

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1
2 An act relating to condominiums; amending s. 718.111,
3 F.S.; prohibiting an officer, director, or manager
4 from soliciting, offering to accept, or accepting a
5 kickback for which consideration has not been
6 provided; providing criminal penalties; requiring that
7 an officer or director charged with certain crimes be
8 removed from office; providing requirements for
9 filling the vacancy left by such removal; prohibiting
10 such officer or director from being appointed or
11 elected or having access to official condominium
12 association records for a specified time; providing an
13 exception; requiring an officer or director to be
14 reinstated if the charges are resolved without a
15 finding of guilt; prohibiting an association from
16 hiring an attorney who represents the management
17 company of the association; prohibiting a board
18 member, manager, or management company from purchasing
19 a unit at a foreclosure sale under certain
20 circumstances; revising recordkeeping requirements;
21 providing that the official records of an association
22 are open to inspection by an association member's
23 authorized representative; providing that a renter of
24 a unit has a right to inspect and copy the
25 association's bylaws and rules; providing requirements

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

26 relating to the posting of specified documents on an
27 association's website; providing a remedy for an
28 association's failure to provide a unit owner with a
29 copy of the most recent financial report; requiring
30 the Division of Florida Condominiums, Timeshares, and
31 Mobile Homes to maintain and provide copies of
32 financial reports; prohibiting a condominium
33 association and its officers, directors, employees,
34 and agents from using a debit card issued in the name
35 of the association, or billed directly to the
36 association, for the payment of any association
37 expense; providing that the use of such debit card for
38 any expense that is not a lawful obligation of the
39 association may be prosecuted as credit card fraud;
40 providing a directive to the Department of Business
41 and Professional Regulation; amending s. 718.112,
42 F.S.; providing board member term limits; providing an
43 exception; deleting certification requirements
44 relating to the recall of board members; revising the
45 amount of time in which a recalled board member must
46 turn over records and property of the association to
47 the board; prohibiting certain associations from
48 employing or contracting with a service provider that
49 is owned or operated by certain persons; amending s.
50 718.1255, F.S.; authorizing, rather than requiring,

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

51 | the division to employ full-time attorneys to conduct
52 | certain arbitration hearings; providing requirements
53 | for the certification of arbitrators; prohibiting the
54 | department from entering into a legal services
55 | contract for certain arbitration hearings; requiring
56 | the division to assign or enter into contracts with
57 | arbitrators; requiring arbitrators to conduct hearings
58 | within a specified period; providing an exception;
59 | providing arbitration proceeding requirements;
60 | amending s. 718.3025, F.S.; prohibiting specified
61 | parties from purchasing a unit at a foreclosure sale
62 | resulting from the association's foreclosure of
63 | association lien for unpaid assessments or from taking
64 | a deed in lieu of foreclosure; authorizing a contract
65 | with a party providing maintenance or management
66 | services to be cancelled by a majority vote of certain
67 | unit owners under specified conditions; creating s.
68 | 718.3027, F.S.; providing requirements relating to
69 | board director and officer conflicts of interest;
70 | providing that certain contracts are voidable and
71 | requiring the termination of such contracts under
72 | certain conditions; amending s. 718.303, F.S.;
73 | providing requirements relating to the suspension of
74 | voting rights of unit owners and members; prohibiting
75 | a receiver from exercising the voting rights of a unit

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

76 owner whose unit is placed in receivership; amending
 77 s. 718.5012, F.S.; providing the ombudsman with an
 78 additional power; creating s. 718.71, F.S.; providing
 79 financial reporting requirements of an association;
 80 providing an effective date.

81

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

83

84 Section 1. Paragraphs (a) and (d) of subsection (1),
 85 subsections (3) and (9), paragraphs (a) and (c) of subsection
 86 (12), and subsection (13) of section 718.111, Florida Statutes,
 87 are amended, paragraph (g) is added to subsection (12), and
 88 subsection (15) is added to that section, to read:

89 718.111 The association.—

90 (1) CORPORATE ENTITY.—

91 (a) The operation of the condominium shall be by the
 92 association, which must be a Florida corporation for profit or a
 93 Florida corporation not for profit. However, any association
 94 which was in existence on January 1, 1977, need not be
 95 incorporated. The owners of units shall be shareholders or
 96 members of the association. The officers and directors of the
 97 association have a fiduciary relationship to the unit owners. It
 98 is the intent of the Legislature that nothing in this paragraph
 99 shall be construed as providing for or removing a requirement of
 100 a fiduciary relationship between any manager employed by the

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

101 association and the unit owners. An officer, director, or
102 manager may not solicit, offer to accept, or accept any thing or
103 service of value or kickback for which consideration has not
104 been provided for his or her own benefit or that of his or her
105 immediate family, from any person providing or proposing to
106 provide goods or services to the association. Any such officer,
107 director, or manager who knowingly so solicits, offers to
108 accept, or accepts any thing or service of value or kickback is
109 subject to a civil penalty pursuant to s. 718.501(1)(d) and, if
110 applicable, a criminal penalty as provided in paragraph (d).

111 However, this paragraph does not prohibit an officer, director,
112 or manager from accepting services or items received in
113 connection with trade fairs or education programs. An
114 association may operate more than one condominium.

115 (d) As required by s. 617.0830, an officer, director, or
116 agent shall discharge his or her duties in good faith, with the
117 care an ordinarily prudent person in a like position would
118 exercise under similar circumstances, and in a manner he or she
119 reasonably believes to be in the interests of the association.
120 An officer, director, or agent shall be liable for monetary
121 damages as provided in s. 617.0834 if such officer, director, or
122 agent breached or failed to perform his or her duties and the
123 breach of, or failure to perform, his or her duties constitutes
124 a violation of criminal law as provided in s. 617.0834;
125 constitutes a transaction from which the officer or director

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

126 | derived an improper personal benefit, either directly or
127 | indirectly; or constitutes recklessness or an act or omission
128 | that was in bad faith, with malicious purpose, or in a manner
129 | exhibiting wanton and willful disregard of human rights, safety,
130 | or property. Forgery of a ballot envelope or voting certificate
131 | used in a condominium association election is punishable as
132 | provided in s. 831.01, the theft or embezzlement of funds of a
133 | condominium association is punishable as provided in s. 812.014,
134 | and the destruction of or the refusal to allow inspection or
135 | copying of an official record of a condominium association that
136 | is accessible to unit owners within the time periods required by
137 | general law in furtherance of any crime is punishable as
138 | tampering with physical evidence as provided in s. 918.13 or as
139 | obstruction of justice as provided in chapter 843. An officer or
140 | director charged by information or indictment with a crime
141 | referenced in this paragraph must be removed from office, and
142 | the vacancy shall be filled as provided in s. 718.112(2)(d)2.
143 | until the end of the officer's or director's period of
144 | suspension or the end of his or her term of office, whichever
145 | occurs first. If a criminal charge is pending against the
146 | officer or director, he or she may not be appointed or elected
147 | to a position as an officer or a director of any association and
148 | may not have access to the official records of any association,
149 | except pursuant to a court order. However, if the charges are
150 | resolved without a finding of guilt, the officer or director

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

151 must be reinstated for the remainder of his or her term of
152 office, if any.

153 (3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT,
154 SUE, AND BE SUED; CONFLICT OF INTEREST.—

155 (a) The association may contract, sue, or be sued with
156 respect to the exercise or nonexercise of its powers. For these
157 purposes, the powers of the association include, but are not
158 limited to, the maintenance, management, and operation of the
159 condominium property. After control of the association is
160 obtained by unit owners other than the developer, the
161 association may institute, maintain, settle, or appeal actions
162 or hearings in its name on behalf of all unit owners concerning
163 matters of common interest to most or all unit owners,
164 including, but not limited to, the common elements; the roof and
165 structural components of a building or other improvements;
166 mechanical, electrical, and plumbing elements serving an
167 improvement or a building; representations of the developer
168 pertaining to any existing or proposed commonly used facilities;
169 and protesting ad valorem taxes on commonly used facilities and
170 on units; and may defend actions in eminent domain or bring
171 inverse condemnation actions. If the association has the
172 authority to maintain a class action, the association may be
173 joined in an action as representative of that class with
174 reference to litigation and disputes involving the matters for
175 which the association could bring a class action. Nothing herein

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

176 | limits any statutory or common-law right of any individual unit
 177 | owner or class of unit owners to bring any action without
 178 | participation by the association which may otherwise be
 179 | available.

180 | (b) An association may not hire an attorney who represents
 181 | the management company of the association.

182 | (9) PURCHASE OF UNITS.—The association has the power,
 183 | unless prohibited by the declaration, articles of incorporation,
 184 | or bylaws of the association, to purchase units in the
 185 | condominium and to acquire and hold, lease, mortgage, and convey
 186 | them. There shall be no limitation on the association's right to
 187 | purchase a unit at a foreclosure sale resulting from the
 188 | association's foreclosure of its lien for unpaid assessments, or
 189 | to take title by deed in lieu of foreclosure. However, except
 190 | for a timeshare condominium, a board member, manager, or
 191 | management company may not purchase a unit at a foreclosure sale
 192 | resulting from the association's foreclosure of its lien for
 193 | unpaid assessments or take title by deed in lieu of foreclosure.

194 | (12) OFFICIAL RECORDS.—

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

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

200 | 2. A photocopy of the recorded declaration of condominium

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

201 of each condominium operated by the association and each
 202 amendment to each declaration.

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

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

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

209 6. A book or books that contain the minutes of all
 210 meetings of the association, the board of administration, and
 211 the unit owners, which minutes must be retained for at least 7
 212 years.

213 7. A current roster of all unit owners and their mailing
 214 addresses, unit identifications, voting certifications, and, if
 215 known, telephone numbers. The association shall also maintain
 216 the electronic mailing addresses and facsimile numbers of unit
 217 owners consenting to receive notice by electronic transmission.
 218 The electronic mailing addresses and facsimile numbers are not
 219 accessible to unit owners if consent to receive notice by
 220 electronic transmission is not provided in accordance with sub-
 221 subparagraph (c)3.e. ~~subparagraph (c)5.~~ However, the association
 222 is not liable for an inadvertent disclosure of the electronic
 223 mail address or facsimile number for receiving electronic
 224 transmission of notices.

225 8. All current insurance policies of the association and

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

226 condominiums operated by the association.

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

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

233 11. Accounting records for the association and separate
 234 accounting records for each condominium that the association
 235 operates. All accounting records must be maintained for at least
 236 7 years. Any person who knowingly or intentionally defaces or
 237 destroys such records, or who knowingly or intentionally fails
 238 to create or maintain such records, with the intent of causing
 239 harm to the association or one or more of its members, is
 240 personally subject to a civil penalty pursuant to s.

241 718.501(1)(d). The accounting records must include, but are not
 242 limited to:

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

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

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

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

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

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

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

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

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

266 16. A copy of the inspection report as described in s.
 267 718.301(4)(p).

268 17. Bids for materials, equipment, or services.

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

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

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

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

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

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

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

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

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

326 conclusion of the litigation or proceedings.

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

330 ~~c.3.~~ Personnel records of association or management
 331 company employees, including, but not limited to, disciplinary,
 332 payroll, health, and insurance records. For purposes of this
 333 sub-subparagraph ~~subparagraph~~, the term "personnel records" does
 334 not include written employment agreements with an association
 335 employee or management company, or budgetary or financial
 336 records that indicate the compensation paid to an association
 337 employee.

338 ~~d.4.~~ Medical records of unit owners.

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

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

351 numbers of each parcel owner. However, an owner may exclude his
 352 or her telephone numbers from the directory by so requesting in
 353 writing to the association. An owner may consent in writing to
 354 the disclosure of other contact information described in this
 355 sub-subparagraph ~~subparagraph~~. The association is not liable for
 356 the inadvertent disclosure of information that is protected
 357 under this sub-subparagraph ~~subparagraph~~ if the information is
 358 included in an official record of the association and is
 359 voluntarily provided by an owner and not requested by the
 360 association.

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

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

367 (g)1. By July 1, 2018, an association with 150 or more
 368 units which does not manage timeshare units shall post digital
 369 copies of the documents specified in subparagraph 2. on its
 370 website.

371 a. The association's website must be:

372 (I) An independent website or web portal wholly owned and
 373 operated by the association; or

374 (II) A website or web portal operated by a third-party
 375 provider with whom the association owns, leases, rents, or

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

376 otherwise obtains the right to operate a web page, subpage, web
 377 portal, or collection of subpages or web portals dedicated to
 378 the association's activities and on which required notices,
 379 records, and documents may be posted by the association.

380 b. The association's website must be accessible through
 381 the Internet and must contain a subpage, web portal, or other
 382 protected electronic location that is inaccessible to the
 383 general public and accessible only to unit owners and employees
 384 of the association.

385 c. Upon a unit owner's written request, the association
 386 must provide the unit owner with a username and password and
 387 access to the protected sections of the association's website
 388 that contain any notices, records, or documents that must be
 389 electronically provided.

390 2. A current copy of the following documents must be
 391 posted in digital format on the association's website:

392 a. The recorded declaration of condominium of each
 393 condominium operated by the association and each amendment to
 394 each declaration.

395 b. The recorded bylaws of the association and each
 396 amendment to the bylaws.

397 c. The articles of incorporation of the association, or
 398 other documents creating the association, and each amendment
 399 thereto. The copy posted pursuant to this sub-subparagraph must
 400 be a copy of the articles of incorporation filed with the

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

401 Department of State.

402 d. The rules of the association.

403 e. Any management agreement, lease, or other contract to
404 which the association is a party or under which the association
405 or the unit owners have an obligation or responsibility.

406 Summaries of bids for materials, equipment, or services must be
407 maintained on the website for 1 year.

408 f. The annual budget required by s. 718.112(2)(f) and any
409 proposed budget to be considered at the annual meeting.

410 g. The financial report required by subsection (13) and
411 any proposed financial report to be considered at a meeting.

412 h. The certification of each director required by s.
413 718.112(2)(d)4.b.

414 i. All contracts or transactions between the association
415 and any director, officer, corporation, firm, or association
416 that is not an affiliated condominium association or any other
417 entity in which an association director is also a director or
418 officer and financially interested.

419 j. Any contract or document regarding a conflict of
420 interest or possible conflict of interest as provided in ss.
421 468.436(2) and 718.3026(3).

422 k. The notice of any unit owner meeting and the agenda for
423 the meeting, as required by s. 718.112(2)(d)3., no later than 14
424 days before the meeting. The notice must be posted in plain view
425 on the front page of the website, or on a separate subpage of

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

426 the website labeled "Notices" which is conspicuously visible and
427 linked from the front page. The association must also post on
428 its website any document to be considered and voted on by the
429 owners during the meeting or any document listed on the agenda
430 at least 7 days before the meeting at which the document or the
431 information within the document will be considered.

432 1. Notice of any board meeting, the agenda, and any other
433 document required for the meeting as required by s.
434 718.112(2)(c), which must be posted no later than the date
435 required for notice pursuant to s. 718.112(2)(c).

436 2. The association shall ensure that the information and
437 records described in paragraph (c), which are not permitted to
438 be accessible to unit owners, are not posted on the
439 association's website. If protected information or information
440 restricted from being accessible to unit owners is included in
441 documents that are required to be posted on the association's
442 website, the association shall ensure the information is
443 redacted before posting the documents online.

444 (13) FINANCIAL REPORTING.—Within 90 days after the end of
445 the fiscal year, or annually on a date provided in the bylaws,
446 the association shall prepare and complete, or contract for the
447 preparation and completion of, a financial report for the
448 preceding fiscal year. Within 21 days after the final financial
449 report is completed by the association or received from the
450 third party, but not later than 120 days after the end of the

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

451 fiscal year or other date as provided in the bylaws, the
452 association shall mail to each unit owner at the address last
453 furnished to the association by the unit owner, or hand deliver
454 to each unit owner, a copy of the most recent financial report
455 or a notice that a copy of the most recent financial report will
456 be mailed or hand delivered to the unit owner, without charge,
457 within 5 business days after ~~upon~~ receipt of a written request
458 from the unit owner. The division shall adopt rules setting
459 forth uniform accounting principles and standards to be used by
460 all associations and addressing the financial reporting
461 requirements for multicondominium associations. The rules must
462 include, but not be limited to, standards for presenting a
463 summary of association reserves, including a good faith estimate
464 disclosing the annual amount of reserve funds that would be
465 necessary for the association to fully fund reserves for each
466 reserve item based on the straight-line accounting method. This
467 disclosure is not applicable to reserves funded via the pooling
468 method. In adopting such rules, the division shall consider the
469 number of members and annual revenues of an association.
470 Financial reports shall be prepared as follows:

471 (a) An association that meets the criteria of this
472 paragraph shall prepare a complete set of financial statements
473 in accordance with generally accepted accounting principles. The
474 financial statements must be based upon the association's total
475 annual revenues, as follows:

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

476 1. An association with total annual revenues of \$150,000
 477 or more, but less than \$300,000, shall prepare compiled
 478 financial statements.

479 2. An association with total annual revenues of at least
 480 \$300,000, but less than \$500,000, shall prepare reviewed
 481 financial statements.

482 3. An association with total annual revenues of \$500,000
 483 or more shall prepare audited financial statements.

484 (b)1. An association with total annual revenues of less
 485 than \$150,000 shall prepare a report of cash receipts and
 486 expenditures.

487 ~~2. An association that operates fewer than 50 units,~~
 488 ~~regardless of the association's annual revenues, shall prepare a~~
 489 ~~report of cash receipts and expenditures in lieu of financial~~
 490 ~~statements required by paragraph (a).~~

491 2.3. A report of cash receipts and disbursements must
 492 disclose the amount of receipts by accounts and receipt
 493 classifications and the amount of expenses by accounts and
 494 expense classifications, including, but not limited to, the
 495 following, as applicable: costs for security, professional and
 496 management fees and expenses, taxes, costs for recreation
 497 facilities, expenses for refuse collection and utility services,
 498 expenses for lawn care, costs for building maintenance and
 499 repair, insurance costs, administration and salary expenses, and
 500 reserves accumulated and expended for capital expenditures,

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

501 deferred maintenance, and any other category for which the
502 association maintains reserves.

503 (c) An association may prepare, without a meeting of or
504 approval by the unit owners:

505 1. Compiled, reviewed, or audited financial statements, if
506 the association is required to prepare a report of cash receipts
507 and expenditures;

508 2. Reviewed or audited financial statements, if the
509 association is required to prepare compiled financial
510 statements; or

511 3. Audited financial statements if the association is
512 required to prepare reviewed financial statements.

513 (d) If approved by a majority of the voting interests
514 present at a properly called meeting of the association, an
515 association may prepare:

516 1. A report of cash receipts and expenditures in lieu of a
517 compiled, reviewed, or audited financial statement;

518 2. A report of cash receipts and expenditures or a
519 compiled financial statement in lieu of a reviewed or audited
520 financial statement; or

521 3. A report of cash receipts and expenditures, a compiled
522 financial statement, or a reviewed financial statement in lieu
523 of an audited financial statement.

524

525 Such meeting and approval must occur before the end of the

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

526 | fiscal year and is effective only for the fiscal year in which
527 | the vote is taken, except that the approval may also be
528 | effective for the following fiscal year. If the developer has
529 | not turned over control of the association, all unit owners,
530 | including the developer, may vote on issues related to the
531 | preparation of the association's financial reports, from the
532 | date of incorporation of the association through the end of the
533 | second fiscal year after the fiscal year in which the
534 | certificate of a surveyor and mapper is recorded pursuant to s.
535 | 718.104(4)(e) or an instrument that transfers title to a unit in
536 | the condominium which is not accompanied by a recorded
537 | assignment of developer rights in favor of the grantee of such
538 | unit is recorded, whichever occurs first. Thereafter, all unit
539 | owners except the developer may vote on such issues until
540 | control is turned over to the association by the developer. Any
541 | audit or review prepared under this section shall be paid for by
542 | the developer if done before turnover of control of the
543 | association. An association may not waive the financial
544 | reporting requirements of this section for more than 3
545 | consecutive years.

546 | (e) A unit owner may provide written notice to the
547 | division of the association's failure to mail or hand deliver
548 | him or her a copy of the most recent financial report within 5
549 | business days after he or she submitted a written request to the
550 | association for a copy of such report. If the division

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

551 determines that the association failed to mail or hand deliver a
552 copy of the most recent financial report to the unit owner, the
553 division shall provide written notice to the association that
554 the association must mail or hand deliver a copy of the most
555 recent financial report to the unit owner and the division
556 within 5 business days after it receives such notice from the
557 division. An association that fails to comply with the
558 division's request may not waive the financial reporting
559 requirement provided in paragraph (d). A financial report
560 received by the division pursuant to this paragraph shall be
561 maintained, and the division shall provide a copy of such report
562 to an association member upon his or her request.

563 (15) DEBIT CARDS.—

564 (a) An association and its officers, directors, employees,
565 and agents may not use a debit card issued in the name of the
566 association, or billed directly to the association, for the
567 payment of any association expense.

568 (b) Use of a debit card issued in the name of the
569 association, or billed directly to the association, for any
570 expense that is not a lawful obligation of the association may
571 be prosecuted as credit card fraud pursuant to s. 817.61.

572 Section 2. To implement the website requirement in section
573 1 of this act, the Department of Business and Professional
574 Regulation is directed to include within the next condominium
575 association annual fee statement required by s. 718.501(2)(a),

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

576 Florida Statutes, a notice informing condominium associations of
577 150 or more units of the requirement to create a website for
578 association documents that is operational on or before July 1,
579 2018.

580 Section 3. Paragraphs (d) and (j) of subsection (2) of
581 section 718.112, Florida Statutes, are amended, and paragraph
582 (p) is added to that subsection, to read:

583 718.112 Bylaws.—

584 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
585 following and, if they do not do so, shall be deemed to include
586 the following:

587 (d) *Unit owner meetings.*—

588 1. An annual meeting of the unit owners shall be held at
589 the location provided in the association bylaws and, if the
590 bylaws are silent as to the location, the meeting shall be held
591 within 45 miles of the condominium property. However, such
592 distance requirement does not apply to an association governing
593 a timeshare condominium.

594 2. Unless the bylaws provide otherwise, a vacancy on the
595 board caused by the expiration of a director's term shall be
596 filled by electing a new board member, and the election must be
597 by secret ballot. An election is not required if the number of
598 vacancies equals or exceeds the number of candidates. For
599 purposes of this paragraph, the term "candidate" means an
600 eligible person who has timely submitted the written notice, as

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

601 described in sub-subparagraph 4.a., of his or her intention to
602 become a candidate. Except in a timeshare or nonresidential
603 condominium, or if the staggered term of a board member does not
604 expire until a later annual meeting, or if all members' terms
605 would otherwise expire but there are no candidates, the terms of
606 all board members expire at the annual meeting, and such members
607 may stand for reelection unless prohibited by the bylaws. ~~If the~~
608 ~~bylaws or articles of incorporation permit terms of no more than~~
609 ~~2 years, the association~~ Board members may serve 2-year terms if
610 permitted by the bylaws or articles of incorporation. A board
611 member may not serve more than four consecutive 2-year terms,
612 unless approved by an affirmative vote of two-thirds of the
613 total voting interests of the association or unless there are
614 not enough eligible candidates to fill the vacancies on the
615 board at the time of the vacancy. If the number of board members
616 whose terms expire at the annual meeting equals or exceeds the
617 number of candidates, the candidates become members of the board
618 effective upon the adjournment of the annual meeting. Unless the
619 bylaws provide otherwise, any remaining vacancies shall be
620 filled by the affirmative vote of the majority of the directors
621 making up the newly constituted board even if the directors
622 constitute less than a quorum or there is only one director. In
623 a residential condominium association of more than 10 units or
624 in a residential condominium association that does not include
625 timeshare units or timeshare interests, coowners of a unit may

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

626 | not serve as members of the board of directors at the same time
627 | unless they own more than one unit or unless there are not
628 | enough eligible candidates to fill the vacancies on the board at
629 | the time of the vacancy. A unit owner in a residential
630 | condominium desiring to be a candidate for board membership must
631 | comply with sub-subparagraph 4.a. and must be eligible to be a
632 | candidate to serve on the board of directors at the time of the
633 | deadline for submitting a notice of intent to run in order to
634 | have his or her name listed as a proper candidate on the ballot
635 | or to serve on the board. A person who has been suspended or
636 | removed by the division under this chapter, or who is delinquent
637 | in the payment of any monetary obligation due to the
638 | association, is not eligible to be a candidate for board
639 | membership and may not be listed on the ballot. A person who has
640 | been convicted of any felony in this state or in a United States
641 | District or Territorial Court, or who has been convicted of any
642 | offense in another jurisdiction which would be considered a
643 | felony if committed in this state, is not eligible for board
644 | membership unless such felon's civil rights have been restored
645 | for at least 5 years as of the date such person seeks election
646 | to the board. The validity of an action by the board is not
647 | affected if it is later determined that a board member is
648 | ineligible for board membership due to having been convicted of
649 | a felony. This subparagraph does not limit the term of a member
650 | of the board of a nonresidential or timeshare condominium.

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

651 3. The bylaws must provide the method of calling meetings
652 of unit owners, including annual meetings. Written notice must
653 include an agenda, must be mailed, hand delivered, or
654 electronically transmitted to each unit owner at least 14 days
655 before the annual meeting, and must be posted in a conspicuous
656 place on the condominium property at least 14 continuous days
657 before the annual meeting. Upon notice to the unit owners, the
658 board shall, by duly adopted rule, designate a specific location
659 on the condominium property or association property where all
660 notices of unit owner meetings shall be posted. This requirement
661 does not apply if there is no condominium property or
662 association property for posting notices. In lieu of, or in
663 addition to, the physical posting of meeting notices, the
664 association may, by reasonable rule, adopt a procedure for
665 conspicuously posting and repeatedly broadcasting the notice and
666 the agenda on a closed-circuit cable television system serving
667 the condominium association. However, if broadcast notice is
668 used in lieu of a notice posted physically on the condominium
669 property, the notice and agenda must be broadcast at least four
670 times every broadcast hour of each day that a posted notice is
671 otherwise required under this section. If broadcast notice is
672 provided, the notice and agenda must be broadcast in a manner
673 and for a sufficient continuous length of time so as to allow an
674 average reader to observe the notice and read and comprehend the
675 entire content of the notice and the agenda. Unless a unit owner

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

676 | waives in writing the right to receive notice of the annual
677 | meeting, such notice must be hand delivered, mailed, or
678 | electronically transmitted to each unit owner. Notice for
679 | meetings and notice for all other purposes must be mailed to
680 | each unit owner at the address last furnished to the association
681 | by the unit owner, or hand delivered to each unit owner.
682 | However, if a unit is owned by more than one person, the
683 | association must provide notice to the address that the
684 | developer identifies for that purpose and thereafter as one or
685 | more of the owners of the unit advise the association in
686 | writing, or if no address is given or the owners of the unit do
687 | not agree, to the address provided on the deed of record. An
688 | officer of the association, or the manager or other person
689 | providing notice of the association meeting, must provide an
690 | affidavit or United States Postal Service certificate of
691 | mailing, to be included in the official records of the
692 | association affirming that the notice was mailed or hand
693 | delivered in accordance with this provision.

694 | 4. The members of the board of a residential condominium
695 | shall be elected by written ballot or voting machine. Proxies
696 | may not be used in electing the board in general elections or
697 | elections to fill vacancies caused by recall, resignation, or
698 | otherwise, unless otherwise provided in this chapter. This
699 | subparagraph does not apply to an association governing a
700 | timeshare condominium.

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

701 a. At least 60 days before a scheduled election, the
702 association shall mail, deliver, or electronically transmit, by
703 separate association mailing or included in another association
704 mailing, delivery, or transmission, including regularly
705 published newsletters, to each unit owner entitled to a vote, a
706 first notice of the date of the election. A unit owner or other
707 eligible person desiring to be a candidate for the board must
708 give written notice of his or her intent to be a candidate to
709 the association at least 40 days before a scheduled election.
710 Together with the written notice and agenda as set forth in
711 subparagraph 3., the association shall mail, deliver, or
712 electronically transmit a second notice of the election to all
713 unit owners entitled to vote, together with a ballot that lists
714 all candidates. Upon request of a candidate, an information
715 sheet, no larger than 8 1/2 inches by 11 inches, which must be
716 furnished by the candidate at least 35 days before the election,
717 must be included with the mailing, delivery, or transmission of
718 the ballot, with the costs of mailing, delivery, or electronic
719 transmission and copying to be borne by the association. The
720 association is not liable for the contents of the information
721 sheets prepared by the candidates. In order to reduce costs, the
722 association may print or duplicate the information sheets on
723 both sides of the paper. The division shall by rule establish
724 voting procedures consistent with this sub-subparagraph,
725 including rules establishing procedures for giving notice by

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

726 | electronic transmission and rules providing for the secrecy of
727 | ballots. Elections shall be decided by a plurality of ballots
728 | cast. There is no quorum requirement; however, at least 20
729 | percent of the eligible voters must cast a ballot in order to
730 | have a valid election. A unit owner may not permit any other
731 | person to vote his or her ballot, and any ballots improperly
732 | cast are invalid. A unit owner who violates this provision may
733 | be fined by the association in accordance with s. 718.303. A
734 | unit owner who needs assistance in casting the ballot for the
735 | reasons stated in s. 101.051 may obtain such assistance. The
736 | regular election must occur on the date of the annual meeting.
737 | Notwithstanding this sub-subparagraph, an election is not
738 | required unless more candidates file notices of intent to run or
739 | are nominated than board vacancies exist.

740 | b. Within 90 days after being elected or appointed to the
741 | board of an association of a residential condominium, each newly
742 | elected or appointed director shall certify in writing to the
743 | secretary of the association that he or she has read the
744 | association's declaration of condominium, articles of
745 | incorporation, bylaws, and current written policies; that he or
746 | she will work to uphold such documents and policies to the best
747 | of his or her ability; and that he or she will faithfully
748 | discharge his or her fiduciary responsibility to the
749 | association's members. In lieu of this written certification,
750 | within 90 days after being elected or appointed to the board,

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

751 the newly elected or appointed director may submit a certificate
752 of having satisfactorily completed the educational curriculum
753 administered by a division-approved condominium education
754 provider within 1 year before or 90 days after the date of
755 election or appointment. The written certification or
756 educational certificate is valid and does not have to be
757 resubmitted as long as the director serves on the board without
758 interruption. A director of an association of a residential
759 condominium who fails to timely file the written certification
760 or educational certificate is suspended from service on the
761 board until he or she complies with this sub-subparagraph. The
762 board may temporarily fill the vacancy during the period of
763 suspension. The secretary shall cause the association to retain
764 a director's written certification or educational certificate
765 for inspection by the members for 5 years after a director's
766 election or the duration of the director's uninterrupted tenure,
767 whichever is longer. Failure to have such written certification
768 or educational certificate on file does not affect the validity
769 of any board action.

770 c. Any challenge to the election process must be commenced
771 within 60 days after the election results are announced.

772 5. Any approval by unit owners called for by this chapter
773 or the applicable declaration or bylaws, including, but not
774 limited to, the approval requirement in s. 718.111(8), must be
775 made at a duly noticed meeting of unit owners and is subject to

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

776 | all requirements of this chapter or the applicable condominium
777 | documents relating to unit owner decisionmaking, except that
778 | unit owners may take action by written agreement, without
779 | meetings, on matters for which action by written agreement
780 | without meetings is expressly allowed by the applicable bylaws
781 | or declaration or any law that provides for such action.

782 | 6. Unit owners may waive notice of specific meetings if
783 | allowed by the applicable bylaws or declaration or any law.
784 | Notice of meetings of the board of administration, unit owner
785 | meetings, except unit owner meetings called to recall board
786 | members under paragraph (j), and committee meetings may be given
787 | by electronic transmission to unit owners who consent to receive
788 | notice by electronic transmission.

789 | 7. Unit owners have the right to participate in meetings
790 | of unit owners with reference to all designated agenda items.
791 | However, the association may adopt reasonable rules governing
792 | the frequency, duration, and manner of unit owner participation.

793 | 8. A unit owner may tape record or videotape a meeting of
794 | the unit owners subject to reasonable rules adopted by the
795 | division.

796 | 9. Unless otherwise provided in the bylaws, any vacancy
797 | occurring on the board before the expiration of a term may be
798 | filled by the affirmative vote of the majority of the remaining
799 | directors, even if the remaining directors constitute less than
800 | a quorum, or by the sole remaining director. In the alternative,

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

801 a board may hold an election to fill the vacancy, in which case
802 the election procedures must conform to sub-subparagraph 4.a.
803 unless the association governs 10 units or fewer and has opted
804 out of the statutory election process, in which case the bylaws
805 of the association control. Unless otherwise provided in the
806 bylaws, a board member appointed or elected under this section
807 shall fill the vacancy for the unexpired term of the seat being
808 filled. Filling vacancies created by recall is governed by
809 paragraph (j) and rules adopted by the division.

810 10. This chapter does not limit the use of general or
811 limited proxies, require the use of general or limited proxies,
812 or require the use of a written ballot or voting machine for any
813 agenda item or election at any meeting of a timeshare
814 condominium association or nonresidential condominium
815 association.

816
817 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
818 association of 10 or fewer units may, by affirmative vote of a
819 majority of the total voting interests, provide for different
820 voting and election procedures in its bylaws, which may be by a
821 proxy specifically delineating the different voting and election
822 procedures. The different voting and election procedures may
823 provide for elections to be conducted by limited or general
824 proxy.

825 (j) *Recall of board members.*—Subject to s. 718.301, any

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

826 member of the board of administration may be recalled and
827 removed from office with or without cause by the vote or
828 agreement in writing by a majority of all the voting interests.
829 A special meeting of the unit owners to recall a member or
830 members of the board of administration may be called by 10
831 percent of the voting interests giving notice of the meeting as
832 required for a meeting of unit owners, and the notice shall
833 state the purpose of the meeting. Electronic transmission may
834 not be used as a method of giving notice of a meeting called in
835 whole or in part for this purpose.

836 1. If the recall is approved by a majority of all voting
837 interests by a vote at a meeting, the recall will be effective
838 as provided in this paragraph. The board shall duly notice and
839 hold a board meeting within 5 full business days after the
840 adjournment of the unit owner meeting to recall one or more
841 board members. ~~At the meeting, the board shall either certify~~
842 ~~the recall, in which case~~ Such member or members shall be
843 recalled effective immediately and shall turn over to the board
844 within 10 ~~5~~ full business days after the vote any and all
845 records and property of the association in their possession, ~~or~~
846 ~~shall proceed as set forth in subparagraph 3.~~

847 2. If the proposed recall is by an agreement in writing by
848 a majority of all voting interests, the agreement in writing or
849 a copy thereof shall be served on the association by certified
850 mail or by personal service in the manner authorized by chapter

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

851 48 and the Florida Rules of Civil Procedure. The board of
852 administration shall duly notice and hold a meeting of the board
853 within 5 full business days after receipt of the agreement in
854 writing. ~~At the meeting, the board shall either certify the~~
855 ~~written agreement to recall a member or members of the board, in~~
856 ~~which case~~ Such member or members shall be recalled effective
857 immediately and shall turn over to the board within 10 ~~5~~ full
858 business days any and all records and property of the
859 association in their possession, ~~or proceed as described in~~
860 ~~subparagraph 3.~~

861 ~~3.— If the board determines not to certify the written~~
862 ~~agreement to recall a member or members of the board, or does~~
863 ~~not certify the recall by a vote at a meeting, the board shall,~~
864 ~~within 5 full business days after the meeting, file with the~~
865 ~~division a petition for arbitration pursuant to the procedures~~
866 ~~in s. 718.1255. For the purposes of this section, the unit~~
867 ~~owners who voted at the meeting or who executed the agreement in~~
868 ~~writing shall constitute one party under the petition for~~
869 ~~arbitration. If the arbitrator certifies the recall as to any~~
870 ~~member or members of the board, the recall will be effective~~
871 ~~upon mailing of the final order of arbitration to the~~
872 ~~association. If the association fails to comply with the order~~
873 ~~of the arbitrator, the division may take action pursuant to s.~~
874 ~~718.501. Any member or members so recalled shall deliver to the~~
875 ~~board any and all records of the association in their possession~~

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

876 | ~~within 5 full business days after the effective date of the~~
877 | ~~recall.~~

878 | ~~3.4.~~ If the board fails to duly notice and hold a board
879 | meeting within 5 full business days after service of an
880 | agreement in writing or within 5 full business days after the
881 | adjournment of the unit owner recall meeting, the recall shall
882 | be deemed effective and the board members so recalled shall
883 | ~~immediately~~ turn over to the board within 10 full business days
884 | after the vote any and all records and property of the
885 | association.

886 | ~~4.5.~~ If the board fails to duly notice and hold the
887 | required meeting or fails to file the required petition, the
888 | unit owner representative may file a petition pursuant to s.
889 | 718.1255 challenging the board's failure to act. The petition
890 | must be filed within 60 days after the expiration of the
891 | applicable 5-full-business-day period. The review of a petition
892 | under this subparagraph is limited to the sufficiency of service
893 | on the board and the facial validity of the written agreement or
894 | ballots filed.

895 | ~~5.6.~~ If a vacancy occurs on the board as a result of a
896 | recall or removal and less than a majority of the board members
897 | are removed, the vacancy may be filled by the affirmative vote
898 | of a majority of the remaining directors, notwithstanding any
899 | provision to the contrary contained in this subsection. If
900 | vacancies occur on the board as a result of a recall and a

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

901 majority or more of the board members are removed, the vacancies
902 shall be filled in accordance with procedural rules to be
903 adopted by the division, which rules need not be consistent with
904 this subsection. The rules must provide procedures governing the
905 conduct of the recall election as well as the operation of the
906 association during the period after a recall but before the
907 recall election.

908 ~~6.7.~~ A board member who has been recalled may file a
909 petition pursuant to s. 718.1255 challenging the validity of the
910 recall. The petition must be filed within 60 days after the
911 recall ~~is deemed certified~~. The association and the unit owner
912 representative shall be named as the respondents.

913 ~~7.8.~~ The division may not accept for filing a recall
914 petition, whether filed pursuant to subparagraph 1.,
915 subparagraph 2., subparagraph ~~4. 5.~~, or subparagraph ~~6. 7.~~ and
916 ~~regardless of whether the recall was certified,~~ when there are
917 60 or fewer days until the scheduled reelection of the board
918 member sought to be recalled or when 60 or fewer days have
919 elapsed since the election of the board member sought to be
920 recalled.

921 (p) Service providers; conflicts of interest.—An
922 association, which is not a timeshare condominium association,
923 may not employ or contract with any service provider that is
924 owned or operated by a board member or with any person who has a
925 financial relationship with a board member or officer, or a

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

926 relative within the third degree of consanguinity by blood or
 927 marriage of a board member or officer. This paragraph does not
 928 apply to a service provider in which a board member or officer,
 929 or a relative within the third degree of consanguinity by blood
 930 or marriage of a board member or officer, owns less than 1
 931 percent of the equity shares.

932 Section 4. Subsection (4) of section 718.1255, Florida
 933 Statutes, is amended to read:

934 718.1255 Alternative dispute resolution; voluntary
 935 mediation; mandatory nonbinding arbitration; legislative
 936 findings.—

937 (4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF
 938 DISPUTES.—The Division of Florida Condominiums, Timeshares, and
 939 Mobile Homes of the Department of Business and Professional
 940 Regulation may ~~shall~~ employ full-time attorneys to act as
 941 arbitrators to conduct the arbitration hearings provided by this
 942 chapter. The division may also certify attorneys who are not
 943 employed by the division to act as arbitrators to conduct the
 944 arbitration hearings provided by this chapter ~~section~~. No person
 945 may be employed by the department as a full-time arbitrator
 946 unless he or she is a member in good standing of The Florida
 947 Bar. A person may only be certified by the division to act as an
 948 arbitrator if he or she has been a member in good standing of
 949 The Florida Bar for at least 5 years and has mediated or
 950 arbitrated at least 10 disputes involving condominiums in this

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

951 state during the 3 years immediately preceding the date of
952 application, mediated or arbitrated at least 30 disputes in any
953 subject area in this state during the 3 years immediately
954 preceding the date of application, or attained board
955 certification in real estate law or condominium and planned
956 development law from The Florida Bar. Arbitrator certification
957 is valid for 1 year. An arbitrator who does not maintain the
958 minimum qualifications for initial certification may not have
959 his or her certification renewed. The department may not enter
960 into a legal services contract for an arbitration hearing under
961 this chapter with an attorney who is not a certified arbitrator
962 unless a certified arbitrator is not available within 50 miles
963 of the dispute. The department shall adopt rules of procedure to
964 govern such arbitration hearings including mediation incident
965 thereto. The decision of an arbitrator shall be final; however,
966 a decision shall not be deemed final agency action. Nothing in
967 this provision shall be construed to foreclose parties from
968 proceeding in a trial de novo unless the parties have agreed
969 that the arbitration is binding. If judicial proceedings are
970 initiated, the final decision of the arbitrator shall be
971 admissible in evidence in the trial de novo.

972 (a) Prior to the institution of court litigation, a party
973 to a dispute shall petition the division for nonbinding
974 arbitration. The petition must be accompanied by a filing fee in
975 the amount of \$50. Filing fees collected under this section must

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

976 | be used to defray the expenses of the alternative dispute
977 | resolution program.

978 | (b) The petition must recite, and have attached thereto,
979 | supporting proof that the petitioner gave the respondents:

980 | 1. Advance written notice of the specific nature of the
981 | dispute;

982 | 2. A demand for relief, and a reasonable opportunity to
983 | comply or to provide the relief; and

984 | 3. Notice of the intention to file an arbitration petition
985 | or other legal action in the absence of a resolution of the
986 | dispute.

987 |

988 | Failure to include the allegations or proof of compliance with
989 | these prerequisites requires dismissal of the petition without
990 | prejudice.

991 | (c) Upon receipt, the petition shall be promptly reviewed
992 | by the division to determine the existence of a dispute and
993 | compliance with the requirements of paragraphs (a) and (b). If
994 | emergency relief is required and is not available through
995 | arbitration, a motion to stay the arbitration may be filed. The
996 | motion must be accompanied by a verified petition alleging facts
997 | that, if proven, would support entry of a temporary injunction,
998 | and if an appropriate motion and supporting papers are filed,
999 | the division may abate the arbitration pending a court hearing
1000 | and disposition of a motion for temporary injunction.

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1001 (d) Upon determination by the division that a dispute
1002 exists and that the petition substantially meets the
1003 requirements of paragraphs (a) and (b) and any other applicable
1004 rules, the division shall assign or enter into a contract with
1005 an arbitrator and serve a copy of the petition ~~shall be served~~
1006 ~~by the division~~ upon all respondents. The arbitrator shall
1007 conduct a hearing within 30 days after being assigned or
1008 entering into a contract unless the petition is withdrawn or a
1009 continuance is granted for good cause shown.

1010 (e) Before or after the filing of the respondents' answer
1011 to the petition, any party may request that the arbitrator refer
1012 the case to mediation under this section and any rules adopted
1013 by the division. Upon receipt of a request for mediation, the
1014 division shall promptly contact the parties to determine if
1015 there is agreement that mediation would be appropriate. If all
1016 parties agree, the dispute must be referred to mediation.
1017 Notwithstanding a lack of an agreement by all parties, the
1018 arbitrator may refer a dispute to mediation at any time.

1019 (f) Upon referral of a case to mediation, the parties must
1020 select a mutually acceptable mediator. To assist in the
1021 selection, the arbitrator shall provide the parties with a list
1022 of both volunteer and paid mediators that have been certified by
1023 the division under s. 718.501. If the parties are unable to
1024 agree on a mediator within the time allowed by the arbitrator,
1025 the arbitrator shall appoint a mediator from the list of

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1026 certified mediators. If a case is referred to mediation, the
 1027 parties shall attend a mediation conference, as scheduled by the
 1028 parties and the mediator. If any party fails to attend a duly
 1029 noticed mediation conference, without the permission or approval
 1030 of the arbitrator or mediator, the arbitrator must impose
 1031 sanctions against the party, including the striking of any
 1032 pleadings filed, the entry of an order of dismissal or default
 1033 if appropriate, and the award of costs and attorney ~~attorneys'~~
 1034 fees incurred by the other parties. Unless otherwise agreed to
 1035 by the parties or as provided by order of the arbitrator, a
 1036 party is deemed to have appeared at a mediation conference by
 1037 the physical presence of the party or its representative having
 1038 full authority to settle without further consultation, provided
 1039 that an association may comply by having one or more
 1040 representatives present with full authority to negotiate a
 1041 settlement and recommend that the board of administration ratify
 1042 and approve such a settlement within 5 days from the date of the
 1043 mediation conference. The parties shall share equally the
 1044 expense of mediation, unless they agree otherwise.

1045 (g) The purpose of mediation as provided for by this
 1046 section is to present the parties with an opportunity to resolve
 1047 the underlying dispute in good faith, and with a minimum
 1048 expenditure of time and resources.

1049 (h) Mediation proceedings must generally be conducted in
 1050 accordance with the Florida Rules of Civil Procedure, and these

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1051 proceedings are privileged and confidential to the same extent
1052 as court-ordered mediation. Persons who are not parties to the
1053 dispute are not allowed to attend the mediation conference
1054 without the consent of all parties, with the exception of
1055 counsel for the parties and corporate representatives designated
1056 to appear for a party. If the mediator declares an impasse after
1057 a mediation conference has been held, the arbitration proceeding
1058 terminates, unless all parties agree in writing to continue the
1059 arbitration proceeding, in which case the arbitrator's decision
1060 shall be binding or nonbinding, as agreed upon by the parties;
1061 in the arbitration proceeding, the arbitrator shall not consider
1062 any evidence relating to the unsuccessful mediation except in a
1063 proceeding to impose sanctions for failure to appear at the
1064 mediation conference. If the parties do not agree to continue
1065 arbitration, the arbitrator shall enter an order of dismissal,
1066 and either party may institute a suit in a court of competent
1067 jurisdiction. The parties may seek to recover any costs and
1068 attorney ~~attorneys'~~ fees incurred in connection with arbitration
1069 and mediation proceedings under this section as part of the
1070 costs and fees that may be recovered by the prevailing party in
1071 any subsequent litigation.

1072 (i) Arbitration shall be conducted according to rules
1073 adopted by the division. The filing of a petition for
1074 arbitration shall toll the applicable statute of limitations.

1075 (j) At the request of any party to the arbitration, the

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1076 arbitrator shall issue subpoenas for the attendance of witnesses
1077 and the production of books, records, documents, and other
1078 evidence and any party on whose behalf a subpoena is issued may
1079 apply to the court for orders compelling such attendance and
1080 production. Subpoenas shall be served and shall be enforceable
1081 in the manner provided by the Florida Rules of Civil Procedure.
1082 Discovery may, in the discretion of the arbitrator, be permitted
1083 in the manner provided by the Florida Rules of Civil Procedure.
1084 Rules adopted by the division may authorize any reasonable
1085 sanctions except contempt for a violation of the arbitration
1086 procedural rules of the division or for the failure of a party
1087 to comply with a reasonable nonfinal order issued by an
1088 arbitrator which is not under judicial review.

1089 (k) The arbitration decision shall be rendered within 30
1090 days after the hearing and presented to the parties in writing.
1091 An arbitration decision is final in those disputes in which the
1092 parties have agreed to be bound. An arbitration decision is also
1093 final if a complaint for a trial de novo is not filed in a court
1094 of competent jurisdiction in which the condominium is located
1095 within 30 days. The right to file for a trial de novo entitles
1096 the parties to file a complaint in the appropriate trial court
1097 for a judicial resolution of the dispute. The prevailing party
1098 in an arbitration proceeding shall be awarded the costs of the
1099 arbitration and reasonable attorney ~~attorney's~~ fees in an amount
1100 determined by the arbitrator. Such an award shall include the

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1101 costs and reasonable attorney ~~attorney's~~ fees incurred in the
 1102 arbitration proceeding as well as the costs and reasonable
 1103 attorney ~~attorney's~~ fees incurred in preparing for and attending
 1104 any scheduled mediation. An arbitrator's failure to render a
 1105 written decision within 30 days after the hearing may result in
 1106 the cancellation of his or her arbitration certification.

1107 (l) The party who files a complaint for a trial de novo
 1108 shall be assessed the other party's arbitration costs, court
 1109 costs, and other reasonable costs, including attorney ~~attorney's~~
 1110 fees, investigation expenses, and expenses for expert or other
 1111 testimony or evidence incurred after the arbitration hearing if
 1112 the judgment upon the trial de novo is not more favorable than
 1113 the arbitration decision. If the judgment is more favorable, the
 1114 party who filed a complaint for trial de novo shall be awarded
 1115 reasonable court costs and attorney ~~attorney's~~ fees.

1116 (m) Any party to an arbitration proceeding may enforce an
 1117 arbitration award by filing a petition in a court of competent
 1118 jurisdiction in which the condominium is located. A petition may
 1119 not be granted unless the time for appeal by the filing of a
 1120 complaint for trial de novo has expired. If a complaint for a
 1121 trial de novo has been filed, a petition may not be granted with
 1122 respect to an arbitration award that has been stayed. If the
 1123 petition for enforcement is granted, the petitioner shall
 1124 recover reasonable attorney ~~attorney's~~ fees and costs incurred
 1125 in enforcing the arbitration award. A mediation settlement may

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1126 | also be enforced through the county or circuit court, as
 1127 | applicable, and any costs and fees incurred in the enforcement
 1128 | of a settlement agreement reached at mediation must be awarded
 1129 | to the prevailing party in any enforcement action.

1130 | Section 5. Subsection (5) is added to section 718.3025,
 1131 | Florida Statutes, to read:

1132 | 718.3025 Agreements for operation, maintenance, or
 1133 | management of condominiums; specific requirements.—

1134 | (5) A party contracting to provide maintenance or
 1135 | management services to an association managing a residential
 1136 | condominium after transfer of control of the association, as
 1137 | provided in s. 718.301, which is not a timeshare condominium
 1138 | association, or an officer or board member of such party, may
 1139 | not purchase a unit at a foreclosure sale resulting from the
 1140 | association's foreclosure of association lien for unpaid
 1141 | assessments or take a deed in lieu of foreclosure. If 50 percent
 1142 | or more of the units in the condominium are owned by a party
 1143 | contracting to provide maintenance or management services to an
 1144 | association managing a residential condominium after transfer of
 1145 | control of the association, as provided in s. 718.301, which is
 1146 | not a timeshare condominium association, or by an officer or
 1147 | board member of such party, the contract with the party
 1148 | providing maintenance or management services may be cancelled by
 1149 | a majority vote of the unit owners other than the contracting
 1150 | party or an officer or board member of such party.

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1151 Section 6. Section 718.3027, Florida Statutes, is created
1152 to read:

1153 718.3027 Conflicts of interest.-

1154 (1) Directors and officers of a board of an association
1155 that is not a timeshare condominium association, and the
1156 relatives of such directors and officers, must disclose to the
1157 board any activity that may reasonably be construed to be a
1158 conflict of interest. A rebuttable presumption of a conflict of
1159 interest exists if any of the following occurs without prior
1160 notice, as required in subsection (4):

1161 (a) A director or an officer, or a relative of a director
1162 or an officer, enters into a contract for goods or services with
1163 the association.

1164 (b) A director or an officer, or a relative of a director
1165 or an officer, holds an interest in a corporation, limited
1166 liability corporation, partnership, limited liability
1167 partnership, or other business entity that conducts business
1168 with the association or proposes to enter into a contract or
1169 other transaction with the association.

1170 (2) If a director or an officer, or a relative of a
1171 director or an officer, proposes to engage in an activity that
1172 is a conflict of interest, as described in subsection (1), the
1173 proposed activity must be listed on, and all contracts and
1174 transactional documents related to the proposed activity must be
1175 attached to, the meeting agenda. If the board votes against the

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1176 proposed activity, the director or officer, or the relative of
1177 the director or officer, must notify the board in writing of his
1178 or her intention not to pursue the proposed activity or to
1179 withdraw from office. If the board finds that an officer or a
1180 director has violated this subsection, the officer or director
1181 shall be deemed removed from office. The vacancy shall be filled
1182 according to general law.

1183 (3) A director or an officer, or a relative of a director
1184 or an officer, who is a party to, or has an interest in, an
1185 activity that is a possible conflict of interest, as described
1186 in subsection (1), may attend the meeting at which the activity
1187 is considered by the board and is authorized to make a
1188 presentation to the board regarding the activity. After the
1189 presentation, the director or officer, or the relative of the
1190 director or officer, must leave the meeting during the
1191 discussion of, and the vote on, the activity. A director or an
1192 officer who is a party to, or has an interest in, the activity
1193 must recuse himself or herself from the vote.

1194 (4) A contract entered into between a director or an
1195 officer, or a relative of a director or an officer, and the
1196 association, which is not a timeshare condominium association,
1197 that has not been properly disclosed as a conflict of interest
1198 or potential conflict of interest as required by s.
1199 718.111(12)(g) is voidable and terminates upon the filing of a
1200 written notice terminating the contract with the board of

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1201 directors which contains the consent of at least 20 percent of
 1202 the voting interests of the association.

1203 (5) As used in this section, the term "relative" means a
 1204 relative within the third degree of consanguinity by blood or
 1205 marriage.

1206 Section 7. Subsection (5) of section 718.303, Florida
 1207 Statutes, is amended, and subsection (8) is added to that
 1208 section, to read:

1209 718.303 Obligations of owners and occupants; remedies.—

1210 (5) An association may suspend the voting rights of a unit
 1211 owner or member due to nonpayment of any fee, fine, or other
 1212 monetary obligation due to the association which is more than
 1213 \$1,000 and more than 90 days delinquent. Proof of such
 1214 obligation must be provided to the unit owner or member 30 days
 1215 before such suspension takes effect. A voting interest or
 1216 consent right allocated to a unit owner or member which has been
 1217 suspended by the association shall be subtracted from the total
 1218 number of voting interests in the association, which shall be
 1219 reduced by the number of suspended voting interests when
 1220 calculating the total percentage or number of all voting
 1221 interests available to take or approve any action, and the
 1222 suspended voting interests shall not be considered for any
 1223 purpose, including, but not limited to, the percentage or number
 1224 of voting interests necessary to constitute a quorum, the
 1225 percentage or number of voting interests required to conduct an

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1226 | election, or the percentage or number of voting interests
 1227 | required to approve an action under this chapter or pursuant to
 1228 | the declaration, articles of incorporation, or bylaws. The
 1229 | suspension ends upon full payment of all obligations currently
 1230 | due or overdue the association. The notice and hearing
 1231 | requirements under subsection (3) do not apply to a suspension
 1232 | imposed under this subsection.

1233 | (8) A receiver may not exercise voting rights of any unit
 1234 | owner whose unit is placed in receivership for the benefit of
 1235 | the association pursuant to this chapter.

1236 | Section 8. Subsection (5) of section 718.5012, Florida
 1237 | Statutes, is amended to read:

1238 | 718.5012 Ombudsman; powers and duties.—The ombudsman shall
 1239 | have the powers that are necessary to carry out the duties of
 1240 | his or her office, including the following specific powers:

1241 | (5) To monitor and review procedures and disputes
 1242 | concerning condominium elections or meetings, including, but not
 1243 | limited to, recommending that the division pursue enforcement
 1244 | action in any manner where there is reasonable cause to believe
 1245 | that election misconduct has occurred and reviewing secret
 1246 | ballots cast at a vote of the association.

1247 | Section 9. Section 718.71, Florida Statutes, is created to
 1248 | read:

1249 | 718.71 Financial reporting.—An association shall provide
 1250 | an annual report to the department containing the names of all

ENROLLED

CS/CS/HB 1237, Engrossed 1

2017 Legislature

1251 | of the financial institutions with which it maintains accounts,
1252 | and a copy of such report may be obtained from the department
1253 | upon written request of any association member.

1254 | Section 10. This act shall take effect July 1, 2017.