS:** IDEN./SIM. BILLS: SB 394

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee		Mawn	Jones
2) Regulatory Reform Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Department of Business and Professional Regulation (“DBPR”) broadly regulates condominium (“condo”) and cooperative (“co-op”) associations and has limited regulatory authority over homeowners’ associations (“HOA”). A condo is a form of real property ownership created under ch. 718, F.S., composed of units which may be owned by one or more persons along with an undivided right of access to common elements. A co-op is a form of property ownership created under ch. 719, F.S., where the real property is owned by the co-op association and individual units are leased to the residents, who own shares in the association. An HOA is a property owners association created under ch. 720, F.S., in which voting membership is made up of parcel owners, in which membership is a mandatory condition of parcel ownership, and which may impose assessments that, if unpaid, may become a lien on the parcel. Each association is governed by a board of directors, and each director must, within 90 days of election or appointment:

- Certify in writing that he or she has read the association’s governing documents, will work to uphold the governing documents to the best of his or her ability, and will faithfully discharge his or her fiduciary responsibility to the association’s members; or
- Submit an educational certificate showing he or she satisfactorily completed the educational curriculum administered by an education provider approved by DBPR’s Division of Condominiums, Timeshares, and Mobile Homes (“Division”) within a specified time after election or appointment.

A director who fails to comply with such requirements is suspended from serving on the board until he or she complies, and the certification is part of the association’s official records.

HB 547 requires that a director newly elected or appointed to the board of a condo, co-op, or HOA, must, within 90 days of election or appointment, both:

- Certify by affidavit that he or she has read the association’s governing documents, will work to uphold the governing documents to the best of his or her ability, and faithfully discharge his or her fiduciary responsibility to the association’s members; and
- Submit an educational certificate.

Further, the bill specifies that:

- A director who fails to provide both an affidavit and an educational certificate is suspended from the board until he or she provides the documents.
- The affidavit and educational certificate:
  - Are valid and do not have to be resubmitted if the director serves on the board without interruption.
  - Must be maintained in the association’s official records.

The bill does not appear to have a fiscal impact on state or local governments. The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### 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 certain regulated communities through board of director educational programs, complaint resolution, alternative dispute resolution, and developer disclosure. These regulated communities include:

- Condominium associations;
- Cooperative associations; and
- Homeowners' associations (limited to the arbitration of election and recall disputes).

##### *Condominiums*

A condominium (“condo”) is a form of real property ownership created under ch. 718, F.S. Persons own condo units along with an undivided right of access to the condo’s common elements.<sup>1</sup> A condo is created by recording a declaration of condominium, governing the relationship between condo unit owners and the condo association, in the public records of the county where the condo is located.<sup>2</sup> All unit owners are members of the condo association, and the association is responsible for common elements operation and maintenance.<sup>3</sup>

##### *Cooperatives*

A cooperative (“co-op”) is a form of property ownership created under ch. 719, F.S., in which the real property is owned by the co-op association and individual units are leased to the residents, who own shares in the association.<sup>4</sup> The lease payment amount is the pro-rata share of the co-op’s operational expenses. Co-ops operate similarly to condos, and the laws regulating co-ops are largely identical to those regulating condos.<sup>5</sup>

##### *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.<sup>6</sup> An HOA’s powers and duties include those powers and duties provided by law and in the governing documents.<sup>7</sup> 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 disputes, but no state agency directly regulates HOAs.<sup>8</sup>

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<sup>1</sup> S. 718.103(11), F.S.

<sup>2</sup> S. 718.104(2), F.S.

<sup>3</sup> S. 718.103(2), F.S.

<sup>4</sup> S. 719.103(2) and (26), F.S.

<sup>5</sup> See generally ch. 719, F.S.

<sup>6</sup> S. 720.301(9), F.S.

<sup>7</sup> Ss. 720.301(8) and 720.303(1), F.S.

<sup>8</sup> See generally ch. 720, F.S.

## Board of Directors

Each condo, co-op, and HOA is governed by a board of directors (“board”) elected by the association’s members or appointed by a developer prior to turnover to the association. The board has those duties described in statute and in the association’s governing documents, including association administration, policy development, and property maintenance.<sup>9</sup> A board director also has a fiduciary responsibility to the association’s members and must use the highest degree of good faith in placing the interests of the members above his or her own personal interests.<sup>10</sup>

To ensure that a director is able to faithfully and competently exercise his or her duties, within 90 days of being elected or appointed to the board, each newly elected or appointed director must:

- Certify in writing that he or she has read the association’s governing documents; will work to uphold the governing documents to the best of his or her ability; and will faithfully discharge his or her fiduciary responsibility to the association’s members; or
- Submit a certificate showing he or she satisfactorily completed the educational curriculum administered by a Division-approved<sup>11</sup> education provider within one year before or 90 days after his or her election or appointment date (“educational certificate”).<sup>12</sup>

A director who fails to comply with such requirements is suspended from serving on the board until he or she complies, and the board may temporarily fill the vacancy during the suspension period.<sup>13</sup> However, the written certification or educational certificate is valid and does not have to be resubmitted if the director serves on the board without interruption.<sup>14</sup>

## Official Records

Each condo, co-op, and HOA must maintain official association records generally for at least seven years, including:

- The articles of incorporation, declaration, bylaws, and rules of the association;
- Meeting minutes;
- Ballots, sign-in sheets, voting proxies, and all other documents relating to voting;
- A member roster;
- A copy of any contracts to which the association is a party or under which the association or the members have an obligation;
- The association’s accounting records;
- All contracts for work to be performed, including bids for work, materials, and equipment;<sup>15</sup>
- A copy of developer-provided plans, permits, warranties, and other items;
- The director’s written certification;<sup>16</sup> and
- All other written records which are related to the association’s operation.<sup>17</sup>

Members may inspect and copy an association’s official records, and the association must make the records available for inspection within ten business days of receiving an inspection request.<sup>18</sup> Further, any condo association with 150 or more units which does not contain timeshare units must post digital

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<sup>9</sup> See generally chs. 718, 719, and 720, F.S.; Florida DBPR, FAQs, <http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/faqs/#1492784365590-e9ec1083-2ca1> (last visited Feb. 3, 2022).

<sup>10</sup> *Id.*

<sup>11</sup> A Division-approved provider must cover specified topics in its education program, which may include budgets; reserves; elections; financial reporting; association operations; dispute resolution; and records maintenance. For a list of Division-approved education providers, see <http://www.myfloridalicense.com/dbpr/lsc/documents/CondoCOOPListofApprovedProviders2015.pdf> (last visited Feb. 3, 2022). 61B-19.001 and 61B-75.0051, F.A.C.

<sup>12</sup> This requirement does not apply to the board of directors for a commercial condominium. Ss. 718.112(2)(d), 719.106(1)(d), and 720.3033(1)(a)-(c), F.S.

<sup>13</sup> *Id.*

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

<sup>15</sup> Such bids are only required to be maintained for one year. S. 718.111(12)(b), F.S.

<sup>16</sup> Such certification must only be maintained for five years or the duration of the director’s uninterrupted tenure, whichever is longer. However, failure to maintain such certification does not invalidate any board action. Ss. 718.112(2)(d), 719.160(1)(d), and 720.3033(1)(c), F.S.

<sup>17</sup> Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.

<sup>18</sup> *Id.*

copies of specified documents on a website or application that can be downloaded on a mobile device, including a current copy of the director's certification.<sup>19</sup>

### Effect of Proposed Changes

HB 547 requires that a director newly elected or appointed to the board of a residential condo, co-op, or HOA with 10 or more parcels, must, within 90 days of election or appointment, both:

- Certify by affidavit that he or she has read the association's governing documents; will work to uphold the governing documents to the best of his or her ability; and will faithfully discharge his or her fiduciary responsibility to the association's members; and
- Submit an educational certificate.

Further, the bill specifies that:

- A director who fails to provide both an affidavit and an educational certificate is suspended from serving on the board until he or she provides the documents.
- The affidavit and education certificate:
  - Are valid and do not have to be resubmitted if the director serves on the board without interruption.
  - Must be maintained in the association's official records and posted on the website or application of a condo association with 150 or more units which does not contain timeshare units.

The bill provides an effective date of July 1, 2022.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 718.111, F.S., relating to official records.

**Section 2:** Amends s. 718.112, F.S., relating to bylaws.

**Section 3:** Amends s. 719.106, F.S., relating to bylaws; cooperative ownership.

**Section 4:** Amends s. 720.3033, F.S. relating to officers and directors.

**Section 5:** Provides an effective date of July 1, 2022.

## 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 ensure that the directors of a condo, co-op, or HOA board are properly educated as to their duties and responsibilities related to maintaining association property and association governance, which may in turn protect the financial investment of the owner of a condo unit, share in a co-op, or parcel in an HOA. However, by requiring both an affidavit and an educational certificate from each director upon election or appointment, the bill may increase costs for an association due to the more frequent need for a director to complete a Division-approved educational curriculum, which may be but is not necessarily both free and available online.

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 counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES