



---

# Civil Justice Subcommittee

**Wednesday, March 11, 2015  
9:00 AM - 12:00 PM  
Sumner Hall (404 HOB)**

**MEETING PACKET**

**Steve Crisafulli  
Speaker**

**Kathleen Passidomo  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Civil Justice Subcommittee

**Start Date and Time:** Wednesday, March 11, 2015 09:00 am  
**End Date and Time:** Wednesday, March 11, 2015 12:00 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

CS/HB 271 Consumer Protection by Business & Professions Subcommittee, Nuñez  
HB 381 Towing of Vehicles & Vessels by Wood  
HB 503 Family Law by Spano  
HB 619 Service of Process by Rouson  
HB 643 Condominiums by Sprowls  
HB 751 Emergency Treatment for Opioid Overdose by Gonzalez, Renuart  
HB 961 Electronic Noticing of Trust Accounts by Broxson  
HB 4021 Financial Reporting by Steube

**Consideration of the following proposed committee substitute(s):**

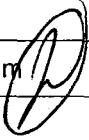

PCS for HB 305 -- Landlords and Tenants  
PCS for HB 791 -- Residential Properties

**NOTICE FINALIZED on 03/09/2015 16:00 by Ingram.Michele**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 271 Consumer Protection  
**SPONSOR(S):** Business & Professions Subcommittee; Nuñez  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N, As CS	Butler	Luczynski
2) Civil Justice Subcommittee		Malcolm 	Bond 
3) Regulatory Affairs Committee			

**SUMMARY ANALYSIS**

The bill creates the "True Origin of Digital Goods Act," which requires owners and operators of websites that electronically disseminate commercial recordings and audiovisual works to provide their name, address, and telephone number or e-mail address on the website. An owner or licensee of a commercial recording or audiovisual work may bring a cause of action for declaratory and injunctive relief against an owner or operator of a website that has failed to disclose the required information. Prior to filing a claim, the aggrieved party must provide the website owner or operator notice and an opportunity to cure 14 days before filing the claim. If a claim leads to the filing of a lawsuit, the prevailing party is entitled to recover expenses and attorney fees.

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

The bill has an effective date of July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Copyright Law

A "copyright" is defined as a form of protection provided to the authors of original works, including published and unpublished literary, dramatic, musical, artistic, and other intellectual works.<sup>1</sup> A copyright exists from the moment the work is fixed in a permanent or stable form, such as a recording or copy.<sup>2</sup> The copyright immediately becomes the author's property without further action by the author.<sup>3</sup> However, to pursue and protect his or her rights under copyright law, the author must register his or her copyright with the copyright office.<sup>4</sup>

Article I, s. 8, cl. 8, of the United States Constitution grants Congress the power to create and regulate copyright law.<sup>5</sup> Federal law expressly preempts all state copyright law for music recordings copyrighted on or after February 15, 1972.<sup>6</sup> As a result, Florida copyright law is limited to recordings fixed prior to February 15, 1972.<sup>7</sup>

Congress passed the Digital Millennium Copyright Act ("DMCA") to extend copyright protections to sound recordings commercially broadcasted on the internet.<sup>8</sup> To prevent a chilling effect on internet speech, the DMCA also generally protects internet service providers ("ISPs") from civil liability for publishing infringing material on the sites they host.<sup>9</sup>

##### Enforcement of Copyright Laws

Enforcement of one's copyright against an anonymous copyright infringer on the internet can be difficult. Websites that sell counterfeit goods are far less likely to have a U.S. phone or address listed than an authorized website that sells legitimate goods.<sup>10</sup> Because ISPs generally fall under the DMCA's safe harbor, owners of infringed copyright material must locate the actual infringing actor in order to enforce their copyrights. The DMCA provides a procedure by which a copyright owner can obtain the name and contact information of a copyright infringer by request to the ISP. Additionally, upon a copyright owner's request, an ISP must take down the identified infringing material in order to remain under the DMCA's safe harbor, and must also provide notice of the complaint to the copyright infringer.<sup>11</sup> Some ISPs have successfully refused to disclose the identity of the copyright infringer.<sup>12</sup>

---

<sup>1</sup> *Circular 1: Copyright Basics*, United States Copyright Office (2012), 1, available at <http://www.copyright.gov/circs/circ01.pdf> (last accessed March 9, 2015).

<sup>2</sup> *Id.*

<sup>3</sup> "No publication or registration or other action in the Copyright Office is required to secure a copyright." *Id.*

<sup>4</sup> 17 U.S.C. § 411.

<sup>5</sup> "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Art. I, § 8, cl. 8, U.S. Const.

<sup>6</sup> 17 U.S.C. §301(a)

<sup>7</sup> Section 540.11(2)(a), F.S.

<sup>8</sup> 17 U.S.C. §512.

<sup>9</sup> *Id.*

<sup>10</sup> Jeremy Wilson and Roy Fenokff, *Distinguishing Counterfeit from Authorized Retailers in the Virtual Marketplace*, 39 *International Criminal Justice Review*, 24(1), 2014.

<sup>11</sup> 17 U.S.C. §512 (d)(3).

<sup>12</sup> See Mikel Boeve, *Will Internet Service Providers Be Forced to Turn in Their Copyright Infringing Customers? The Power of the Digital Millennium Copyright Act's Subpoena Provision After In Re Charter Communications*, 29 *Hamline L. Rev.* 115, 118-19 (2006).

## State Copyright Law

In 2004, California passed the “True Name and Address” act, which makes the knowing electronic dissemination of a commercial recording or audiovisual work to more than 10 people without the disclosure of the disseminator’s e-mail address a misdemeanor.<sup>13</sup>

Tennessee followed suit in July, 2014, with the passage of their True Origin of Goods Act.<sup>14</sup> This law requires the owner or operator of a website dealing in electronic dissemination of commercial recordings or audiovisual works to clearly post his or her true and correct name, physical address, and telephone number. If the website’s owner fails to disclose his or her address, he or she may be enjoined to enforce compliance, and fined for failure to do so.<sup>15</sup> Tennessee requires these actions to be initiated and sustained by the Tennessee Attorney General’s Office.<sup>16</sup>

### Effect of the Bill

The bill creates s. 501.155, F.S., the “True Origin of Digital Goods Act,” to require owners or operators of websites<sup>17</sup> that disseminate commercial recordings or audiovisual works to Florida consumers to clearly post on the website and make readily accessible to a consumer using or visiting the website the following information:

- The true and correct name of the operator or owner;
- The operator or owner’s physical address; and
- The operator or owner’s telephone number or e-mail address.

“Commercial recordings or audiovisual works” are defined broadly in the bill to include a recording or audiovisual work whose owner, assignee, authorized agent, or licensee has disseminated or intends to disseminate such work for sale, rental, or performance or exhibition to the public, regardless of whether the person seeks commercial advantage or private financial gain from the dissemination. The definition excludes “an excerpt consisting of less than substantially all of a recording or audiovisual work” as well as video games, video game streaming, or depictions of video game.

The bill provides a right to injunctive relief for owners, assignees, authorized agents, or licensees of a commercial recording or audio visual work whose work appears on a website that is in violation of the bill. Prior to initiating the civil action provided for in the bill, the aggrieved party must make reasonable efforts to put the violating website on notice that they may be in violation of this section, and that failure to cure the violation within 14 days may result in civil action. The prevailing party under this act may also obtain necessary expenses and reasonable attorney’s fees. These remedies are available as a supplement to other state and federal criminal and civil law provisions.

### B. SECTION DIRECTORY:

Section 1 creates s. 501.155, F.S., related to the electronic dissemination of commercial recordings or audiovisual works; required disclosures; injunctive relief.

Section 2 provides an effective date.

---

<sup>13</sup> Cal. Penal Code §653aa.

<sup>14</sup> Tenn. Code Ann. §47-18-5601 – 47-18-5606 (2014).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> The bill specifically exempts providers of interactive computer services, communication services, commercial mobile services, information services that provide transmission, storage, or caching of electronic communications or other related telecommunications service, and commercial mobile radio services.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

For a court to exercise its jurisdiction over a corporation or individual, the court must have both personal jurisdiction and subject matter jurisdiction. State courts have general jurisdiction, therefore a claim made under a state statute meets the subject matter jurisdiction requirement. Personal jurisdiction requirements ensure that a defendant has sufficient notice and due process required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution before his or her rights are subjected to the Court.<sup>18</sup> Specifically, due process requires that a defendant have minimum contacts with the state in which the court sits.<sup>19</sup> A non-resident defendant may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida's long-arm statute.<sup>20</sup> Alternately, the non-resident defendant may be subject to a Florida court's personal jurisdiction because he or she has minimum contacts with the state that are otherwise unrelated to the matter that brings him or her into court "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"<sup>21</sup>

<sup>18</sup> *Walden v. Fiore*, 134 S. Ct. 1115, 1121, (2014).

<sup>19</sup> *Id.*

<sup>20</sup> *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4<sup>th</sup> DCA 2011); s. 48.193, F.S.

<sup>21</sup> *Walden*, 134 S. Ct. at 1121; *Caiazza*, 73 So. 3d at 250.

A defendant's minimum contacts sufficient to create specific jurisdiction must be contacts that the defendant him or herself has created with the state itself and not with persons who reside there.<sup>22</sup> "Due process requires that a defendant be haled into court in a forum state based on his own affiliation with the state, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the state."<sup>23</sup> Examples of sufficient minimum contacts include frequent business travel to the state, owning a company with a Florida office branch, or subjecting him or herself to the court's jurisdiction by being present in the Florida court.<sup>24</sup> Additionally, intentional conduct by an out-of-state tortfeasor that creates contacts with the forum state may be sufficient for a court to exercise jurisdiction over the defendant.<sup>25</sup> However, a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction.<sup>26</sup>

Whether a non-resident website owner or operator that electronically disseminates commercial recordings or audiovisual works into Florida has sufficient minimum contacts with the state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.<sup>27</sup>

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The phrase "less than substantially all" is not defined. It is unclear when a "commercial recording or audiovisual work" is no longer "substantially all" of the work, or at what point an excerpt would no longer be considered a "commercial recording or audiovisual work" under this bill.

As noted above, it is unclear if Florida could assert jurisdiction over foreign websites should an aggrieved party attempt to enforce the disclosure requirements of this bill against a website owner or operator located outside of Florida. Proponents do not expect websites owners or operators located outside of Florida to respond to law suits or submit willingly to jurisdiction in Florida courts. As such, proponents expect for any proceedings against owners or operators of websites located outside of Florida to end in default judgments and the issuance of an injunction. The injunction may be used to prove to the host ISP that the website violated state law, and therefore is in violation of the ISP's terms of service agreement.<sup>28</sup> The ISP generally revokes its contract with the website based on such violation and shuts down the website. Proponents argue that bad actors are unlikely to disclose the required information, and thus, the bill will allow owners of copyrighted works to indirectly protect their intellectual property.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Business & Professions Subcommittee considered and adopted three amendments. These amendments:

- Define "website";
- Provide that the person with a cause of action against a website is the owner, assignee, authorized agent, or licensee of a "work" that was electronically disseminated by the website that failed to meet the disclosure requirements of this bill; and,

<sup>22</sup> *Walden*, 134 S. Ct. at 1121.

<sup>23</sup> *Id.* at 1123.

<sup>24</sup> *Caiazza*, 73 So. 3d at 250.

<sup>25</sup> *Walden*, 134 S. Ct. at 1123.

<sup>26</sup> *Id.*

<sup>27</sup> See *Caiazza*, 73 So. 3d 245; *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

<sup>28</sup> ISPs' Terms of Service Agreements frequently forbid the user website from engaging in illegal activity.



- Require that a person knowingly violate the disclosure requirements of this bill, and prior to filing a cause of action created by this bill, the aggrieved party must make reasonable efforts to place the owner or operator on notice of the violation and provide an opportunity to cure.

The staff analysis is drafted to reflect the committee substitute.

CS/HB 271

2015

1 A bill to be entitled  
2 An act relating to consumer protection; creating s.  
3 501.155, F.S.; providing a short title; providing  
4 applicability; providing definitions; requiring owners  
5 and operators of specified websites and online  
6 services to disclose certain information; providing  
7 for injunctive relief; providing an effective date.  
8

9 Be It Enacted by the Legislature of the State of Florida:  
10

11 Section 1. Section 501.155, Florida Statutes, is created  
12 to read:

13 501.155 Electronic dissemination of commercial recordings  
14 or audiovisual works; required disclosures; injunctive relief.-

15 (1) SHORT TITLE.—This section may be cited as the "True  
16 Origin of Digital Goods Act."

17 (2) APPLICABILITY.—This section is supplemental to those  
18 provisions of state and federal criminal and civil law which  
19 impose prohibitions or provide penalties, sanctions, or remedies  
20 against the same conduct prohibited by this section. This  
21 section does not:

22 (a) Bar any cause of action or preclude the imposition of  
23 sanctions or penalties that would otherwise be available under  
24 state or federal law.

25 (b) Impose liability on providers of an interactive  
26 computer service, communications service as defined in s.

27 202.11(1), commercial mobile service, or information service,  
28 including, but not limited to, an Internet access service  
29 provider and a hosting service provider, if they provide the  
30 transmission, storage, or caching of electronic communications  
31 or messages of others or provide another related  
32 telecommunications, commercial mobile radio service, or  
33 information service, for use of such services by another person  
34 in violation of this section. This exemption from liability is  
35 consistent with and in addition to any liability exemption  
36 provided under 47 U.S.C. s. 230.

37 (3) DEFINITIONS.-As used in this section, the term:

38 (a) "Commercial recording or audiovisual work" means a  
39 recording or audiovisual work whose owner, assignee, authorized  
40 agent, or licensee has disseminated or intends to disseminate  
41 such recording or audiovisual work for sale, rental, or for  
42 performance or exhibition to the public, including under  
43 license, but does not include an excerpt consisting of less than  
44 substantially all of a recording or audiovisual work. A  
45 recording or audiovisual work may be commercial regardless of  
46 whether a person who electronically disseminates it seeks  
47 commercial advantage or private financial gain from the  
48 dissemination. The term does not include video games, depictions  
49 of video game play, or the streaming of video game activity.

50 (b) "Electronic dissemination" means initiating a  
51 transmission of, making available, or otherwise offering a  
52 commercial recording or audiovisual work for distribution

53 through the Internet or other digital network, regardless of  
 54 whether another person has previously electronically  
 55 disseminated the same commercial recording or audiovisual work.

56 (c) "E-mail address" means an electronic mail address as  
 57 defined in s. 668.602.

58 (d) "Website" means a set of related web pages served from  
 59 a single web domain. The term does not include a home page or  
 60 channel page for the user account of a person that is not the  
 61 owner or operator of the website upon which such user home page  
 62 or channel page appears.

63 (4) DISCLOSURE OF INFORMATION.—

64 (a) A person who owns or operates a website or online  
 65 service dealing in substantial part in the electronic  
 66 dissemination of commercial recordings or audiovisual works,  
 67 directly or indirectly, to consumers in this state shall clearly  
 68 and conspicuously disclose his or her true and correct name,  
 69 physical address, and telephone number or e-mail address on his  
 70 or her website or online service in a location readily  
 71 accessible to a consumer using or visiting the website or online  
 72 service.

73 (b) The following locations are deemed readily accessible  
 74 for purposes of this subsection:

- 75 1. A landing or home web page or screen;
- 76 2. An "about" or "about us" web page or screen;
- 77 3. A "contact" or "contact us" web page or screen;
- 78 4. An information web page or screen; or

79           5. Another place on the website or online service commonly  
 80 used to display identifying information to consumers.

81           (5) INJUNCTIVE RELIEF.—

82           (a) An owner, assignee, authorized agent, or licensee of a  
 83 commercial recording or audio visual work that is electronically  
 84 disseminated by a website or online service in violation of this  
 85 section may bring a private cause of action to obtain a  
 86 declaratory judgment that an act or practice violates this  
 87 section and enjoin any person who knowingly has violated, is  
 88 violating, or is otherwise likely to violate this section. As a  
 89 condition precedent to filing a civil action under this section,  
 90 the aggrieved party must make reasonable efforts to notify the  
 91 person alleged to be in violation of this section of such  
 92 violation and that failure to cure the violation within 14 days  
 93 may result in a civil action being filed in a court of competent  
 94 jurisdiction.

95           (b) Upon motion of the party instituting the action, the  
 96 court may make appropriate orders to compel compliance with this  
 97 section.

98           (c) The prevailing party in a cause under this section is  
 99 entitled to recover necessary expenses and reasonable attorney  
 100 fees.

101           Section 2. This act shall take effect July 1, 2015.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 305 Landlords and Tenants  
**SPONSOR(S):** Civil Justice Subcommittee  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Robinson <i>RR</i>	Bond <i>NTB</i>

**SUMMARY ANALYSIS**

Florida residential property owners commonly allow relatives, friends, or acquaintances to temporarily reside in their home as guests. These residencies are often terminated when the guest voluntarily vacates the property at the time agreed or, when the guest is no longer welcome, at the direction of the property owner. However, the process of removing an unwanted guest who refuses to leave can be frustrating and costly for property owners. In the absence of a crime, where a person has established even a temporary residence in residential property, law enforcement frequently will not force the person to surrender possession of the premises without a court order.

The bill authorizes law enforcement officers to direct certain guests to surrender possession of residential property without a court order upon the filing of a sworn affidavit by the person entitled to possession of the property that the guest is unlawfully detaining the property. Failing to surrender possession at the direction of law enforcement constitutes a criminal trespass.

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

The bill takes effect July 1, 2015.

HB 305, as filed, was referred to the Civil Justice Subcommittee and the Judiciary Committee.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Florida residential property owners commonly allow relatives, friends, or acquaintances to temporarily reside in their home as guests. These residencies are often terminated when the guest voluntarily vacates the property at the time agreed or, when the guest is no longer welcome, at the direction of the property owner. However, the process of removing an unwanted guest who refuses to leave can be frustrating and costly for property owners. In the absence of a crime, where a person has established a temporary residence in residential property, law enforcement frequently will not force the person to surrender possession of the premises without a court order, even where there are no indicators of the intent to create a permanent residency.<sup>1</sup>

A property owner seeking a court order for removal of a guest must file an action for possession in county or civil court. If the owner prevails in the action, the clerk of court will issue a writ of possession to the Sheriff describing the premises and commanding the Sheriff to put the owner in possession of the property.<sup>2</sup>

##### **Actions for Possession**

Property owners possess three separate, yet somewhat overlapping, judicial remedies for removing an unwanted guest from their home.

##### *Eviction*

Part II of ch. 83, F.S., the "Florida Residential Landlord and Tenant Act" (FRLATA), governs the relationship between landlords and tenants under a residential lease agreement. A rental agreement includes any written or oral agreement regarding the duration and conditions of a tenant's occupation of a dwelling unit.<sup>3</sup> Section 83.57, F.S., provides that a tenancy without a specific term may be terminated upon written notice of either party. The amount of notice required may range from 7 to 60 days.<sup>4</sup> A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated by filing an action for possession.<sup>5</sup> The FRLATA may apply to situations in which an invited guest made some minor contributions for the purchase of household goods or the payment of household expenses while residing in the property with the consent of the owner if a court decides that such an arrangement is a residential tenancy based on an agreement to pay "rent" in exchange for occupancy. However, if the court determines that possession is not based on residential tenancy (a landlord-tenant relationship), eviction is not the proper remedy and procedures under FRLATA not available.<sup>6</sup>

---

<sup>1</sup> For instance, a property appraiser considers all of the following factors in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence: proof of payment of utilities at the property, address of record for purposes of voting and driver licenses, the location where bank statements and checking accounts are registered, and the address listed on a federal tax return. Section 196.015, F.S.

<sup>2</sup> Sections 66.021(3), 82.091, and 83.62(1), F.S.

<sup>3</sup> Section 83.43(7), F.S. ("A rental agreement "means any written ... or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.")

<sup>4</sup> Section 83.57, F.S.

<sup>5</sup> Section 83.59, F.S.

<sup>6</sup> *Grimm v. Huckabee*, 891 So. 2d 608 (Fla. 1st DCA 2005).



## *Unlawful Detainer*

An unlawful detainer action can be filed to remove an unwanted guest who occupied residential property with the consent of the owner but has overstayed their welcome and has refused to leave upon the request of the property owner.<sup>7</sup> The person unlawfully detaining the property is not a tenant and claims no other right or interest in the property.

## *Ejectment*

An ejectment action can be filed to eject an unwanted guest who once may have had permission to live upon the property, but subsequently claimed that they had a legal right to be there and refused to leave when asked by the property owner. To prevail in an ejectment action, the plaintiff must prove that he or she has good title to the property and has been deprived of its possession by the unwanted guest.<sup>8</sup>

While these actions may certainly be similar in some respects, a number of their pleading requirements differ, as may the forum in which the property owner is required file the appropriate complaint. An eviction and unlawful detainer action must be filed in county court<sup>9</sup> and are entitled to the summary procedure of s. 51.011, F.S. which provides that a defendant must answer the action within 5 days<sup>10</sup> Thus, an action for possession based upon eviction or unlawful detainer may only take several weeks before entry of a judgment. Ejectment actions, however, are subject to the exclusive original jurisdiction of the circuit court<sup>11</sup> and governed by the Florida Rules of Civil Procedure which results in a longer court process before a property owner may obtain a judgment for possession.

## **Fees and Costs Associated with an Action for Possession**

In addition to the delay caused by the time it takes to obtain and serve a writ of possession pursuant to one of the above actions for possession, property owners must also pay a number of fees and costs, including, but not limited to:

- Filing fees - \$180 (county court)<sup>12</sup> or \$395 (civil court).<sup>13</sup>
- Service charge for issuance of each summons - \$10.<sup>14</sup>
- Service of each summons by the Sheriff - \$40.<sup>15</sup>
- Service and execution of the writ of possession by Sheriff - \$90.<sup>16</sup>
- Fees charged by the Sheriff to stand by and to keep the peace in an action for possession - Varies.<sup>17</sup>
- Attorney Fees - Varies.

---

<sup>7</sup> Section 82.04, F.S.

<sup>8</sup> Section 66.021, F.S.

<sup>9</sup> Section 34.011,(2), F.S.

<sup>10</sup> Sections 82.04(1) and 83.59(2), F.S.; Under the summary procedure of. s. 51.011, F.S., all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

<sup>11</sup> Section 26.012(2)(f), F.S.

<sup>12</sup> Section 34.041(1)(a)7., F.S.

<sup>13</sup> Section 28.241(1)(a)1.a., F.S.

<sup>14</sup> Sections 28.241(1)(d) and 34.041(1)(d), F.S.

<sup>15</sup> 30.231(1)(a), F.S.

<sup>16</sup> Section 30.231, F.S.

<sup>17</sup> Section 30.231(2), F.S.; For example, the Miami-Dade Police Department charges \$57.94 per hour, <http://www.miamidade.gov/police/fees-procedure.asp>, the Jacksonville Sheriff's Office charges \$46.00 per hour, <http://www.coj.net/departments/sheriffs-office/civil-process-unit/writ-of-possession-procedures.aspx>, and the Sarasota County Sheriff's Office charges \$31 per hour, <http://www.sarasotasheriff.org/services/civil-procedures.html>.

## Effect of Proposed Changes

The bill creates s. 82.045, F.S. to provide an additional remedy in ch. 82, F.S. for the unlawful detention of residential property by "transient occupants."

The bill defines a transient occupant as a person whose residency in residential property has been for a brief period of time, the residency is not pursuant to a written lease, and the residency was intended as temporary. Factors that establish whether a person is a transient occupant include:

- The absence of an ownership or financial interest in the property entitling the person to occupancy of the property.
- No utility subscriptions at the property.
- Failure to use the property as the address of record with governmental agencies.
- Failure to receive mail at the property.
- A minimal amount of personal belongings at the property, if any.
- Payment of minimal, if any, rent.
- Lack of a designated personal space, such as a private room, at the property.
- An apparent permanent residence elsewhere.

Similar factors indicate the lack of intent to establish a permanent residence under current law.<sup>18</sup> Minor contributions made for the purchase of household goods, or minor contributions towards other household expenses do not establish residency for the purposes of determining a transient occupancy.

If an unwanted guest refuses to leave residential property at the direction of the person entitled to possession of the property, which may be the owner or lessee of the property, such person may file a sworn affidavit with any law enforcement officer that the unwanted guest is a transient occupant and unlawfully detaining the property. A knowingly false statement in the sworn affidavit constitutes perjury, a first degree misdemeanor.<sup>19</sup>

Upon receipt of the sworn affidavit the law enforcement officer may direct the guest to surrender possession of the residential property. A person who fails to comply with the direction of the officer violates s. 810.08, F.S. and commits a criminal trespass in a structure or conveyance. In any prosecution of a violation of s. 810.08, F.S. whether the defendant was properly classified as a transient occupant is not an element of the offense, the state is not required to prove that the defendant was in fact a transient occupant, and the defendant's status as a permanent resident is not an affirmative defense. A person who is wrongfully removed by law enforcement as a transient occupant has a civil action for wrongful removal against the property owner, and, if acting in bad faith, against the law enforcement officer and the agency employing the officer.

The bill also provides that the person entitled to possession of the property may bring an action against the transient occupant for unlawful detainer pursuant to ch. 82, F.S. Additionally, the bill specifies that unlike the notices required under ch. 83, F.S. to a tenant prior to filing an eviction action, a transient occupant is not entitled to any notice of non-compliance prior to the property owner or lessee filing an action for unlawful detainer. The filing fee for an unlawful detainer action against a transient occupant is the fee established in s. 34.041(1)(a)7. for the removal of a tenant which is currently \$180.

If the court determines the defendant is not a transient occupant but a tenant of residential property governed by part II of ch. 83, F.S., the court may not dismiss the action without first allowing the plaintiff to give the defendant the pre-eviction notices required by that chapter and thereafter amend the complaint to pursue eviction.

---

<sup>18</sup> See e.g. s. 196.015, F.S.

<sup>19</sup> Section 837.012, F.S.

**B. SECTION DIRECTORY:**

Section 1 creates s. 82.045, F.S., relating to a remedy for unlawful detention by a transient occupant of residential property.

Section 2 provides an effective date of July 1, 2015.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

This bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

In each of the following cases, a Florida residential property owner sought help from law enforcement to remove an unwanted guest from his or her home but was required to pursue a civil action at his or her own expense for eviction, unlawful detainer, or ejection, even though the unwanted guests

admitted there was not an agreement to pay rent and claimed no other ownership interest in the property:

- Brother of property owner moved into property owner's home without permission under the pretext of serving as a companion to the property owner during an illness three years prior and thereafter refused to leave. The brother periodically made minor contributions to the household of \$100.<sup>20</sup>
- Property owner allowed an old college friend, as well as the friend's three children, to move into her home temporarily while the friend searched for a place to live. After 7 months, the owner requested the friend leave and the friend refused stating that "you can't find a place overnight."<sup>21</sup>
- Property owner allowed a mother and daughter, both adults, to move into his home after the women become unemployed. They refused to leave the home when requested by the owner after 3 months. The owner left the home and moved into his office. Public records showed the women were habitual squatters.<sup>22</sup>
- A military veteran invited a homeless man to move into his home for a few months until he could find permanent housing. The man refused to leave when requested by the owner over a year later, stating "you'll have to have me carried out of here."<sup>23</sup>
- A couple invited the homeless mother of their grandchild to live in their home. After she lost custody of the child, the couple requested that she leave and the woman refused. The couple alleged the woman wrote fraudulent checks from the couple's account and stole \$32,000 in jewelry from a safe in the home while they were away on vacation. After an investigation, a warrant was issued for the woman's arrest on charges of grand theft, dealing in stolen property and defrauding a pawnbroker.<sup>24</sup>

Certain tenancies that are currently considered landlord-tenant relationships governed by the protections and procedures of the Florida Residential Landlord and Tenant Act may be considered transient occupancies if the bill goes into effect. For instance, oral week-to-week or month-to-month, rental agreements, which by their very nature may be intended as temporary, may be considered transient occupancies if the amount of rent agreed to by the parties is considered "minimal", and the person fails to use the address for government records or for the purpose of receiving mail.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

---

<sup>20</sup> Marcus Franklin, *Law slanted in favor of unwelcome guests*, St. Petersburg Times, February 17, 2004, [http://www.sptimes.com/2004/02/17/Tampabay/Law\\_slanted\\_in\\_favor\\_shtml](http://www.sptimes.com/2004/02/17/Tampabay/Law_slanted_in_favor_shtml).

<sup>21</sup> *Id.*

<sup>22</sup> Eileen Schulte, *Charity backfires on landlord*, The Columbus Dispatch, January 23, 2009, <http://www.dispatch.com/content/stories/insight/2009/01/23/squatters.html>.

<sup>23</sup> Shannon Behnken, *Only court order will rid you of unwanted house guest*, The Tampa Tribune, September 7, 2011, <http://tbo.com/news/business/only-court-order-will-rid-you-of-unwanted-house-guest-255859>.

<sup>24</sup> Ben Montgomery, *Hospitality cost couple dearly when guest refused to leave*, Tampa Bay Times, August 25, 2011, <http://www.tampabay.com/features/humaninterest/hospitality-cost-couple-dearly-when-guest-refused-to-leave/1187810>.

1                                   A bill to be entitled  
 2           An act relating to unlawful detention by a transient  
 3           occupant; creating s. 82.045, F.S.; defining the term  
 4           "transient occupant"; providing factors that establish  
 5           a transient occupancy; providing for removal of a  
 6           transient occupant by a law enforcement officer;  
 7           providing a cause of action for wrongful removal;  
 8           limiting actions for wrongful removal; providing a  
 9           civil action for removal of a transient occupant;  
 10          providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. Section 82.045, Florida Statutes, is created to  
 15           read:

16           82.045 Remedy for unlawful detention by a transient  
 17           occupant of residential property.--

18           (1) As used in this section, the term "transient occupant"  
 19           means a person whose residency in a dwelling intended for  
 20           residential use has occurred for a brief length of time, is not  
 21           pursuant to a written lease, and whose occupancy was intended as  
 22           transient in nature.

23           (a) Factors that establish that a person is a transient  
 24           occupant include, but are not limited to:

25           1. The person does not have ownership or financial interest  
 26           in the property entitling him or her to occupancy of the

27 property.

28 2. The person does not have any property utility  
 29 subscriptions.

30 3. The person does not use the property address as an  
 31 address of record with any governmental agency, including, but  
 32 not limited to, the Department of Highway Safety and Motor  
 33 Vehicles or the supervisor of elections.

34 4. The person does not receive mail at the property.

35 5. The person pays minimal or no rent for his or her stay  
 36 at the property.

37 6. The person does not have a designated space of his or  
 38 her own, such as a room, at the property.

39 7. The person has minimal, if any, personal belongings at  
 40 the property.

41 8. The person has an apparent permanent residence  
 42 elsewhere.

43 (b) Minor contributions made for the purchase of household  
 44 goods, or minor contributions towards other household expenses,  
 45 do not establish residency.

46 (2) A transient occupant unlawfully detains a residential  
 47 property if the transient occupant remains in occupancy of the  
 48 residential property after the party entitled to possession of  
 49 the property has directed the transient occupant to leave.

50 (3) Any law enforcement officer may, upon receipt of a  
 51 sworn affidavit of the party entitled to possession that a  
 52 person who is a transient occupant is unlawfully detaining

53 residential property, direct a transient occupant to surrender  
 54 possession of residential property. A person who fails to comply  
 55 with the direction of the law enforcement officer to surrender  
 56 possession or occupancy violates s. 810.08. In any prosecution  
 57 of a violation of s. 810.08 related to this section, whether the  
 58 defendant was properly classified as a transient occupant is not  
 59 an element of the offense, the state is not required to prove  
 60 that the defendant was in fact a transient occupant, and the  
 61 status as a permanent resident is not an affirmative defense. A  
 62 person wrongfully removed pursuant to this subsection has a  
 63 cause of action for wrongful removal against the person who  
 64 requested the removal, and may recover injunctive relief and  
 65 compensatory damages. However, a wrongfully removed person does  
 66 not have a cause of action against the law enforcement officer  
 67 or the agency employing the law enforcement officer absent a  
 68 showing of bad faith by the law enforcement officer.

69 (4) A party entitled to possession of a dwelling has a  
 70 cause of action for unlawful detainer and removal of a transient  
 71 occupant. The party entitled to possession is entitled to the  
 72 summary procedure of s. 51.011 to remove a transient occupant.  
 73 The party entitled to possession is not required to notify the  
 74 transient occupant before filing the action. If the court finds  
 75 that the defendant is a transient occupant the court shall order  
 76 the clerk to issue a writ of possession placing the plaintiff in  
 77 possession of the premises, and may award compensatory damages.  
 78 If the court finds the defendant is not a transient occupant but

79 is instead a tenant of residential property entitled to the  
 80 protections of part II of ch. 83, the court may not dismiss the  
 81 action without first allowing the plaintiff to give notice  
 82 required by that part and to thereafter amend the complaint to  
 83 pursue eviction under that part. County courts have jurisdiction  
 84 over actions authorized under this subsection. The filing fee  
 85 for an action under this subsection is the fee established in s.  
 86 34.041(1)(a)7. for removal of a tenant.

87 Section 2. This act shall take effect July 1, 2015.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 381 Towing of Vehicles & Vessels  
**SPONSOR(S):** Wood  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 786

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee	12 Y, 0 N	Whittaker	Smith
2) Civil Justice Subcommittee		Robinson <i>R</i>	Bond <i>YB</i>
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

Current law provides that the owner or lessee of real property, or their agent, may have any unauthorized vehicle or vessel parked on such property removed by towing without incurring any liability for the cost, storage, damage, or transportation associated with such towing if the owner or lessee has complied with strict posted notice requirements. These requirements include the location of the notice, the graphics of the notice, and the length of the time the notice is posted. An exception to the posted notice requirements exist if the property is a single-family residence, the owner, lessee, or agent provides personal notice to the owner or operator of the vehicle or vessel that it is subject to towing, or the vehicle or vessel restricts the normal operation of a business or obstructs a private driveway.

The bill provides an additional exception for towing a vehicle or vessel without the posted notice requirements. The owner or lessee of real property may have a vehicle or vessel that has been parked or stored on private property for a period exceeding 5 days removed by a towing company upon signing an order that the vehicle or vessel be removed. The 5 day period does not begin to run until a notice that the vehicle or vessel will be removed from the property is attached to the vehicle or vessel and law enforcement verifies the sufficiency of the notice.

The bill further specifies that an agent of an owner or lessee of real property who may cause the removal of unauthorized vehicles by towing includes the designated representative of the cooperative association if the real property is a cooperative, or the designated representative of the homeowners' association if the real property is owned by a homeowners' association.

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

The bill provides that the act shall take effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### *Posting Requirements for Towing*

Section 715.07, F.S. provides that the owner or lessee of real property, or their agent, may have any unauthorized vehicle or vessel parked on such property removed by towing without incurring any liability for the cost, storage, damage, or transportation associated with such towing if the owner or lessee has complied with strict posted notice requirements.

Prior to causing the removal of an unauthorized vehicle or vessel from real property without the consent of the owner, the owner or lessee of the property must post a notice meeting the following requirements<sup>1</sup>:

- The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 5 feet from the public right-of-way line. If there are no curbs or access barriers, the signs must be posted not less than one sign for each 25 feet of lot frontage.
- The notice must clearly indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than 4-inch high letters.
- The notice must provide the name and current telephone number of the person or firm towing or removing the vehicles or vessels.
- The sign structure containing the required notice must be permanently installed with the words "tow-away zone" not less than 3 feet and not more than 6 feet above ground level and must be continuously maintained on the property for at least 24 hours prior to the towing or removal of any vehicles or vessels.

A business with 20 or fewer parking spaces satisfies the notice requirements by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles or Vessels Will be Towed Away At the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.<sup>2</sup>

##### *Exceptions to Posting Requirements*

Lawful towing or removal of any vehicle or vessel without posted notice or the consent of the registered owner may be effected when:<sup>3</sup>

- The property belongs to and is obviously a part of a single-family residence;
- When notice is personally given to the owner or other legally authorized person in control of the vehicle or vessel that the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or vessels and that the vehicle or vessel is subject to being removed at the owner's or operator's expense;
- The vehicle or vessel is parked in such a manner that restricts the normal operation of a business; or

---

<sup>1</sup> Section 715.07(2)(a)5., F.S.

<sup>2</sup> Section 715.07(2)(a)5.f., F.S.

<sup>3</sup> Section 715.07(2)(a)5., F.S.

- If a vehicle or vessel parked on a public right-of-way obstructs access to a private driveway.

### **Effect of Proposed Changes**

The bill provides an additional exception for towing a vehicle or vessel without the posted notice requirements. It provides that the owner, lessee, or agent of the owner or lessee of real property, may have a vehicle or vessel that has been parked without permission on private property for a period exceeding 5 days removed by a towing company. The owner must provide the towing company with a signed order that the vehicle or vessel be removed without a posted tow-away zone sign. The 5-day period does not begin to run until both of the following conditions are met:

- A notice that the vehicle or vessel will be removed from the property is attached to the vehicle or vessel with adhesive material. The notice must:
  - Be at least 8 1/2 by 11 inches in size and weatherproofed to withstand normal exposure to the elements;
  - Be attached to the vehicle's windshield or, in the case of a vessel, to the registration number on the left side;
  - Provide the name and phone number of the proposed towing company;
  - Clearly indicate the date posted; and clearly indicate in bold letters that the vehicle or vessel will be towed or removed 5 days from the date local law enforcement verifies and documents that the notice complies with all legal requirements.
- The property owner or lessee, or the agent thereof, notifies the local law enforcement agency of the notice being posted and the local law enforcement agency verifies and documents the sufficiency of the notice in a police report that must be provided to the property owner and the towing company.

The bill further specifies that an agent of an owner or lessee of real property who may cause the removal of unauthorized vehicles or vessels by towing pursuant to s. 715.07, F.S. includes the designated representative of the cooperative association if the real property is a cooperative, or the designated representative of the homeowners' association if the real property is owned by a homeowners' association.

### **Other Changes**

A person or firm that tows or removes a vehicle or vessel from real property at the direction of the property owner or lessee, or agent of the owner or lessee, pursuant to s. 715.07, F.S. must notify local law enforcement within 30 minutes after completion of the tow or removal and provide information regarding the location of the tow or removal, vehicle or vessel identifiers, and the vehicle or vessel storage location.<sup>4</sup> Current law requires the person or firm to obtain the name of the person at the law enforcement agency to whom such information was reported and record the name on the trip record.<sup>5</sup>

The bill provides that as an alternative to recording the name of such person on the trip record, the person or firm may:

- Record the person's badge number on the trip record;
- Record any case number provided by such person on the trip record; or
- If the notification was made by an electronic notification process approved by the police department or sheriff's office, attach the electronic receipt received from the department or office to the trip record.

---

<sup>4</sup> Section 715.07(2)(a)2., F.S.

<sup>5</sup> *Id.*

The bill also makes technical and grammatical changes to the statute.

**B. SECTION DIRECTORY:**

Section 1 amends s. 715.07, F.S., relating to vehicles or vessels parked on private property; towing.

Section 2 provides that the act shall take effect upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

The added exemption may provide private property owners with greater ease in having abandoned vehicles towed from their properties. Owners and lessees of real property could avoid the cost of posting tow-away zone signage when a vehicle or vessel has been parked or stored on the property for more than 5 days.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Line 190 of the bill only specifies that a copy of the police report documenting the sufficiency of the notice posted on an unauthorized vessel or vehicle be provided to the property owner. However, current law and the bill also allow a lessee, or an agent of an owner or lessee, to cause the removal of an unauthorized vehicle or vessel from private property and to post such a notice.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

n/a

HB 381

2015

1                                   A bill to be entitled  
 2           An act relating to towing of vehicles and vessels;  
 3           amending s. 715.07, F.S.; providing for removal of a  
 4           vehicle or vessel by a cooperative association or a  
 5           homeowners' association; authorizing an owner or  
 6           lessee of real property to have a vehicle or vessel  
 7           removed from the property without certain signage  
 8           under certain circumstances; requiring a notice to be  
 9           attached to the vehicle or vessel and providing  
 10          requirements therefor; requiring police verification  
 11          and documentation of such a notice and requirements  
 12          therefor; providing an effective date.

13  
 14 Be It Enacted by the Legislature of the State of Florida:

15  
 16           Section 1. Section 715.07, Florida Statutes, is amended to  
 17           read:

18           715.07 Vehicles or vessels ~~parked on private property;~~  
 19           towing.—

20           (1) As used in this section, the term:

21           (a) "Vehicle" means a ~~any~~ mobile item that ~~which~~ normally  
 22           uses wheels, whether motorized or not.

23           (b) "Vessel" means every description of watercraft, barge,  
 24           and airboat used or capable of being used as a means of  
 25           transportation on water, other than a seaplane or a "documented  
 26           vessel" as defined in s. 327.02.

27 (2) The owner or lessee of real property, or a any person  
 28 authorized by the owner or lessee, which person may be the  
 29 designated representative of the condominium association if the  
 30 real property is a condominium, the designated representative of  
 31 the cooperative association if the real property is a  
 32 cooperative, or the designated representative of the homeowners'  
 33 association if the real property is owned by a homeowners'  
 34 association, may cause a any vehicle or vessel parked on such  
 35 property without her or his permission to be removed by a person  
 36 regularly engaged in the business of towing vehicles or vessels,  
 37 without liability for the costs of removal, transportation, or  
 38 storage or damages caused by such removal, transportation, or  
 39 storage, under any of the following circumstances:

40 (a) The towing or removal of a any vehicle or vessel from  
 41 private property without the consent of the registered owner or  
 42 other legally authorized person in control of that vehicle or  
 43 vessel is subject to strict compliance with the following  
 44 conditions and restrictions:

45 1.a. A Any towed or removed vehicle or vessel must be  
 46 stored at a site within a 10-mile radius of the point of removal  
 47 in a any county with a population of 500,000 ~~population~~ or more  
 48 or, ~~and~~ within a 15-mile radius of the point of removal in a any  
 49 county with a population of less than 500,000 ~~population~~. That  
 50 site must be open for the purpose of redemption of vehicles from  
 51 8 a.m. to 6 p.m. on any day that the person or firm towing such  
 52 vehicle or vessel is open for towing purposes, ~~from 8:00 a.m. to~~



53 ~~6:00 p.m.,~~ and, when closed, shall have prominently posted a  
 54 sign indicating a telephone number where the operator of the  
 55 site can be reached at all times. Upon receipt of a telephoned  
 56 request to open the site to redeem a vehicle or vessel, the  
 57 operator must ~~shall~~ return to the site within 1 hour ~~or she or~~  
 58 ~~he will be in violation of this section.~~

59 b. If no towing business providing such service is located  
 60 within the area of towing limitations under ~~set forth in~~ sub-  
 61 subparagraph a., the following limitations apply: a ~~any~~ towed or  
 62 removed vehicle or vessel must be stored at a site within a 20-  
 63 mile radius of the point of removal in a ~~any~~ county with a  
 64 population of 500,000 ~~population~~ or more or, ~~and~~ within a 30-  
 65 mile radius of the point of removal in a ~~any~~ county with a  
 66 population of less than 500,000 ~~population~~.

67 2. Within 30 minutes after completion of the towing or  
 68 removal, the person or firm that towed or removed ~~towing or~~  
 69 ~~removing~~ the vehicle or vessel must ~~shall,~~ ~~within 30 minutes~~  
 70 ~~after completion of such towing or removal,~~ notify the municipal  
 71 police department or, in an unincorporated area, the sheriff,  
 72 of: the ~~such~~ towing or removal; the storage site; the time the  
 73 vehicle or vessel was towed or removed; and the make, model,  
 74 color, and license plate number of the vehicle or description  
 75 and registration number of the vessel. The person or firm ~~and~~  
 76 shall note on the trip record at the time of the telephone call  
 77 ~~obtain~~ the case number, badge number, or name of the person at  
 78 ~~that department~~ to whom such information was reported or attach

79 the electronic receipt received from the department or office to  
 80 the trip record if the notification was made by an electronic  
 81 notification process approved by the police department or  
 82 sheriff's office ~~and note that name on the trip record.~~

83 3. A person in the process of towing or removing a vehicle  
 84 or vessel from the premises or parking lot in which the vehicle  
 85 or vessel is not lawfully parked must stop when a person seeks  
 86 the return of the vehicle or vessel. The vehicle or vessel must  
 87 be returned upon the payment of a reasonable service fee of not  
 88 more than one-half of the posted rate for the towing or removal  
 89 service as provided in subparagraph 7. ~~6.~~ The vehicle or vessel  
 90 may be towed or removed if, after a reasonable opportunity, the  
 91 owner or legally authorized person in control of the vehicle or  
 92 vessel is unable to pay the service fee. If the vehicle or  
 93 vessel is redeemed, a detailed signed receipt must be given to  
 94 the person redeeming the vehicle or vessel.

95 4. A person may not pay or accept money or other valuable  
 96 consideration for the privilege of towing or removing vehicles  
 97 or vessels from a particular location.

98 5. Except when the ~~for~~ property is appurtenant to and  
 99 obviously a part of a single-family residence or, ~~and except for~~  
 100 ~~instances~~ when notice is personally given to the owner or other  
 101 legally authorized person in control of the vehicle or vessel  
 102 that the area in which that vehicle or vessel is parked is  
 103 reserved or otherwise unavailable for unauthorized vehicles or  
 104 vessels and that the vehicle or vessel is subject to being

105 removed at the owner's or operator's expense, before towing or  
 106 removing a vehicle or vessel from private property without the  
 107 consent of the owner or other legally authorized person in  
 108 control of that vehicle or vessel, a ~~any~~ property owner or  
 109 ~~lessee, or person authorized by the property owner or lessee,~~  
 110 ~~prior to towing or removing any vehicle or vessel from private~~  
 111 ~~property without the consent of the owner or other legally~~  
 112 ~~authorized person in control of that vehicle or vessel,~~ must  
 113 post a notice subject to meeting the following ~~requirements~~:

114 a. The notice must:

115 (I) Be prominently placed at each driveway access or curb  
 116 cut allowing vehicular access to the property, within 5 feet  
 117 from the public right-of-way line. If there are no curbs or  
 118 access barriers, the signs must be posted not less than one sign  
 119 for each 25 feet of lot frontage.

120 (II) ~~b. The notice must~~ Clearly indicate, in not less than  
 121 2-inch high, light-reflective letters on a contrasting  
 122 background, that unauthorized vehicles will be towed away at the  
 123 owner's expense. The words "tow-away zone" must be included on  
 124 the sign in not less than 4-inch high letters.

125 (III) ~~e. The notice must also~~ Provide the name and current  
 126 telephone number of the person or firm towing or removing ~~the~~  
 127 vehicles or vessels.

128 ~~b.d.~~ The sign structure containing the required notices  
 129 must be permanently installed with the words "tow-away zone" at  
 130 least ~~not less than~~ 3 feet but no ~~and not~~ more than 6 feet above

HB 381

2015

131 ground level and must be continuously maintained on the property  
 132 for at least ~~not less than~~ 24 hours before ~~prior to the~~ towing  
 133 or removing a vehicle or vessel ~~removal of any vehicles or~~  
 134 ~~vessels.~~

135 ~~e.~~ The local government may require permitting and  
 136 inspection of such ~~these~~ signs before ~~prior to any~~ towing or  
 137 removing a vehicle or vessel is ~~removal of vehicles or vessels~~  
 138 ~~being~~ authorized.

139 ~~c.f.~~ A business with 20 or fewer parking spaces satisfies  
 140 the notice requirements of this subparagraph by prominently  
 141 displaying a sign stating "Reserved Parking for Customers Only  
 142 Unauthorized Vehicles or Vessels Will be Towed Away At the  
 143 Owner's Expense" in not less than 4-inch high, light-reflective  
 144 letters on a contrasting background.

145 ~~d.g.~~ A property owner towing or removing vessels from real  
 146 property must post notice, consistent with the requirements in  
 147 sub-subparagraphs a.-c. ~~a.-f.~~, which apply to vehicles, that  
 148 unauthorized vehicles or vessels will be towed away at the  
 149 owner's expense.

150 6. Notwithstanding subparagraph 5., ~~a business owner or~~  
 151 ~~lessee may authorize the removal of a vehicle or vessel by a~~  
 152 ~~towing company~~ when a ~~the~~ vehicle or vessel is parked in ~~such~~ a  
 153 manner that restricts the normal operation of business; is ~~and~~  
 154 ~~if a vehicle or vessel parked on a public right-of-way~~ in a  
 155 manner that obstructs access to a private driveway; or has been  
 156 parked or stored on private property for a period exceeding 5

157 days, the owner ~~or,~~ lessee, or agent of the owner or lessee, of  
 158 the real property may have the vehicle or vessel removed by a  
 159 towing company upon signing an order that the vehicle or vessel  
 160 be removed without a posted tow-away zone sign. However, the 5-  
 161 day period after which the owner or lessee, or agent of the  
 162 owner or lessee, of the real property may have the vehicle or  
 163 vessel removed without tow-away zone signage does not begin  
 164 until both of the following requirements are met:

165 a. Such owner, lessee, or agent attaches to the vehicle or  
 166 vessel with adhesive material a notice that the vehicle or  
 167 vessel will be towed or removed from the property. The notice  
 168 must:

169 I. In the case of a vehicle, be attached to the vehicle's  
 170 windshield.

171 II. In the case of a vessel, be attached adjacent to the  
 172 vessel registration number on the left or port side of the  
 173 vessel.

174 III. Be at least 8 inches by 10 inches in size and be  
 175 sufficiently weatherproofed to withstand normal exposure to the  
 176 elements.

177 IV. Clearly indicate the date on which the notice is  
 178 posted.

179 V. Clearly indicate in bold letters that the vehicle or  
 180 vessel will be towed or removed from the real property 5 days  
 181 after the date on which a local law enforcement agency verifies  
 182 and documents with a police report the notice's compliance with

183 this subparagraph.

184 VI. Provide the name and phone number of the proposed  
 185 towing company.

186 b. The local law enforcement agency is notified of the  
 187 notice being posted pursuant to this subparagraph, and the local  
 188 law enforcement agency verifies and documents the notice's  
 189 compliance with this subparagraph with a police report that  
 190 shall be provided to the property owner and the towing company.

191 7.6. A ~~Any~~ person or firm that tows or removes vehicles or  
 192 vessels and proposes to require an owner, operator, or person in  
 193 control of a vehicle or vessel to pay the costs of towing and  
 194 storage before ~~prior to~~ redemption of the vehicle or vessel must  
 195 file and keep on record with the local law enforcement agency a  
 196 complete copy of the current rates to be charged for such  
 197 services and post at the storage site an identical rate schedule  
 198 and any written contracts with property owners, lessees, or  
 199 persons in control of property which authorize such person or  
 200 firm to remove vehicles or vessels as provided in this section.

201 8.7. A ~~Any~~ person or firm towing or removing ~~any~~ vehicles  
 202 or vessels from private property without the consent of the  
 203 owner or other legally authorized person in control of the  
 204 vehicles or vessels shall, on any trucks, wreckers as defined in  
 205 s. 713.78(1)(c), or other vehicles used in the towing or  
 206 removal, have the name, address, and telephone number of the  
 207 company performing such service clearly printed in contrasting  
 208 colors on the driver and passenger sides of the vehicle. The

209 name shall be in at least 3-inch, permanently affixed letters,  
 210 and the address and telephone number shall be in at least 1-  
 211 inch, permanently affixed letters.

212 ~~9.8.~~ Vehicle entry for the purpose of removing the vehicle  
 213 or vessel shall be allowed with reasonable care on the part of  
 214 the person or firm towing the vehicle or vessel. Such person or  
 215 firm shall be liable for any damage occasioned to the vehicle or  
 216 vessel if such entry is not in accordance with the standard of  
 217 reasonable care.

218 ~~10.9.~~ When a vehicle or vessel has been towed or removed  
 219 pursuant to this section, it must be released to its owner or  
 220 custodian within 1 ~~one~~ hour after requested. A ~~Any~~ vehicle or  
 221 vessel owner or agent of the owner may ~~shall have the right to~~  
 222 inspect the vehicle or vessel before accepting its return. A~~r~~  
 223 ~~and no~~ release or waiver of any kind which would release the  
 224 person or firm towing the vehicle or vessel from liability for  
 225 damages noted by the owner or other legally authorized person at  
 226 the time of the redemption may not be required from a ~~any~~  
 227 vehicle or vessel owner or~~r~~ custodian~~r~~ or agent of the owner or  
 228 custodian as a condition of release of the vehicle or vessel to  
 229 its owner. A detailed, signed receipt showing the legal name of  
 230 the company or person towing or removing the vehicle or vessel  
 231 must be given to the person paying towing or storage charges at  
 232 the time of payment, whether requested or not.

233 (b) The ~~These~~ requirements of this subsection are minimum  
 234 standards and do not preclude enactment of additional

235 regulations by a ~~any~~ municipality or county including the right  
 236 to regulate rates when vehicles or vessels are towed from  
 237 private property.

238 (3) This section does not apply to law enforcement,  
 239 firefighting, rescue squad, ambulance, or other emergency  
 240 vehicles or vessels that are marked as such or to property owned  
 241 by a ~~any~~ governmental entity.

242 (4) When a person improperly causes a vehicle or vessel to  
 243 be removed, such person shall be liable to the owner or lessee  
 244 of the vehicle or vessel for the cost of removal,  
 245 transportation, and storage; any damages resulting from the  
 246 removal, transportation, or storage of the vehicle or vessel;  
 247 attorney's fees; and court costs.

248 (5)(a) A ~~Any~~ person who violates subparagraph (2)(a)2. or  
 249 subparagraph (2)(a)7. ~~(2)(a)6.~~ commits a misdemeanor of the  
 250 first degree, punishable as provided in s. 775.082 or s.  
 251 775.083.

252 (b) A ~~Any~~ person who violates subparagraph (2)(a)1.,  
 253 subparagraph (2)(a)3., subparagraph (2)(a)4., subparagraph  
 254 (2)(a)8. ~~(2)(a)7.~~, or subparagraph (2)(a)10. ~~(2)(a)9.~~ commits a  
 255 felony of the third degree, punishable as provided in s.  
 256 775.082, s. 775.083, or s. 775.084.

257 Section 2. This act shall take effect upon becoming a law.





Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
2 Representative Wood offered the following:

**Amendment**

5 Remove lines 125-127 and insert:

6 (III)e. The notice must also Provide the name and current  
7 telephone number of the person or firm towing or removing ~~the~~  
8 vehicles or vessels. If such person or firm is doing business  
9 under a fictitious or other name, the notice must clearly show  
10 the current fictitious or other name of that person or firm.



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Wood offered the following:

**Amendment**

Remove line 190 and insert:

6 shall be provided to the property owner or lessee, or agent of  
 7 the property owner or lessee, and the towing company.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 381 (2015)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
2 Representative Wood offered the following:

3  
4 **Amendment (with title amendment)**

5 Between lines 256 and 257, insert:

6 Section 2. Paragraph (a) of subsection (4) and subsection  
7 (6) of section 713.78, Florida Statutes, are amended, and for  
8 the purpose of incorporating the amendments made by this act to  
9 section 715.07, Florida Statutes, in references thereto,  
10 paragraph (b) of subsection (2), paragraph (b) of subsection  
11 (4), and paragraph (a) of subsection (7) of section 713.78,  
12 Florida Statutes, are reenacted, to read:

13 713.78 Liens for recovering, towing, or storing vehicles  
14 and vessels.-

15 (2) Whenever a person regularly engaged in the business of  
16 transporting vehicles or vessels by wrecker, tow truck, or car  
17 carrier recovers, removes, or stores a vehicle or vessel upon

089769 - h0381-line 256.docx

Published On: 3/10/2015 5:52:02 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 381 (2015)

Amendment No. 3

18 instructions from:

19 (b) The owner or lessor, or a person authorized by the  
20 owner or lessor, of property on which such vehicle or vessel is  
21 wrongfully parked, and the removal is done in compliance with s.  
22 715.07;

23  
24 she or he shall have a lien on the vehicle or vessel for a  
25 reasonable towing fee and for a reasonable storage fee; except  
26 that no storage fee shall be charged if the vehicle is stored  
27 for less than 6 hours.

28 (4) (a) Any person regularly engaged in the business of  
29 recovering, towing, or storing vehicles or vessels who comes  
30 into possession of a vehicle or vessel pursuant to subsection  
31 (2), and who claims a lien for recovery, towing, or storage  
32 services, shall give notice to the registered owner, the  
33 insurance company insuring the vehicle notwithstanding the  
34 provisions of s. 627.736, and to all persons claiming a lien  
35 thereon, as disclosed by the records in the Department of  
36 Highway Safety and Motor Vehicles or as disclosed by the records  
37 of any corresponding agency in any other state in which the  
38 vehicle is identified through a records check of the National  
39 Motor Vehicle Title Information System or an equivalent  
40 commercially available system as being titled or registered, and  
41 shall verify that the vehicle or vessel is not currently  
42 reported stolen as provided in subsection (6).

43 (b) Whenever any law enforcement agency authorizes the

089769 - h0381-line 256.docx

Published On: 3/10/2015 5:52:02 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 381 (2015)

Amendment No. 3

44 removal of a vehicle or vessel or whenever any towing service,  
45 garage, repair shop, or automotive service, storage, or parking  
46 place notifies the law enforcement agency of possession of a  
47 vehicle or vessel pursuant to s. 715.07(2)(a)2., the law  
48 enforcement agency of the jurisdiction where the vehicle or  
49 vessel is stored shall contact the Department of Highway Safety  
50 and Motor Vehicles, or the appropriate agency of the state of  
51 registration, if known, within 24 hours through the medium of  
52 electronic communications, giving the full description of the  
53 vehicle or vessel. Upon receipt of the full description of the  
54 vehicle or vessel, the department shall search its files to  
55 determine the owner's name, the insurance company insuring the  
56 vehicle or vessel, and whether any person has filed a lien upon  
57 the vehicle or vessel as provided in s. 319.27(2) and (3) and  
58 notify the applicable law enforcement agency within 72 hours.  
59 The person in charge of the towing service, garage, repair shop,  
60 or automotive service, storage, or parking place shall obtain  
61 such information from the applicable law enforcement agency  
62 within 5 days after the date of storage and shall give notice  
63 pursuant to paragraph (a). The department may release the  
64 insurance company information to the requestor notwithstanding  
65 the provisions of s. 627.736.

66 (6) Any vehicle or vessel which is stored pursuant to  
67 subsection (2) and which remains unclaimed, or for which  
68 reasonable charges for recovery, towing, or storing remain  
69 unpaid, and any contents not released pursuant to subsection

089769 - h0381-line 256.docx

Published On: 3/10/2015 5:52:02 PM

## COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 381 (2015)

Amendment No. 3

70 (10), may be sold by the owner or operator of the storage space  
71 for such towing or storage charge after 35 days following ~~from~~  
72 the time the vehicle or vessel is stored therein if the vehicle  
73 or vessel is more than 3 years of age or after 50 days following  
74 the time the vehicle or vessel is stored therein if the vehicle  
75 or vessel is 3 years of age or less. The sale shall be at public  
76 sale for cash. If the date of the sale was not included in the  
77 notice required in subsection (4), notice of the sale shall be  
78 given to the person in whose name the vehicle or vessel is  
79 registered and to all persons claiming a lien on the vehicle or  
80 vessel as shown on the records of the Department of Highway  
81 Safety and Motor Vehicles or of any corresponding agency in any  
82 other state in which the vehicle is identified through a records  
83 check of the National Motor Vehicle Title Information System or  
84 an equivalent commercially available system as being titled.  
85 Notice shall be sent by certified mail to the owner of the  
86 vehicle or vessel and the person having the recorded lien on the  
87 vehicle or vessel at the address shown on the records of the  
88 registering agency and shall be mailed at least ~~not less than~~ 15  
89 days before the date of the sale. After diligent search and  
90 inquiry, if the name and address of the registered owner or the  
91 owner of the recorded lien cannot be ascertained, the  
92 requirements of notice by mail may be dispensed with. In  
93 addition to the notice by mail, public notice of the time and  
94 place of sale shall be made by publishing a notice thereof one  
95 time, at least 10 days before ~~prior to~~ the date of the sale, in

089769 - h0381-line 256.docx

Published On: 3/10/2015 5:52:02 PM

Page 4 of 7

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 381 (2015)

Amendment No. 3

96 a newspaper of general circulation in the county in which the  
97 sale is to be held. The proceeds of the sale, after payment of  
98 reasonable towing and storage charges, and costs of the sale, in  
99 that order of priority, shall be deposited with the clerk of the  
100 circuit court for the county if the owner or lienholder is  
101 absent, and the clerk shall hold such proceeds subject to the  
102 claim of the owner or lienholder legally entitled thereto. The  
103 clerk shall be entitled to receive 5 percent of such proceeds  
104 for the care and disbursement thereof. In addition to the notice  
105 requirements of this section and compliance with the federal  
106 Servicemembers' Civil Relief Act of 2003, within 72 hours before  
107 the public sale of the vehicle or vessel, the owner or operator  
108 of the storage space shall obtain written proof of verification  
109 that the vehicle or vessel is not currently reported as an  
110 active theft by submitting the vehicle or vessel identification  
111 number to a vendor using the National Motor Vehicle Title  
112 Information System to obtain a report that includes active theft  
113 data from a national vehicle theft database or by submitting the  
114 vehicle or vessel identification number to a state or local law  
115 enforcement agency by hand delivery, facsimile, or electronic  
116 transmission to obtain a National Crime Information Center  
117 stolen vehicle report. Such report is required before a  
118 certificate of title or a certificate of destruction is issued.  
119 The certificate of title issued under this law shall be  
120 discharged of all liens unless otherwise provided by court  
121 order. The owner or lienholder may file a complaint after the

089769 - h0381-line 256.docx

Published On: 3/10/2015 5:52:02 PM

Amendment No. 3

122 vehicle or vessel has been sold in the county court of the  
123 county in which it is stored. Upon determining the respective  
124 rights of the parties, the court may award damages, attorney's  
125 fees, and costs in favor of the prevailing party.

126 (7)(a) A wrecker operator recovering, towing, or storing  
127 vehicles or vessels is not liable for damages connected with  
128 such services, theft of such vehicles or vessels, or theft of  
129 personal property contained in such vehicles or vessels,  
130 provided that such services have been performed with reasonable  
131 care and provided, further, that, in the case of removal of a  
132 vehicle or vessel upon the request of a person purporting, and  
133 reasonably appearing, to be the owner or lessee, or a person  
134 authorized by the owner or lessee, of the property from which  
135 such vehicle or vessel is removed, such removal has been done in  
136 compliance with s. 715.07. Further, a wrecker operator is not  
137 liable for damage to a vehicle, vessel, or cargo that obstructs  
138 the normal movement of traffic or creates a hazard to traffic  
139 and is removed in compliance with the request of a law  
140 enforcement officer.

141

142

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

143

Remove line 12 and insert:

144

therefor; amending s. 713.78, F.S.; requiring the

145

owner or operator of a storage space to verify that a

146

vehicle or vessel is not currently reported as an

147



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 381 (2015)



Amendment No. 3

148 active theft before its public sale to recover certain  
149 costs; reenacting s. 713.78(2)(b), (4)(b), and (7)(a),  
150 F.S., relating to liens for recovering, towing, or  
151 storing vehicles and vessels, to incorporate the  
152 amendments made by the act to s. 715.07, F.S., in  
153 references thereto; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 503 Family Law  
**SPONSOR(S):** Spano  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 462

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		 Robinson	Bond 
2) Judiciary Committee			

### SUMMARY ANALYSIS

Collaborative law is a non-adversarial alternative dispute resolution concept that, similar to mediation, promotes problem-solving and solutions in lieu of litigation. The process employs collaborative attorneys, mental health professionals, and financial specialists to help adversarial parties reach a consensus. Collaborative law is entirely voluntary, and counsel retained for the purpose of collaborative law may only be used in the collaborative law process. Should litigation ensue because the collaborative law process partially or completely failed to resolve the issues, the adversarial parties are required to retain different attorneys for litigation. The process is intended to promote full and open disclosure. The concept requires extensive confidentiality and privileges to be created by statute, while the courts must develop rules of practice and procedure to conform.

The Uniform Law Commission (ULC) developed the Uniform Collaborative Law Rules/Act of 2009 (amended in 2010), which regulates the use of collaborative law. The Act has been adopted in 10 states and approved by three sections of the American Bar Association.

The bill creates the Collaborative Law Process Act based upon the Uniform Collaborative Law Rules/Act of 2009 to facilitate the settlement of dissolution of marriage and paternity actions. The bill does not actually create a collaborative law process in Florida. Rather, it provides a framework that will become effective should the Supreme Court of Florida adopt rules to enact a collaborative law process in Florida. The bill primarily serves to provide the grounds for beginning, concluding, and terminating a collaborative law process and to provide the necessary statutory privileges and confidentiality of communications required for the collaborative law process.

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

The bill has an effective date of July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Collaborative law is a non-adversarial alternative dispute resolution concept that, similar to mediation, promotes problem-solving and solutions in lieu of litigation. The process employs collaborative attorneys, mental health professionals, and financial specialists to help adversarial parties reach a consensus. Collaborative law is entirely voluntary, and counsel retained for the purpose of collaborative law may only be used in the collaborative law process. Should litigation ensue because the collaborative law process partially or completely failed to resolve the issues, the adversarial parties are required to retain different attorneys for litigation. The process is intended to promote full and open disclosure. The concept requires extensive confidentiality and privileges to be created by statute, while the courts must develop rules of practice and procedure to conform.<sup>1</sup>

The collaborative process purportedly hastens resolution of disputed issues and the total expenses of the parties are less than the parties would incur in traditional litigation. The International Academy of Collaborative Professionals (IACP) studied 933 divorce cases within the United States and Canada in which the parties agreed to the collaborative process. The IACP found that:

- Eighty percent of all collaborative cases resolved within 1 year;
- Eighty six percent of the cases studied were resolved with a formal agreement and no court appearances; and
- The average fees for all professionals totaled \$24,185.<sup>2</sup>

#### Background

##### **Collaborative Law**

The collaborative law movement started in 1990, but began to significantly expand after 2000.<sup>3</sup> Today, collaborative law professionals are assisting disputing parties in every state of the United States, in every English-speaking country, as well as in a host of other foreign jurisdictions.<sup>4</sup> The International Academy of Collaborative Professionals has more than 4,000 members from 24 countries.<sup>5</sup>

In the United States, the Uniform Law Commission<sup>6</sup> established the Uniform Collaborative Law Rules/Act of 2009 (amended in 2010), which regulates the use of collaborative law. According to the UCLR/A:

At its core Collaborative Law is a voluntary dispute-resolution process in which clients agree that, with respect to a particular matter in dispute, their named counsel will represent them solely for purposes of negotiation, and, if the matter is not settled out of court that new counsel will be retained for purposes of litigation. The parties and their

---

<sup>1</sup> See the Uniform Law Commission Collaborative Law Summary website for more information at [http://www.uniformlaws.org/ActSummary.aspx?title=Collaborative Law Act](http://www.uniformlaws.org/ActSummary.aspx?title=Collaborative+Law+Act) (last viewed March 5, 2015).

<sup>2</sup> Glen L. Rabenn, Marc R. Bertone, and Paul J. Toohey, *Collaborative Divorce – A Follow Up*, 55-APR Orange County Law 32, 36 (Apr. 2013), available at <http://www.ocbar.org/AllNews/NewsView/tabid/66/ArticleId/1039/April-2013-Collaborative-Divorce-A-Follow-Up.aspx>

<sup>3</sup> John Lande and Forrest S. Mosten, *Family Lawyering: Past, Present, and Future*, 51 FAM. CT. REV. 20, 22 (Jan. 2013), available at [http://www.mostenmediation.com/books/articles/Family Lawyering Past Present Future.pdf](http://www.mostenmediation.com/books/articles/Family+Lawyering+Past+Present+Future.pdf).

<sup>4</sup> *Supra* note at 2.

<sup>5</sup> *Id.*

<sup>6</sup> The Uniform Law Commission (ULC) develops model statutes that are designed to be consistent from state to state to create uniformity in the law between jurisdictions. Florida's commissioners to the ULC are appointed to 4-year terms by the Governor and confirmed by the Senate.

lawyers work together to find an equitable resolution of a dispute, retaining experts as necessary. The process is intended to promote full and open disclosure, and, as is the case in mediation, information disclosed in a collaborative process is privileged against use in any subsequent litigation.

Collaborative Law is currently being practiced in all American jurisdictions as well as in a number of foreign countries. In the U.S., Collaborative Law is governed by a patchwork of state laws, state Supreme Court rules, local rules, and ethic opinions. The Uniform Collaborative Law Rules/Act (“UCLR/A”) is intended to create a uniform national framework for the use of Collaborative Law—one which includes important consumer protections and enforceable privilege provisions. Collaborative Law under the UCLR/A is strictly voluntary. Attorneys are not required to offer collaborative services, and parties cannot be compelled to participate.<sup>7</sup>

An essential component of the Uniform Collaborative Law Rules/Act (UCLR/A) is the mandatory disqualification of the collaborative attorneys if the parties fail to reach an agreement or intend to engage in contested litigation. Once both collaborative lawyers are disqualified from further representation, the parties must start again with new counsel. “The disqualification provision thus creates incentives for parties and Collaborative lawyers to settle.”<sup>8</sup>

Ten states<sup>9</sup> plus Washington, D.C., have enacted the Uniform Collaborative Law Rules/Act, and a bill is pending this year in the Montana Legislature. Three sections of the American Bar Association have also approved the UCLR/A—the Section of Dispute Resolution, the Section of Individual Rights & Responsibilities, and the Family Law Section.<sup>10</sup>

At least 30,000 attorneys and family professionals in the United States have been trained in the collaborative process.<sup>11</sup>

### **Collaborative Law in Florida**

Florida currently recognizes forms of alternative dispute resolution and is considered a leader among states in that regard.<sup>12</sup> Florida public policy favors arbitration<sup>13</sup> and “mediation and settlement of family law disputes is highly favored in Florida law.”<sup>14</sup>

In the 1990s, the court system began to move towards establishing family law divisions and support services to accommodate families in conflict. In 2001, the Florida Supreme Court adopted the Model Family Court Initiative. This action by the Court combined all family cases, including dependency, adoption, paternity, dissolution of marriage, and child custody into the jurisdiction of a specially designated family court. The Court noted the need for these cases to have a “system that provide[s]

---

<sup>7</sup> Uniform Law Commission, Uniform Collaborative Law Rules/Act Short Summary. Found at [http://www.uniformlaws.org/Shared/Docs/Collaborative\\_Law/UCLA%20Short%20Summary.pdf](http://www.uniformlaws.org/Shared/Docs/Collaborative_Law/UCLA%20Short%20Summary.pdf) (last viewed March 5, 2015).

<sup>8</sup> Lande, *infra* note 6 at 429; Members of the ABA who objected to the UCLR/A have stated that the disqualification provision unfairly enables one party to disqualify the other party's attorney simply by terminating the collaborative process or initiating litigation. See Andrew J. Meyer, *The Uniform Collaborative Law Act: Statutory Framework and the Struggle for Approval by the American Bar Association*, 4 Y.B. ON ARB. & MEDIATION 212, 216 (2012).

<sup>9</sup> Alabama, Hawaii, Maryland, Michigan, Nevada, New Jersey, Ohio, Texas, Utah, and Washington.

<sup>10</sup> New Jersey Law Revision Commission, *Final Report Relating to New Jersey Family Collaborative Law Act*, 5 (Jul. 23, 2013), <http://www.lawrev.state.nj.us/ucla/njfclaFR0723131500.pdf>.

<sup>11</sup> John Lande, *The Revolution in Family Law Dispute Resolution*, 24 J. AM. ACAD. MATRIM. LAW. 411, 430 (2012), available at <http://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1254&context=facpubs>.

<sup>12</sup> Fran L. Tetunic, *Demystifying Florida Mediator Ethics: the Good, the Bad, and the Unseemly*, 32 Nova L. Rev. 205, 244 (Fall, 2007).

<sup>13</sup> *Shotts v. OP Winter Haven, Inc.*, 86 So.3d 456 (Fla. 2011).

<sup>14</sup> *Griffith v. Griffith*, 860 So.2d 1069, 1073 (Fla. 1st DCA 2003).

nonadversarial alternatives and flexibility of alternatives; a system that preserve[s] rather than destroy[s] family relationships; ... and a system that facilitate[s] the process chosen by the parties.”<sup>15</sup> The court also noted the need to fully staff a mediation program, anticipating that mediation can resolve a high percentage of disputes.<sup>16</sup>

In 2012, the Florida Family Law Rules committee proposed to the Florida Supreme Court a new rule 12.745, to be known as the Collaborative Process Rule.<sup>17</sup> In declining to adopt the rule, the court explained:

Given the possibility of legislative action addressing the use of the collaborative law process and the fact that certain foundations, such as training or certification of attorneys for participation in the process, have not yet been laid, we conclude that the adoption of a court rule on the subject at this time would be premature.<sup>18</sup>

Although the Florida Supreme Court has not adopted rules on collaborative law, at least four judicial circuits in Florida have adopted local court rules on collaborative law. These are the 9th, 11th, 13th, and 18th judicial circuits. Each of these circuits that have adopted local court rules on collaborative law include the requirement that an attorney disqualify himself or herself if the collaborative process is unsuccessful. Other circuits have recognized the collaborative process in the absence of issuing a formal administrative order.

### **Effect of the Proposed Changes**

The bill creates Part III of ch. 61, F.S., the Collaborative Law Process Act, as a basic framework for the collaborative law process, for use in dissolution of marriage and paternity actions. The bill does not actually create a collaborative law process in Florida. Rather, it provides a framework that will become effective 30 days after the Supreme Court of Florida adopts rules of procedure and professional responsibility consistent with the collaborative law process.

The Legislature may not create rules or procedures relating to litigation, as this would violate the separation of powers and the Court’s exclusive right to “adopt rules for the practice and procedure in all courts . . .”<sup>19</sup> However, should the Court decide to promulgate rules consistent with this bill and the uniform act, this bill provides substantive privileges and confidentiality for parties and nonparties involved in a collaborative law process. See the Constitutional Issues section below for a more detailed discussion.

### **Applicability of the Collaborative Law Process Act**

The authority for the collaborative process provided in the bill is limited to issues governed by ch. 61, F.S. (Dissolution of Marriage; Support; Time-sharing) and ch. 742, F.S. (Determination of Parentage). More specifically, the following issues are subject to resolution through the collaborative law process:

- Marriage, divorce, dissolution, annulment, and marital property distribution;
- Child custody, visitation, parenting plan, and parenting time;
- Alimony, maintenance, child support;
- Parental relocation with a child;
- Premarital, marital, and postmarital agreements; and
- Paternity.

---

<sup>15</sup> *In re Report of Family Court Steering Committee*, 794 So. 2d 518, 523 (Fla. 2001).

<sup>16</sup> *Id.* at 520.

<sup>17</sup> *In Re: Amendments to the Florida Family Law Rules of Procedure*, 84 So. 3d 257 (March 15, 2012).

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

<sup>19</sup> Art. V, s. 2, FLA. CONST.

## **Definitions**

The bill creates s. 61.56, F.S. to provide definitions applicable to the Act.

## **Beginning, Concluding, and Terminating a Collaborative Law Process**

The bill creates s. 61.57, F.S., to provide conditions upon which a collaborative law process begins, concludes, and terminates. The bill provides that a tribunal may not order a party to participate in a collaborative law process over that party's objection and a party may terminate the collaborative law process with or without cause. The process begins when the parties enter into a collaborative participation agreement. If a legal proceeding is pending, the proceeding is put on hold while the collaborative law process is ongoing.

A collaborative law process is concluded in one of four ways. First, the parties may provide for a method by agreement. Second, the parties may sign a record providing a resolution of the matter. Third, the parties may sign a record indicating resolution of certain matters while leaving other matters unresolved. Fourth, the process is concluded by a termination of the process, evidenced when a party:

- Gives notice to other parties that the process is ended;
- Begins a legal proceeding related to a collaborative law matter without the agreement of all the parties;
- Initiates a pleading, motion, order to show cause, or request for a conference with a tribunal in a pending proceeding related to the matter;
- Requests that the proceeding be put on the tribunal's active calendar in a pending proceeding related to the matter or takes a similar action requiring notice to be sent to the parties; or
- Discharges a collaborative lawyer or a collaborative lawyer withdraws.

A party's collaborative lawyer must give prompt notice to all other parties in a record of a discharge or withdrawal.

A collaborative law process may survive the discharge or withdrawal of a collaborative lawyer under the following conditions:

- The unrepresented party engages a successor collaborative lawyer;
- The parties consent in a signed record to continue the process;
- The agreement is amended to identify the successor collaborative lawyer; and
- The successor collaborative lawyer confirms representation in a signed record.

## **Confidentiality of Collaborative Law Communication**

The bill creates s. 61.58, F.S., to provide that a collaborative law communication is confidential to the extent agreed upon by the parties in a signed record or as otherwise provided by law, with limitations as discussed below.

## **Privilege Against Disclosure for Collaborative Law Communications**

The bill creates s. 61.58(1), F.S., to provide a privilege against disclosure for collaborative law communications, within limits provided in the bill. A collaborative law communication is not subject to discovery or admissible in evidence in a proceeding before a tribunal. Each party (including a party's attorney during the collaborative law process) has a privilege to refuse to disclose a collaborative law communication, and to prevent any other person from disclosing a communication. A nonparty to the collaborative law process (which is anybody other than the party or the party's attorney, in this context) may also refuse to disclose any communication or may prevent any other person from disclosing the nonparty's communication. Therefore, a party has an absolute privilege as to all communications, while the nonparty has a privilege for his or her own communications. However, evidence that would

otherwise be admissible does not become inadmissible or protected from discovery solely because it may have been a communication during a collaborative law process. The privilege does not apply if the parties agree in advance in a signed record or if all parties agree in a proceeding that all or part of a collaborative law process is not privileged, as long as the parties had actual notice before the communication was made.

### **Waiver and Preclusion of Privilege**

The bill creates s. 61.58(2), F.S., to provide that a privilege may be expressly waived either orally or in writing during a proceeding if all the parties agree. If a nonparty has a privilege, the nonparty must also agree to waive the privilege. However, if a person makes a disclosure or representation about a collaborative law communication that prejudices another person during a proceeding before a tribunal, that person may not assert a privilege to the extent that it is necessary for the prejudiced person to respond.

### **Limits of Privilege**

The bill creates s. 61.58(3), F.S., to provide that a privilege does not apply to a collaborative law communication that is:

- Available to the public under Florida's Public Records statutes in ch. 119, F.S.;
- Made during a collaborative law session that is open to the public or required by law to be open to the public;
- A threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- Intentionally used to plan or commit a crime, or conceal an ongoing crime or ongoing criminal activity; or
- In an agreement resulting from the collaborative process if there is a record memorializing the agreement, signed by all of the parties.

A privilege does not apply to the extent that the communication is sought or offered to prove or disprove:

- A claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or
- Abuse, neglect, abandonment, or exploitation of a child or adult, unless the Florida Department of Children and Families is a party or otherwise participates in the collaborative law process.

Only the portion of the communication needed for proof or disproof may be disclosed or admitted.

There are other limited circumstances where a privilege does not apply that requires the approval of the court. A party seeking discovery or a proponent of certain evidence may show that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the communication is either in a court proceeding involving a felony or a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or where a defense is asserted to avoid liability on the contract. Only the portion of the communication needed for evidence may be disclosed or admitted.

### **B. SECTION DIRECTORY:**

Section 1 contains legislative findings and declarations.

Section 2 directs the Division of Law Revision and Information to create part III of ch. 61, Florida Statutes, entitled the "Collaborative Law Process Act."

Section 3 creates s. 61.55, F.S., relating to the purpose of the Act.



Section 4 creates s. 61.56, F.S., relating to definitions.

Section 5 creates s. 61.57, F.S., relating to beginning, concluding, and terminating a collaborative law process.

Section 6 creates s. 61.58, F.S., relating to confidentiality of a collaborative law communication.

Section 7 directs that the Act is not effective until 30 days after the adoption of rules of procedure and professional responsibility by the Supreme Court.

Section 8 contains an effective date of July 1, 2015, except as otherwise expressly provided in the Act.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The Office of the State Courts Administrator indicates that the bill could decrease judicial workload due to fewer filings, fewer hearings, and fewer contested issues in each case in which the collaborative law process is used. The precise decrease in workload is unknown, however, because it would depend on how many cases are resolved using the collaborative process. In addition, if the collaborative law process in a given case ultimately ends without agreement, the parties may avail themselves of the traditional adversarial system, thereby resulting in no decrease in judicial workload for that case. Some judicial workload might result from in camera hearings regarding whether certain collaborative communications are privileged pursuant to s. 61.58(3)(c), F.S.; however, the extent of this judicial labor is difficult to measure at this time.<sup>20</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

### D. FISCAL COMMENTS:

None.

---

<sup>20</sup> Office of the State Courts Administrator, Analysis of SB 462 (2015) (on file with the Civil Justice Subcommittee, Florida House of Representatives)

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

Article V, s. 2 of the Florida Constitution provides the Supreme Court with rulemaking authority for practice and procedure in all courts. This bill appears to present the Court with the opportunity to make rules to carry out the purpose of the bill. The bill does not direct the Court to make rules. The privileges and confidentiality portions of the bill appear to be substantive as they create rights that do not currently exist in the law.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

HB 503

2015

1 A bill to be entitled

2 An act relating to family law; providing legislative  
3 findings; providing a directive to the Division of Law  
4 Revision and Information; creating s. 61.55, F.S.;  
5 providing a purpose; creating s. 61.56, F.S.; defining  
6 terms; creating s. 61.57, F.S.; providing that a  
7 collaborative law process commences when the parties  
8 enter into a collaborative law participation  
9 agreement; prohibiting a tribunal from ordering a  
10 party to participate in a collaborative law process  
11 over the party's objection; providing the conditions  
12 under which a collaborative law process concludes,  
13 terminates, or continues; creating s. 61.58, F.S.;  
14 providing for confidentiality of communications made  
15 during the collaborative law process; providing  
16 exceptions; providing that specified provisions do not  
17 take effect until 30 days after the Florida Supreme  
18 Court adopts rules of procedure and professional  
19 responsibility; providing a contingent effective date;  
20 providing effective dates.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24 Section 1. The Legislature finds and declares that the  
25 purpose of this act is to:

26 (1) Create a system of practice for a collaborative law

27 process for proceedings under chapters 61 and 742, Florida  
 28 Statutes.

29 (2) Encourage the peaceful resolution of disputes and the  
 30 early resolution of pending litigation through voluntary  
 31 settlement procedures.

32 (3) Preserve the working relationship between parties to a  
 33 dispute through a nonadversarial method that reduces the  
 34 emotional and financial toll of litigation.

35 Section 2. The Division of Law Revision and Information is  
 36 directed to create part III of chapter 61, Florida Statutes,  
 37 consisting of ss. 61.55-61.58, to be entitled the "Collaborative  
 38 Law Process Act."

39 Section 3. Section 61.55, Florida Statutes, is created to  
 40 read:

41 61.55 Purpose.—The purpose of this part is to create a  
 42 uniform system of practice for the collaborative law process in  
 43 this state. It is the policy of this state to encourage the  
 44 peaceful resolution of disputes and the early resolution of  
 45 pending litigation through a voluntary settlement process. The  
 46 collaborative law process is a unique nonadversarial process  
 47 that preserves a working relationship between the parties and  
 48 reduces the emotional and financial toll of litigation.

49 Section 4. Section 61.56, Florida Statutes, is created to  
 50 read:

51 61.56 Definitions.—As used in this part, the term:

52 (1) "Collaborative attorney" means an attorney who

53 represents a party in a collaborative law process.

54 (2) "Collaborative law communication" means an oral or  
 55 written statement, including a statement made in a record, or  
 56 nonverbal conduct that:

57 (a) Is made in the conduct of or in the course of  
 58 participating in, continuing, or reconvening for a collaborative  
 59 law process; and

60 (b) Occurs after the parties sign a collaborative law  
 61 participation agreement and before the collaborative law process  
 62 is concluded or terminated.

63 (3) "Collaborative law participation agreement" means an  
 64 agreement between persons to participate in a collaborative law  
 65 process.

66 (4) "Collaborative law process" means a process intended  
 67 to resolve a collaborative matter without intervention by a  
 68 tribunal and in which persons sign a collaborative law  
 69 participation agreement and are represented by collaborative  
 70 attorneys.

71 (5) "Collaborative matter" means a dispute, transaction,  
 72 claim, problem, or issue for resolution, including a dispute,  
 73 claim, or issue in a proceeding which is described in a  
 74 collaborative law participation agreement and arises under this  
 75 chapter or chapter 742, including, but not limited to:

76 (a) Marriage, divorce, dissolution, annulment, and marital  
 77 property distribution.

78 (b) Child custody, visitation, parenting plans, and

79 parenting time.

80 (c) Alimony, maintenance, and child support.

81 (d) Parental relocation with a child.

82 (e) Parentage and paternity.

83 (f) Premarital, marital, and postmarital agreements.

84 (6) "Law firm" means:

85 (a) One or more attorneys who practice law in a  
 86 partnership, professional corporation, sole proprietorship,  
 87 limited liability company, or association; or

88 (b) One or more attorneys employed in a legal services  
 89 organization, the legal department of a corporation or other  
 90 organization, or the legal department of a governmental entity,  
 91 subdivision, agency, or instrumentality.

92 (7) "Nonparty participant" means a person, other than a  
 93 party and the party's collaborative attorney, who participates  
 94 in a collaborative law process.

95 (8) "Party" means a person who signs a collaborative law  
 96 participation agreement and whose consent is necessary to  
 97 resolve a collaborative matter.

98 (9) "Person" means an individual; a corporation; a  
 99 business trust; an estate; a trust; a partnership; a limited  
 100 liability company; an association; a joint venture; a public  
 101 corporation; a government or governmental subdivision, agency,  
 102 or instrumentality; or any other legal or commercial entity.

103 (10) "Proceeding" means a judicial, administrative,  
 104 arbitral, or other adjudicative process before a tribunal,

105 including related prehearing and posthearing motions,  
 106 conferences, and discovery.

107 (11) "Prospective party" means a person who discusses with  
 108 a prospective collaborative attorney the possibility of signing  
 109 a collaborative law participation agreement.

110 (12) "Record" means information that is inscribed on a  
 111 tangible medium or that is stored in an electronic or other  
 112 medium and is retrievable in perceivable form.

113 (13) "Related to a collaborative matter" means involving  
 114 the same parties, transaction or occurrence, nucleus of  
 115 operative fact, dispute, claim, or issue as the collaborative  
 116 matter.

117 (14) "Sign" means, with present intent to authenticate or  
 118 adopt a record, to:

119 (a) Execute or adopt a tangible symbol; or

120 (b) Attach to or logically associate with the record an  
 121 electronic symbol, sound, or process.

122 (15) "Tribunal" means a court, arbitrator, administrative  
 123 agency, or other body acting in an adjudicative capacity which,  
 124 after presentation of evidence or legal argument, has  
 125 jurisdiction to render a decision affecting a party's interests  
 126 in a matter.

127 Section 5. Section 61.57, Florida Statutes, is created to  
 128 read:

129 61.57 Beginning, concluding, and terminating a  
 130 collaborative law process.—

131       (1) The collaborative law process commences, regardless of  
 132 whether a legal proceeding is pending, when the parties enter  
 133 into a collaborative law participation agreement.

134       (2) A tribunal may not order a party to participate in a  
 135 collaborative law process over that party's objection.

136       (3) A collaborative law process is concluded by any of the  
 137 following:

138           (a) Resolution of a collaborative matter as evidenced by a  
 139 signed record;

140           (b) Resolution of a part of the collaborative matter,  
 141 evidenced by a signed record, in which the parties agree that  
 142 the remaining parts of the collaborative matter will not be  
 143 resolved in the collaborative law process; or

144           (c) Termination of the collaborative law process.

145       (4) A collaborative law process terminates when a party:

146           (a) Gives notice to the other parties in a record that the  
 147 collaborative law process is concluded;

148           (b) Begins a proceeding related to a collaborative matter  
 149 without the consent of all parties;

150           (c) Initiates a pleading, motion, order to show cause, or  
 151 request for a conference with a tribunal in a pending proceeding  
 152 related to a collaborative matter;

153           (d) Requests that the proceeding be put on the tribunal's  
 154 active calendar in a pending proceeding related to a  
 155 collaborative matter;

156           (e) Takes similar action requiring notice to be sent to



157 the parties in a pending proceeding related to a collaborative  
 158 matter; or

159 (f) Discharges a collaborative attorney or a collaborative  
 160 attorney withdraws from further representation of a party,  
 161 except as otherwise provided in subsection (7).

162 (5) A party's collaborative attorney shall give prompt  
 163 notice to all other parties in a record of a discharge or  
 164 withdrawal.

165 (6) A party may terminate a collaborative law process with  
 166 or without cause.

167 (7) Notwithstanding the discharge or withdrawal of a  
 168 collaborative attorney, the collaborative law process continues  
 169 if, not later than 30 days after the date that the notice of the  
 170 discharge or withdrawal of a collaborative attorney required by  
 171 subsection (5) is sent to the parties:

172 (a) The unrepresented party engages a successor  
 173 collaborative attorney;

174 (b) The parties consent to continue the collaborative law  
 175 process by reaffirming the collaborative law participation  
 176 agreement in a signed record;

177 (c) The collaborative law participation agreement is  
 178 amended to identify the successor collaborative attorney in a  
 179 signed record; and

180 (d) The successor collaborative attorney confirms his or  
 181 her representation of a party in the collaborative law  
 182 participation agreement in a signed record.

183           (8) A collaborative law process does not conclude if, with  
 184 the consent of the parties, a party requests a tribunal to  
 185 approve a resolution of a collaborative matter or any part  
 186 thereof as evidenced by a signed record.

187           (9) A collaborative law participation agreement may  
 188 provide additional methods for concluding a collaborative law  
 189 process.

190           Section 6. Section 61.58, Florida Statutes, is created to  
 191 read:

192           61.58 Confidentiality of a collaborative law  
 193 communication.—Except as provided in this section, a  
 194 collaborative law communication is confidential to the extent  
 195 agreed by the parties in a signed record or as otherwise  
 196 provided by law.

197           (1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW  
 198 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

199           (a) Subject to subsections (2) and (3), a collaborative  
 200 law communication is privileged as provided under paragraph (b),  
 201 is not subject to discovery, and is not admissible into  
 202 evidence.

203           (b) In a proceeding, the following privileges apply:

204           1. A party may refuse to disclose, and may prevent another  
 205 person from disclosing, a collaborative law communication.

206           2. A nonparty participant may refuse to disclose, and may  
 207 prevent another person from disclosing, a collaborative law  
 208 communication of a nonparty participant.

209 (c) Evidence or information that is otherwise admissible  
 210 or subject to discovery does not become inadmissible or  
 211 protected from discovery solely because of its disclosure or use  
 212 in a collaborative law process.

213 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—

214 (a) A privilege under subsection (1) may be waived orally  
 215 or in a record during a proceeding if it is expressly waived by  
 216 all parties and, in the case of the privilege of a nonparty  
 217 participant, if it is expressly waived by the nonparty  
 218 participant.

219 (b) A person who makes a disclosure or representation  
 220 about a collaborative law communication that prejudices another  
 221 person in a proceeding may not assert a privilege under  
 222 subsection (1). This preclusion applies only to the extent  
 223 necessary for the person prejudiced to respond to the disclosure  
 224 or representation.

225 (3) LIMITS OF PRIVILEGE.—

226 (a) A privilege under subsection (1) does not apply to a  
 227 collaborative law communication that is:

228 1. Available to the public under chapter 119 or made  
 229 during a session of a collaborative law process that is open, or  
 230 is required by law to be open, to the public;

231 2. A threat, or statement of a plan, to inflict bodily  
 232 injury or commit a crime of violence;

233 3. Intentionally used to plan a crime, commit or attempt  
 234 to commit a crime, or conceal an ongoing crime or ongoing

235 criminal activity; or

236 4. In an agreement resulting from the collaborative law  
 237 process, as evidenced by a record signed by all parties to the  
 238 agreement.

239 (b) A privilege under subsection (1) for a collaborative  
 240 law communication does not apply to the extent that such  
 241 collaborative law communication is:

242 1. Sought or offered to prove or disprove a claim or  
 243 complaint of professional misconduct or malpractice arising from  
 244 or related to a collaborative law process; or

245 2. Sought or offered to prove or disprove abuse, neglect,  
 246 abandonment, or exploitation of a child or adult unless the  
 247 Department of Children and Families is a party to or otherwise  
 248 participates in the process.

249 (c) A privilege under subsection (1) does not apply if a  
 250 tribunal finds, after a hearing in camera, that the party  
 251 seeking discovery or the proponent of the evidence has shown  
 252 that the evidence is not otherwise available, the need for the  
 253 evidence substantially outweighs the interest in protecting  
 254 confidentiality, and the collaborative law communication is  
 255 sought or offered in:

256 1. A court proceeding involving a felony; or

257 2. A proceeding seeking rescission or reformation of a  
 258 contract arising out of the collaborative law process or in  
 259 which a defense is asserted to avoid liability on the contract.

260 (d) If a collaborative law communication is subject to an

261 exception under paragraph (b) or paragraph (c), only the part of  
262 the collaborative law communication necessary for the  
263 application of the exception may be disclosed or admitted.

264 (e) Disclosure or admission of evidence excepted from the  
265 privilege under paragraph (b) or paragraph (c) does not make the  
266 evidence or any other collaborative law communication  
267 discoverable or admissible for any other purpose.

268 (f) A privilege under subsection (1) does not apply if the  
269 parties agree in advance in a signed record, or if a record of a  
270 proceeding reflects agreement by the parties, that all or part  
271 of a collaborative law process is not privileged. This paragraph  
272 does not apply to a collaborative law communication made by a  
273 person who did not receive actual notice of the collaborative  
274 law participation agreement before the communication was made.

275 Section 7. Sections 61.55-61.58, Florida Statutes, as  
276 created by this act, shall not take effect until 30 days after  
277 the Florida Supreme Court adopts rules of procedure and  
278 professional responsibility consistent with this act.

279 Section 8. Except as otherwise expressly provided in this  
280 act, this act shall take effect July 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Spano offered the following:

**Amendment (with title amendment)**

Remove lines 24-34 and insert:

6 Section 1. This act may be cited as the "Collaborative Law  
 7 Process Act."

9 -----  
 10 **T I T L E A M E N D M E N T**

Remove lines 2-3 and insert:

12 An act relating to family law; providing a short title;  
 13 providing a directive to the Division of Law



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 619 Service of Process  
SPONSOR(S): Rouson  
TIED BILLS: None IDEN./SIM. BILLS: SB 570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Bond NB	Bond YTB
2) Judiciary Committee			

SUMMARY ANALYSIS

Traditionally, a witness in a trial was required to be personally served with a subpoena in order to require that witness to appear at a hearing or trial. Current law allows, however, for service of witness subpoena by regular mail in certain felony, misdemeanor and criminal traffic cases. A witness subpoena served by mail cannot be enforced by contempt.

This bill adds civil traffic cases to the types of action in which a witness subpoena may be served by regular mail.

This bill appears to have an unknown significant positive fiscal impact on local government expenditures. This bill does not appear to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2015.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.<sup>1</sup> The term “to serve” means to make legal delivery of a notice or a pleading.<sup>2</sup> A summons is a writ or a process beginning a plaintiff’s legal action and requiring a defendant to appear in court to answer the summons.<sup>3</sup> A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.<sup>4</sup> A subpoena can command a person to be present for a deposition or for a court appearance.

In general, service of process is accomplished by personal delivery upon a person. However, service of process of a witness subpoena may be accomplished through United States mail for criminal traffic, misdemeanors, third degree felonies, and second degree felonies.<sup>5</sup>

To serve a subpoena on a witness by mail, the subpoena must be sent to the last known address of the witness at least 7 days before the appearance required in the subpoena. If a witness fails to appear in response to a subpoena served by mail, the court may not find the person in contempt of court.

Civil traffic offenses are only punishable by a fine, and thus are generally regarded as being less serious than criminal traffic, misdemeanor or felony cases. Yet, current law does not allow service of a subpoena by mail in civil traffic cases, requiring instead the more expensive service of process by personal delivery.

##### **Effect of the Bill**

The bill adds civil traffic cases to the list of court cases for which service of process of a witness subpoena may be accomplished by United States mail.

#### B. SECTION DIRECTORY:

Section 1 amends s. 48.031, F.S., regarding service of process generally and service of witness subpoenas.

Section 2 provides an effective date of July 1, 2015.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

---

<sup>1</sup> Sections 48.011 and 48.021, F.S.

<sup>2</sup> BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>3</sup> BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>4</sup> BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>5</sup> Section 48.031(3)(a), F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

This bill may result in a cost savings for local sheriffs by giving them the option of serving witness subpoenas by mail for appearances in civil traffic cases. The statewide cost savings is indeterminate. As an example, however, Hillsborough County delivered 5,878 witness subpoenas in civil traffic cases in 2014. That county alone estimates a cost savings from this bill of almost \$100,000 a year in manpower costs.<sup>6</sup>

The Office of the State Courts Administrator anticipates a minimal fiscal impact from the bill.<sup>7</sup>

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

A person who challenges a civil traffic citation bears the costs of service of process for witness subpoenas should the person require the attendance of a witness. The fee for in-person service of a witness subpoena is \$40.<sup>8</sup> Thus, by allowing witness subpoenas to be served by mail, the costs of challenging a civil traffic citation may decrease.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

n/a

<sup>6</sup> Email correspondence from Lorelei Bowden, Manager, Legislative Affairs and Grants, Hillsborough County Sheriff's Office, dated February 27, 2015. (on file with Civil Justice Subcommittee staff).

<sup>7</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement on [companion bill] SB 570* (February 20, 2015).

<sup>8</sup> Section 30.231(1)(c), F.S.

1                                   A bill to be entitled  
 2           An act relating to service of process; amending s.  
 3           48.031, F.S.; authorizing service of witness subpoenas  
 4           in civil traffic cases by United States mail;  
 5           providing requirements; providing an effective date.

6  
 7   Be It Enacted by the Legislature of the State of Florida:

8  
 9           Section 1. Paragraph (a) of subsection (3) of section  
 10          48.031, Florida Statutes, is amended to read:

11           48.031 Service of process generally; service of witness  
 12          subpoenas.—

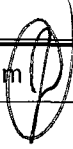

13           (3)(a) The service of process of witness subpoenas,  
 14          whether in criminal cases or civil actions, shall be made as  
 15          provided in subsection (1). However, service of a subpoena on a  
 16          witness in a civil traffic case, a criminal traffic case, a  
 17          misdemeanor case, or a second degree or third degree felony may  
 18          be made by United States mail directed to the witness at the  
 19          last known address, and the service must be mailed at least 7  
 20          days prior to the date of the witness's required appearance.  
 21          Failure of a witness to appear in response to a subpoena served  
 22          by United States mail that is not certified may not be grounds  
 23          for finding the witness in contempt of court.

24           Section 2. This act shall take effect July 1, 2015.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 643 Condominiums  
**SPONSOR(S):** Sprowls  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Malcolm 	Bond 
2) Business & Professions Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

A condominium may be terminated at any time if the termination is approved by 80 percent of the condominium's total voting interests and no more than 10 percent of the total voting interests reject the termination.

The bill provides that a condominium formed by a conversion cannot be terminated for seven years. If, after seven years, at least 80 percent of the voting interests are owned by a bulk buyer or assignee, and no sale of the condominium property to a third party is contemplated, the termination must include the following:

- Unit owners must be allowed to lease their units if the units will be offered for lease after termination;
- Any unit owner whose unit was granted homestead exemption must be paid a relocation payment;
- Third-party unit owners must be paid at least 100 percent of the fair market value of their units;
- Dissenting or objecting owners must be paid 110 percent of the purchase price, or 110 percent of fair market value, whichever is greater; and
- The outstanding first mortgages of all third-party unit owners must be satisfied in full.

The bill also makes changes to condominium termination proceedings that are not specific to conversions:

- If more than 10 percent of the voting interests of a condominium reject a plan of termination, another termination may not be considered for 36 months;
- Unit owners may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of unit owners will not be fully satisfied, or that the required vote was not obtained;
- A court may only void a plan of termination if it determines that the plan was not properly approved; and
- Any challenge to a plan, other than a challenge to the required vote, does not affect title to the property.

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

The bill provides an effective date of July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which is comprised of units which are individually owned, but have an undivided share of access to common facilities. A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws, which govern the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.

##### ***Termination of a Condominium***

Section 718.117, F.S., governs the process for terminating a condominium in cases of economic waste or impossibility<sup>1</sup> and in cases where the association uses its discretion to terminate.<sup>2</sup> In cases of optional termination, current law provides that unless the condominium declaration provides for a lower percentage, the condominium may be terminated if the termination is approved by at least 80 percent of the total voting interests of the condominium and no more than 10 percent of the total voting interests of the condominium reject the termination.<sup>3</sup>

##### ***Condominium Conversions***

A condominium conversion generally involves converting existing improvements, such as an apartment complex, to condominiums. Condominium conversions are regulated pursuant to Part VI of ch. 718, F.S. Current condominium termination regulations in s. 718.117, F.S., do not make specific provision for recent condominium conversions pursuant to Part VI of ch. 718, F.S.

##### **Effect of the Bill**

The bill makes a number of changes to condominium terminations pursuant to s. 718.117, F.S.

The bill provides that if more than 10 percent of the total voting interests of the condominium reject a plan of termination, another optional plan of termination may not be considered for 36 months. The bill specifies that the total voting interests of the condominium include all voting interests for the purpose of

---

<sup>1</sup> Section 718.117(2) provides that a condominium may be terminated for "economic waste" if the total cost of construction or repairs necessary to construct the improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium. A condominium may be terminated for "impossibility" if "it becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations." *Id.* at (2)(a)2.

<sup>2</sup> *Id.* at (3), F.S.

<sup>3</sup> *Id.* Optional terminations do not apply to condominiums in which 75 percent or more of the condominium units are timeshare units. *Id.*

considering a plan of termination, and a voting interest of the condominium may not be suspended during the consideration of a plan of termination.

If the plan of termination is voted on at a meeting of the unit owners, any unit owner desiring to reject the plan must vote to reject the plan or deliver a written rejection to the association. If the plan of termination is approved without a meeting, any unit owner desiring to object to the plan must deliver a written objection to the association.

### ***Terminations Following a Condominium Conversion***

The bill prohibits a condominium that has been created pursuant to conversion procedures in Part VI of ch. 718, F.S., from undertaking an optional plan of termination until seven years after the conversion. For such condominiums that have waited the required seven years, if at least 80 percent of the total voting interests are owned by a bulk buyer or assignee, and no sale of the terminated condominium property to an unrelated third party is contemplated, the plan of termination is subject to the following:

#### ***Right to Lease Former Unit***

After the termination, if the units are offered for lease, each unit owner may lease his or her former unit and remain in possession of the unit for 12 months after the termination. The unit owner must make a written request to the termination trustee to rent the former unit. Any unit owner who fails to make a written request and sign a lease within the required timeframe waives his or her right to retain possession of the unit, unless otherwise provided in the plan of termination.

#### ***Relocation Payments for Homestead Property***

Any former unit owner whose unit was granted homestead exemption must be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the owner's former unit. The relocation payment must be paid by the entity owning at least 80 percent of the voting interests. The relocation payment is in addition to any termination proceeds and must be paid within 10 days after the unit owner vacates the unit.

#### ***Third-Party Unit Owner Compensation and Satisfaction of First Mortgages***

All third-party unit owners must be compensated at least 100 percent of the fair market value of their units. The allocation of the proceeds of the sale of condominium property to dissenting or objecting owners must be 110 percent of the purchase price, or 110 percent of fair market value, whichever is greater. A plan of termination is not effective unless the outstanding first mortgages of all third-party unit owners are satisfied in full before, or simultaneously with, the termination.

### ***Exemption from Amendment Requirements***

Currently, a plan of termination pursuant to s. 718.117, F.S., is not considered an amendment to the condominium declaration and thus is not subject to the procedural and voting requirements of s. 718.110(4), F.S. The bill provides that an amendment to a declaration to conform the declaration to s. 718.117, F.S., is likewise not an amendment subject to s. 718.110(4), F.S., and may be approved by the lesser of 80 percent of the voting interests or the percentage of the voting interests required to amend the declaration.

### ***Right to Contest a Plan of Termination***

Currently, a unit owner or lienor may contest a plan of termination by initiating a summary procedure<sup>4</sup> within 90 days after the date the plan is recorded. The person contesting the plan has the burden of proving that the apportionment of the proceeds from the sale among the unit owners was not fair and

---

<sup>4</sup> Section 51.011, F.S.  
STORAGE NAME: h0643.CJS.DOCX  
DATE: 3/9/2015

reasonable. If the court determines that the plan of termination is not fair and reasonable, it may void or modify the plan to apportion the proceeds in a fair and reasonable manner.<sup>5</sup>

The bill amends the right to contest provisions in s. 718.117(16), F.S., to provide that a unit owner or lienor's right to contest a plan of termination is limited to contesting only the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of all unit owners have not or will not be fully satisfied at the time of termination, or that the required vote to approve the plan was not obtained. The court may only void a plan of termination if it determines that the plan was not properly approved. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the property.

The bill provides an effective date of July 1, 2015.

**B. SECTION DIRECTORY:**

Section 1 amends s. 718.117, F.S., related to the termination of condominiums.

Section 2 provides an effective date of July 1, 2015.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

---

<sup>5</sup> Section 718.117(16), F.S.  
STORAGE NAME: h0643.CJS.DOCX  
DATE: 3/9/2015



The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill does not define "third-party unit owner." Additionally, it is unclear if dissenting unit owners will collect the greater of 110 percent of the purchase price or 100 of the fair market value *in addition to* having their first mortgages paid off, or if the mortgage pay-off amount is deducted from the greater of other payments.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

n/a

1                                   A bill to be entitled  
 2           An act relating to condominiums; amending s. 718.117,  
 3           F.S.; providing and revising procedures and  
 4           requirements for termination of a condominium  
 5           property; providing requirements for the rejection of  
 6           a plan of termination; providing a definition;  
 7           providing applicability; providing requirements  
 8           relating to partial termination of a condominium  
 9           property; revising requirements relating to the right  
 10          to contest a plan of termination; providing an  
 11          effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15           Section 1. Subsections (3), (4) and (16) of section  
 16           718.117, Florida Statutes, are amended to read:

17           718.117 Termination of condominium.—

18           (3) OPTIONAL TERMINATION.—Except as provided in subsection  
 19           (2) or unless the declaration provides for a lower percentage,  
 20           and subject to the limitations in paragraph (b), the condominium  
 21           form of ownership may be terminated for all or a portion of the  
 22           condominium property pursuant to a plan of termination approved  
 23           by at least 80 percent of the total voting interests of the  
 24           condominium if no more than 10 percent of the total voting  
 25           interests of the condominium have rejected the plan of  
 26           termination by negative vote or by providing written objections.

HB 643

2015

27 Total voting interests of the condominium include all voting  
28 interests for the purpose of considering a plan of termination,  
29 and a voting interest of the condominium may not be suspended  
30 for such consideration. If more than 10 percent of the total  
31 voting interests of the condominium reject the plan of  
32 termination, a plan of termination pursuant to this subsection  
33 may not be considered for 36 months after the date of the  
34 rejection. This subsection does not apply to condominiums in  
35 which 75 percent or more of the units are timeshare units. This  
36 subsection also does not apply to any condominium created  
37 pursuant to part VI until 7 years after the recording of the  
38 declaration of condominium for the condominium and thereafter is  
39 applicable to the condominium pursuant to paragraph (b).

40 (a)1. If the plan of termination is voted on at a meeting  
41 of the unit owners called in accordance with subsection (9), any  
42 unit owner desiring to reject the plan must do so by either  
43 voting to reject the plan in person or by proxy, or by  
44 delivering a written rejection to the association before or at  
45 the meeting.

46 2. If the plan of termination is approved by written  
47 consent or joinder without a meeting of the unit owners, any  
48 unit owner desiring to object to the plan must deliver a written  
49 objection to the association within 20 days after the date that  
50 the association notifies the nonconsenting owners, in the manner  
51 provided in paragraph (15)(a), that the plan of termination has  
52 been approved by written action in lieu of a unit owner meeting.

53        (b) Seven years after the recording of a declaration of  
54 condominium for a condominium created pursuant to part VI, this  
55 subsection may be used to terminate the condominium. If, at the  
56 time of recording of the plan of termination, at least 80  
57 percent of the total voting interests are owned by a bulk buyer  
58 or assignee or a related entity which would be considered an  
59 insider under s. 726.102, and no sale of the terminated  
60 condominium property as a whole to an unrelated third party is  
61 contemplated in the plan of termination, the plan of termination  
62 is subject to the following conditions and limitations:

63        1. After the termination, if the former condominium units  
64 are offered for lease to the public, each unit owner in  
65 occupancy immediately before the date of recording of the plan  
66 of termination may lease his or her former unit and remain in  
67 possession of the unit for 12 months after the effective date of  
68 the termination on the same terms as similar unit types within  
69 the property are being offered to the public. In order to obtain  
70 a lease and exercise the right to retain exclusive possession of  
71 the unit owner's former unit, the unit owner must make a written  
72 request to the termination trustee to rent the former unit  
73 within 90 days after the date the plan of termination is  
74 recorded. Any unit owner who fails to timely make such written  
75 request and sign a lease within 15 days after being presented  
76 with a lease is deemed to have waived his or her right to retain  
77 possession of his or her former unit and shall be required to  
78 vacate the former unit upon the effective date of the

79 termination, unless otherwise provided in the plan of  
 80 termination.

81 2. Any former unit owner whose unit was granted homestead  
 82 exemption status by the applicable county property appraiser as  
 83 of the date of the recording of the plan of termination shall be  
 84 paid a relocation payment in an amount equal to 1 percent of the  
 85 termination proceeds allocated to the owner's former unit. Any  
 86 relocation payment payable under this subparagraph shall be paid  
 87 by the single entity or related entities owning at least 80  
 88 percent of the total voting interests. Such relocation payment  
 89 shall be in addition to the termination proceeds for such  
 90 owner's former unit and shall be paid no later than 10 days  
 91 after the former unit owner vacates his or her former unit.

92 3. For their respective units, all third-party unit owners  
 93 must be compensated at least 100 percent of the fair market  
 94 value of their units as of a date that is no earlier than 90  
 95 days before the date the plan of termination is recorded as  
 96 determined by an independent appraiser selected by the  
 97 termination trustee. Notwithstanding subsection (12), the  
 98 allocation of the proceeds of the sale of condominium property  
 99 to owners of units dissenting or objecting to the plan of  
 100 termination shall be 110 percent of the purchase price, or 110  
 101 percent of fair market value, whichever is greater. For purposes  
 102 of this subparagraph, the term "fair market value" means the  
 103 price of a unit that a seller is willing to accept and a buyer  
 104 is willing to pay on the open market in an arms-length

HB 643

2015

105 transaction based on similar units sold in other condominiums,  
106 including units sold in bulk purchases but excluding units sold  
107 at wholesale or distressed prices. The purchase price of units  
108 acquired in bulk following a bankruptcy or foreclosure shall not  
109 be considered for purposes of determining fair market value.

110 4. A plan of termination is not effective unless the  
111 outstanding first mortgages of all third-party unit owners are  
112 satisfied in full before, or simultaneously with, the  
113 termination.

114 (4) EXEMPTION.—A plan of termination is not an amendment  
115 subject to s. 718.110(4). In a partial termination, a plan of  
116 termination is not an amendment subject to s. 718.110(4) if the  
117 ownership share of the common elements of a surviving unit in  
118 the condominium remains in the same proportion to the surviving  
119 units as it was before the partial termination. An amendment to  
120 a declaration to conform the declaration to this section is not  
121 an amendment subject to s. 718.110(4) and may be approved by the  
122 lesser of 80 percent of the voting interests or the percentage  
123 of the voting interests required to amend the declaration.

124 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest  
125 a plan of termination by initiating a summary procedure pursuant  
126 to s. 51.011 within 90 days after the date the plan is recorded.  
127 A unit owner or lienor may only contest the fairness and  
128 reasonableness of the apportionment of the proceeds from the  
129 sale among the unit owners, that the first mortgages of all unit  
130 owners have not or will not be fully satisfied at the time of

131 termination as required by subsection (3), or that the required  
 132 vote to approve the plan was not obtained. A unit owner or  
 133 lienor who does not contest the plan within the 90-day period is  
 134 barred from asserting or prosecuting a claim against the  
 135 association, the termination trustee, any unit owner, or any  
 136 successor in interest to the condominium property. In an action  
 137 contesting a plan of termination, the person contesting the plan  
 138 has the burden of pleading and proving that the apportionment of  
 139 the proceeds from the sale among the unit owners was not fair  
 140 and reasonable or that the required vote was not obtained. The  
 141 apportionment of sale proceeds is presumed fair and reasonable  
 142 if it was determined pursuant to the methods prescribed in  
 143 subsection (12). The court shall determine the rights and  
 144 interests of the parties in the apportionment of the sale  
 145 proceeds and order the plan of termination to be implemented if  
 146 it is fair and reasonable. If the court determines that the  
 147 apportionment of sales proceeds ~~plan of termination~~ is not fair  
 148 and reasonable, the court may ~~void the plan or~~ may modify the  
 149 plan to apportion the proceeds in a fair and reasonable manner  
 150 pursuant to this section based upon the proceedings and order  
 151 the modified plan of termination to be implemented. If the court  
 152 determines that the plan was not properly approved, it may void  
 153 the plan or grant other relief it deems just and proper. Any  
 154 challenge to a plan, other than a challenge that the required  
 155 vote was not obtained, does not affect title to the condominium  
 156 property or the vesting of the condominium property in the

HB 643

2015

157 | trustee, but shall only be a claim against the proceeds of the  
158 | plan. In any such action, the prevailing party shall recover  
159 | reasonable attorney ~~attorney's~~ fees and costs.

160 |       Section 2. This act shall take effect July 1, 2015.





Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Sprowls offered the following:

**Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsections (3), (4), (11), (12) and (16) of  
 7 section 718.117, Florida Statutes, are amended to read:

8 718.117 Termination of condominium.-

9 (3) OPTIONAL TERMINATION.-Except as provided in subsection  
 10 (2) or unless the declaration provides for a lower percentage,  
 11 the condominium form of ownership may be terminated for all or a  
 12 portion of the condominium property pursuant to a plan of  
 13 termination approved by at least 80 percent of the total voting  
 14 interests of the condominium if no more than 10 percent of the  
 15 total voting interests of the condominium have rejected the plan  
 16 of termination by negative vote or by providing written  
 17 objections, subject to following conditions:-



Amendment No. 1

18       (a) The total voting interests of the condominium include  
19 all voting interests for the purpose of considering a plan of  
20 termination. A voting interest of the condominium may not be  
21 suspended for any reason when voting on termination pursuant to  
22 this subsection.

23       (b) If more than 10 percent of the total voting interests  
24 of the condominium reject a plan of termination, a subsequent  
25 plan of termination pursuant to this subsection may not be  
26 considered for 18 months after the date of the rejection.

27       (c) This subsection does not apply to condominiums in  
28 which 75 percent or more of the units are timeshare units. This  
29 subsection also does not apply to any condominium created  
30 pursuant to part VI until 7 years after the recording of the  
31 declaration of condominium for the condominium.

32       (d) For purposes of this paragraph only, a bulk owner  
33 shall be deemed to be a single holder of such voting interests  
34 or an owner together with related entities which would be  
35 considered an insider under s. 726.102 holding such voting  
36 interests. If the condominium association is a residential  
37 association proposed for termination pursuant to this subsection  
38 and if, at the time of recording the plan of termination at  
39 least 80 percent of the total voting interests are owned by a  
40 bulk owner:

41       1. If the plan of termination is voted on at a meeting of  
42 the unit owners called in accordance with subsection (9), any  
43 unit owner desiring to reject the plan must do so by either



Amendment No. 1

44 voting to reject the plan in person or by proxy, or by  
45 delivering a written rejection to the association before or at  
46 the meeting.

47 2. If the plan of termination is approved by written  
48 consent or joinder without a meeting of the unit owners, any  
49 unit owner desiring to object to the plan must deliver a written  
50 objection to the association within 20 days after the date that  
51 the association notifies the nonconsenting owners, in the manner  
52 provided in paragraph (15)(a), that the plan of termination has  
53 been approved by written action in lieu of a unit owner meeting.

54 3. Unless the terminated condominium property is sold as a  
55 whole to an unrelated third party, the plan of termination is  
56 subject to the following conditions and limitations:

57 a. If the former condominium units are offered for lease  
58 to the public after the termination, each unit owner in  
59 occupancy immediately before the date of recording of the plan  
60 of termination may lease his or her former unit and remain in  
61 possession of the unit for 12 months after the effective date of  
62 the termination on the same terms as similar unit types within  
63 the property are being offered to the public. In order to obtain  
64 a lease and exercise the right to retain exclusive possession of  
65 the unit owner's former unit, the unit owner must make a written  
66 request to the termination trustee to rent the former unit  
67 within 90 days after the date the plan of termination is  
68 recorded. Any unit owner who fails to timely make such written  
69 request and sign a lease within 15 days after being presented

966903 - h0643- strike.docx

Published On: 3/10/2015 3:04:25 PM



Amendment No. 1

70 with a lease is deemed to have waived his or her right to retain  
71 possession of his or her former unit and shall be required to  
72 vacate the former unit upon the effective date of the  
73 termination, unless otherwise provided in the plan of  
74 termination.

75 b. Any former unit owner whose unit was granted homestead  
76 exemption status by the applicable county property appraiser as  
77 of the date of the recording of the plan of termination shall be  
78 paid a relocation payment in an amount equal to 1 percent of the  
79 termination proceeds allocated to the owner's former unit. Any  
80 relocation payment payable under this subparagraph shall be paid  
81 by the single entity or related entities owning at least 80  
82 percent of the total voting interests. Such relocation payment  
83 shall be in addition to the termination proceeds for such  
84 owner's former unit and shall be paid no later than 10 days  
85 after the former unit owner vacates his or her former unit.

86 c. For their respective units, all units not owned by the  
87 bulk owner must be compensated at least 100 percent of the fair  
88 market value of their units. The fair market value shall be  
89 determined as of a date that is no earlier than 90 days before  
90 the date the plan of termination is recorded, and shall be  
91 determined by an independent appraiser selected by the  
92 termination trustee. Notwithstanding subsection (12), the  
93 allocation of the proceeds of the sale of condominium property  
94 to owners of units dissenting or objecting to the plan of  
95 termination shall be 110 percent of the original purchase price,

966903 - h0643- strike.docx

Published On: 3/10/2015 3:04:25 PM



Amendment No. 1

96 or 110 percent of fair market value, whichever is greater. For  
97 purposes of this sub-subparagraph, the term "fair market value"  
98 means the price of a unit that a seller is willing to accept and  
99 a buyer is willing to pay on the open market in an arms-length  
100 transaction based on similar units sold in other condominiums,  
101 including units sold in bulk purchases but excluding units sold  
102 at wholesale or distressed prices. The purchase price of units  
103 acquired in bulk following a bankruptcy or foreclosure shall not  
104 be considered for purposes of determining fair market value.

105 d. A plan of termination is not effective unless the  
106 outstanding first mortgages of all unit owners other than the  
107 bulk owner are satisfied in full before, or simultaneously with,  
108 the termination.

109 4. Prior to presenting a plan of termination to the unit  
110 owners for consideration pursuant to this paragraph, the plan  
111 shall include the following written disclosures in a sworn  
112 statement:

113 a. The identity of any person that owners or controls 50%  
114 or more of the units in the condominium, and if the units are  
115 owned by an artificial entity, a disclosure of the natural  
116 person or persons who, directly or indirectly, manage or control  
117 the entity and the natural person or persons who, directly or  
118 indirectly, own or control 20% or more of the artificial entity  
119 or entities that constitute the bulk owner.

120 b. The identity of all units acquired by any bulk owner,  
121 the date of acquisition of each unit, and the total



Amendment No. 1

122 consideration paid to each prior owner by the bulk owner,  
123 whether or not attributed to the purchase price of the unit.

124 c. The relationship of any currently serving board member  
125 to the bulk owner or any person or entity affiliated with the  
126 bulk owner and subject to disclosure pursuant to this  
127 subsection.

128 d. If the members of the board of administration are  
129 elected by the bulk owner, the unit owners other than the bulk  
130 owner shall be entitled to elect not less than one-third of the  
131 board of administration prior to the approval of any plan of  
132 termination by the board.

133 (4) EXEMPTION.—A plan of termination is not an amendment  
134 subject to s. 718.110(4). In a partial termination, a plan of  
135 termination is not an amendment subject to s. 718.110(4) if the  
136 ownership share of the common elements of a surviving unit in  
137 the condominium remains in the same proportion to the surviving  
138 units as it was before the partial termination. An amendment to  
139 a declaration to conform the declaration to this section is not  
140 an amendment subject to s. 718.110(4) and may be approved by the  
141 lesser of 80 percent of the voting interests or the percentage  
142 of the voting interests required to amend the declaration.

143 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL  
144 TERMINATION; WITHDRAWAL; ERRORS.—

145 (a) Unless the ~~The~~ plan of termination expressly  
146 authorizes a ~~may provide that each~~ unit owner or other person to  
147 retain ~~retains~~ the exclusive right to possess that ~~of possession~~

966903 - h0643- strike.docx

Published On: 3/10/2015 3:04:25 PM



Amendment No. 1

148 ~~to the~~ portion of the real estate which formerly constituted the  
149 unit after termination or to use the common elements of the  
150 condominium after termination, then all such rights in the unit  
151 or common elements shall automatically terminate on the  
152 effective date of termination. Unless the plan expressly  
153 provides otherwise, all leases, occupancy agreements, subleases,  
154 licenses or other agreements for the use or occupancy of any  
155 unit or common elements in the condominium shall automatically  
156 terminate on the effective date of termination subject to  
157 paragraph 2(a). In the event the plan expressly authorizes a  
158 unit owner or other person to retain exclusive right to possess  
159 that portion of the real estate that formerly constituted the  
160 unit or to use the common elements of the condominium after  
161 termination, then the plan must specify the terms and ~~if the~~  
162 ~~plan specifies the conditions of possession. In a partial~~  
163 ~~termination, the plan of termination as specified in subsection~~  
164 ~~(10) must also identify the units that survive the partial~~  
165 ~~termination and provide that such units remain in the~~  
166 ~~condominium form of ownership pursuant to an amendment to the~~  
167 ~~declaration of condominium or an amended and restated~~  
168 ~~declaration. In a partial termination, title to the surviving~~  
169 units and common elements that remain part of the condominium  
170 property specified in the plan of termination remain vested in  
171 the ownership shown in the public records and do not vest in the  
172 termination trustee.

173 (b) In a conditional termination, the plan must specify



Amendment No. 1

174 the conditions for termination. A conditional plan does not vest  
175 title in the termination trustee until the plan and a  
176 certificate executed by the association with the formalities of  
177 a deed, confirming that the conditions in the conditional plan  
178 have been satisfied or waived by the requisite percentage of the  
179 voting interests, have been recorded. ~~In a partial termination,~~  
180 ~~the plan does not vest title to the surviving units or common~~  
181 ~~elements that remain part of the condominium property in the~~  
182 ~~termination trustee.~~

183 (c) Unless otherwise provided in the plan of termination,  
184 at any time prior to the sale of the condominium property, a  
185 plan may be withdrawn or modified by the affirmative vote or  
186 written agreement of not less than the same percentage of voting  
187 interests in the condominium as was required for the initial  
188 approval of the plan.

189 (d) Upon the discovery of a scrivener's error in the plan  
190 of termination, the termination trustee may record an amended  
191 plan or an amendment to the plan for the purpose of correcting  
192 such scrivener's error, and such amended plan or amendment to  
193 the plan need only be executed by the termination trustee in the  
194 manner for execution of a deed.

195 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM  
196 PROPERTY.—

197 (a) Unless the declaration expressly provides for the  
198 allocation of the proceeds of sale of condominium property, the  
199 plan of termination may require separate valuations for the ~~must~~





Amendment No. 1

200 ~~first apportion the proceeds between the aggregate value of all~~  
201 ~~units and the value of the common elements, but in the absence~~  
202 ~~of such provision it shall be presumed that the common elements~~  
203 ~~have no independent value, but rather that their value is~~  
204 ~~incorporated into the valuation of the units based on their~~  
205 ~~respective fair market values immediately before the~~  
206 ~~termination, as determined by one or more independent appraisers~~  
207 ~~selected by the association or termination trustee. In a partial~~  
208 ~~termination, the aggregate values of the units and common~~  
209 ~~elements that are being terminated must be separately~~  
210 ~~determined, and the plan of termination must specify the~~  
211 ~~allocation of the proceeds of sale for the units and common~~  
212 ~~elements being terminated.~~

213 (b) The portion of proceeds allocated to the units shall  
214 be ~~further~~ apportioned among the individual units. The  
215 apportionment is deemed fair and reasonable if it is ~~so~~  
216 ~~determined by the unit owners, who may approve the plan of~~  
217 ~~termination~~ by any of the following methods:

218 1. The respective values of the units based on the fair  
219 market values of the units immediately before the termination,  
220 as determined by one or more independent appraisers selected by  
221 the association or termination trustee;

222 2. The respective values of the units based on the most  
223 recent market value of the units before the termination, as  
224 provided in the county property appraiser's records; or

225 3. The respective interests of the units in the common



Amendment No. 1

226 elements specified in the declaration immediately before the  
227 termination.

228 (c) The methods of apportionment in paragraph (b) do not  
229 prohibit any other method of apportioning the proceeds of sale  
230 allocated to the units or any other method of valuing the units  
231 agreed upon in the plan of termination. Any ~~The~~ portion of the  
232 proceeds separately allocated to the common elements shall be  
233 apportioned among the units based upon their respective  
234 interests in the common elements as provided in the declaration.

235 (d) Liens that encumber a unit shall, unless otherwise  
236 provided in the plan of termination, be transferred to the  
237 proceeds of sale of the condominium property and the proceeds of  
238 sale or other distribution of association property, common  
239 surplus, or other association assets attributable to such unit  
240 in their same priority. In a partial termination, liens that  
241 encumber a unit being terminated must be transferred to the  
242 proceeds of sale of that portion of the condominium property  
243 being terminated which are attributable to such unit. The  
244 proceeds of any sale of condominium property pursuant to a plan  
245 of termination may not be deemed to be common surplus or  
246 association property. The holder of a lien that encumbers a unit  
247 at the time of recording a plan is required, within 30 days  
248 following written request from the termination trustee, to  
249 deliver to the termination trustee a statement confirming the  
250 outstanding amount of any obligations of the unit owner secured  
251 by the lien.

966903 - h0643- strike.docx

Published On: 3/10/2015 3:04:25 PM



Amendment No. 1

252 (e) The termination trustee shall have the right to setoff  
253 against and reduce the share of the termination proceeds  
254 allocated to a unit by the following amounts, which may include  
255 attorney fees and costs in each instance:

256 1. All unpaid assessments, taxes, late fees, interest,  
257 finances, charges and all other amounts due and owing the  
258 association associated with the unit, its owner, the owner's  
259 family members, guests, tenants, occupants, licensees, invitees  
260 or others.

261 2. All costs of clearing title to the owner's unit,  
262 including without limitation, locating lienors, obtaining  
263 statements from such lienors confirming the outstanding amount  
264 of any obligations of the unit owner, and paying all mortgages  
265 and other liens, judgments and encumbrances and filing suit to  
266 quiet title or remove title defects.

267 3. All costs of removing the owner, the owner's family  
268 members, guests, tenants, occupants, licensees, invitees or  
269 others from the unit in the event an owner, or owner's family  
270 members, tenants, occupants, or others fail to vacate a unit as  
271 required by the plan.

272 4. All costs arising from or related to such other breach  
273 of the plan by an owner, the owner's family members, guests,  
274 tenants, occupants, licensees, invitees or others.

275 5. All costs arising out of or related to removal and  
276 storage of all personal property remaining in a unit other than  
277 personal property owned by the association such that the unit



Amendment No. 1

278 can be delivered vacant and clear of the owner, the owner's  
279 family members, guests, tenants, occupants, licensees, invitees  
280 or others as required by the plan.

281 6. All costs arising out of or related to the appointment  
282 and activities of a receiver or attorney ad litem acting for  
283 such owner in the event that an owner cannot be located.

284 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest  
285 a plan of termination by initiating a summary procedure pursuant  
286 to s. 51.011 within 90 days after the date the plan is recorded.  
287 A unit owner or lienor may only contest the fairness and  
288 reasonableness of the apportionment of the proceeds from the  
289 sale among the unit owners, that the first mortgages of all unit  
290 owners have not or will not be fully satisfied at the time of  
291 termination as required by subsection (3), or that the required  
292 vote to approve the plan was not obtained. A unit owner or  
293 lienor who does not contest the plan within the 90-day period is  
294 barred from asserting or prosecuting a claim against the  
295 association, the termination trustee, any unit owner, or any  
296 successor in interest to the condominium property. In an action  
297 contesting a plan of termination, the person contesting the plan  
298 has the burden of pleading and proving that the apportionment of  
299 the proceeds from the sale among the unit owners was not fair  
300 and reasonable or that the required vote was not obtained. The  
301 apportionment of sale proceeds is presumed fair and reasonable  
302 if it was determined pursuant to the methods prescribed in  
303 subsection (12). The court shall determine the rights and

966903 - h0643- strike.docx

Published On: 3/10/2015 3:04:25 PM



Amendment No. 1

304 interests of the parties in the apportionment of the sale  
305 proceeds and ~~order the plan of termination to be implemented if~~  
306 ~~it is fair and reasonable~~. If the court determines that the  
307 apportionment of sales proceeds ~~plan of termination~~ is not fair  
308 and reasonable, the court may ~~void the plan or may~~ modify the  
309 plan to apportion the proceeds in a fair and reasonable manner  
310 pursuant to this section based upon the proceedings and order  
311 the modified plan of termination to be implemented. If the court  
312 determines that the plan was not properly approved, it may void  
313 the plan or grant other relief it deems just and proper. Any  
314 challenge to a plan, other than a challenge that the required  
315 vote was not obtained, does not affect title to the condominium  
316 property or the vesting of the condominium property in the  
317 trustee, but shall only be a claim against the proceeds of the  
318 plan. In any such action, the prevailing party shall recover  
319 reasonable attorney ~~attorney's~~ fees and costs.

320 Section 2. This act shall take effect July 1, 2015.

321  
322  
323 -----  
324 **T I T L E A M E N D M E N T**

325 Remove everything before the enacting clause and insert:  
326 An act relating to termination of a condominium association;  
327 amending s. 718.117, F.S.; providing and revising procedures and  
328 requirements for termination of a condominium property;  
329 providing requirements for the rejection of a plan of



Amendment No. 1

330 termination; providing definitions; providing applicability;  
331 providing requirements relating to partial termination of a  
332 condominium property; revising requirements relating to the  
333 right to contest a plan of termination; providing an effective  
334 date.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 751 Emergency Treatment for Opioid Overdose  
**SPONSOR(S):** Gonzalez; Renuart and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 758

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N	McElroy	O'Callaghan
2) Civil Justice Subcommittee		Bond <i>NB</i>	Bond <i>NB</i>
3) Health & Human Services Committee			

**SUMMARY ANALYSIS**

Deaths from drug overdose have steadily increased over the past few decades and have become the leading cause of accidental death in the United States. The vast majority of these deaths involved an overdose related to opioid analgesics, which are narcotic pain relievers derived from the opium poppy, or its synthetic analogues. Although some of these deaths are unpreventable, opioid antagonists have proven successful in reversing opioid related drug overdoses when administered in a timely manner.

The bill creates the Emergency Treatment and Recovery Act, which authorizes health care practitioners to prescribe, and pharmacists to dispense, emergency opioid antagonists to patients and caregivers. Patients and caregivers are authorized to store and possess emergency opioid antagonists. In an emergency situation when a physician is not immediately available, patients and caregivers are authorized to administer an emergency opioid antagonist to a person believed in good faith to be experiencing an opioid overdose, regardless of whether that person has a prescription for an emergency opioid antagonist.

The bill provides for civil liability protections under the Good Samaritan Act for all individuals, and professional disciplinary exemptions for certain health care providers, who comply with the bill's requirements. The bill does not limit other existing immunities currently afforded to certain health care providers.

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

The bill takes effect upon becoming a law.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Opioids

The drug overdose death rate has more than doubled from 1999 through 2013 and has now become the leading cause of accidental deaths in the United States.<sup>1</sup> In 2013, there were 43,982 drug overdose deaths in the United States of which 22,767 (51.8%) were related to pharmaceuticals.<sup>2</sup> The majority of the pharmaceutical related deaths, 16,235 (71.3%), involved opioid analgesic drugs (opioids).<sup>3</sup>

Opioids are psychoactive substances derived from the opium poppy, or their synthetic analogues.<sup>4</sup> They are commonly used as pain relievers to treat acute and chronic pain. An individual experiences pain as a result of a series of electrical and chemical exchanges among his or her peripheral nerves, spinal cord and brain.<sup>5</sup> Opioid receptors occur naturally and are distributed widely throughout the central nervous system and in peripheral sensory and autonomic nerves.<sup>6</sup> When an individual experiences pain the body releases hormones, such as endorphins, which bind with targeted opioid receptors.<sup>7</sup> This disrupts the transmission of pain signals through the central nervous system and reduces the perception of pain.<sup>8</sup> Opioids function in the same way by binding to specific opioid receptors in the brain, spinal cord and gastrointestinal tract, thereby reducing the perception of pain.<sup>9</sup> Opioids include<sup>10</sup>:

- Buprenorphine (Subutex, Suboxone)
- Codeine
- Fentanyl (Duragesic, Fentora)
- Heroin
- Hydrocodone (Vicodin, Lortab, Norco)
- Hydromorphone (Dilaudid, Exalgo)
- Meperidine
- Methadone
- Morphine
- Oxycodone (OxyContin, Percodan, Percocet)
- Oxymorphone
- Tramadol

---

<sup>1</sup> More deaths occur each year due to drug overdose than deaths caused by motor vehicle crashes. *Prescription Drug Overdose in the United States: Fact Sheet*, Centers for Disease Control and Prevention.

<http://www.cdc.gov/homeandrecreationalafety/overdose/facts.html> (last visited 2/27/15).

<sup>2</sup> *Prescription Drug Overdose in the United States: Fact Sheet*, Centers for Disease Control and Prevention.

<http://www.cdc.gov/homeandrecreationalafety/overdose/facts.html> (last visited 2/27/15).

<sup>3</sup> *Id.*

<sup>4</sup> *Information Sheet on Opioid Overdose*, World Health Organization, November 2014.

[http://www.who.int/substance\\_abuse/information-sheet/en/](http://www.who.int/substance_abuse/information-sheet/en/) (last visited 2/27/15).

<sup>5</sup> Mayo Clinic Health Library, [http://www.riversideonline.com/health\\_reference/Nervous-System/PN00017.cfm](http://www.riversideonline.com/health_reference/Nervous-System/PN00017.cfm) (last visited).

<sup>6</sup> *Imaging of Opioid Receptors in the Central Nervous System*, Gjermund Henriksen, Frode Willoch; *Brain* (2008) 131 (5): 1171-1196.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *SAMHSA Opioid Overdose Toolkit: Facts for Community Members*, Department of Health and Human Services- Substance Abuse and Mental Health Services Administration.

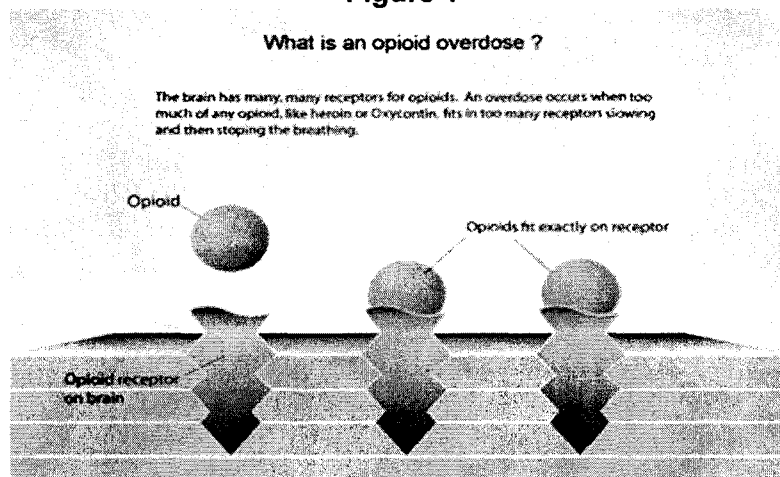
<sup>10</sup> *Drugs Identified in Deceased Persons by Florida Medical Examiners 2012 Report*, Florida Department of Law Enforcement, September 2013.

Opioids are commonly abused with an estimated 15 million people worldwide suffering from opioid dependence.<sup>11</sup> Opioids can create a euphoric feeling because they affect the regions of the brain involved with pleasure and reward which can lead to abuse.<sup>12</sup> Continued use of these drugs can lead to the development of tolerance and psychological and physical dependence.<sup>13</sup> This dependence is characterized by a strong desire to take opioids, impaired control over opioid use, persistent opioid use despite harmful consequences, a higher priority given to opioid use than to other activities and obligations, and a physical withdrawal reaction when opioids are discontinued.<sup>14</sup>

An overabundance of opioids in the body can lead to a fatal overdose. In addition to their presence in major pain pathways, opioid receptors are also located in the respiratory control centers of the brain.<sup>15</sup> Opioids disrupt the transmission of signals for respiration in the identical manner that they disrupt the transmission of pain signals (figure 1). This leads to a reduction, and potentially cessation, of an individual's respiration. Oxygen starvation will eventually stop vital organs like the heart, then the brain, and can lead to unconsciousness, coma, and possibly death.<sup>16</sup> Within 3-5 minutes without oxygen, brain damage starts to occur, soon followed by death.<sup>17</sup> However, this does not occur instantaneously as people will commonly stop breathing slowly, minutes to hours after the drug or drugs were used.<sup>18</sup> An opioid overdose can be identified by a combination of three signs and symptoms referred to as the "opioid overdose triad":<sup>19</sup>

- Pinpoint pupils;
- Unconsciousness; and,
- Respiratory depression.

**Figure 1**



Source: Maya Doe-Simkins, MPH, Boston Medical Center.

<sup>11</sup> *Information Sheet on Opioid Overdose*, World Health Organization, November 2014.

[http://www.who.int/substance\\_abuse/information-sheet/en/](http://www.who.int/substance_abuse/information-sheet/en/) (last visited 2/27/15).

<sup>12</sup> *How Do Opioids Affect the Brain and Body?*, National Institute on Drug Abuse. <http://www.drugabuse.gov/publications/research-reports/prescription-drugs/opioids/how-do-opioids-affect-brain-body> (last visited 2/27/15).

<sup>13</sup> *Imaging of Opioid Receptors in the Central Nervous System*, Gjermund Henriksen, Frode Willoch; *Brain* (2008) 131 (5): 1171-1196.

<sup>14</sup> *Information Sheet on Opioid Overdose*, World Health Organization, November 2014.

[http://www.who.int/substance\\_abuse/information-sheet/en/](http://www.who.int/substance_abuse/information-sheet/en/) (last visited 2/27/15).

<sup>15</sup> *Opioids and the Control of Respiration*, K.T.S. Pattinson, *BJA*, Volume 100, Issue 6, Pages 747-758.

<http://bj.oxfordjournals.org/content/100/6/747.full> (last visited 2/27/15).

<sup>16</sup> *Guide to Developing and Managing Overdose Prevention and Take-Home Naloxone Projects*, Harm Reduction Coalition, Fall 2012.

<http://harmreduction.org/our-work/overdose-prevention/> (last visited 2/27/15).

<sup>17</sup> *Id.*

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

<sup>19</sup> *Information Sheet on Opioid Overdose*, World Health Organization, November 2014.

[http://www.who.int/substance\\_abuse/information-sheet/en/](http://www.who.int/substance_abuse/information-sheet/en/) (last visited 2/27/15).

## Opioid Antagonist

An opioid overdose can be reversed if an opioid antagonist is administered in a timely manner. Opioid antagonists are used in opioid overdoses to counteract life-threatening depression of the central nervous system and respiratory system, allowing an overdose victim to breathe normally.<sup>20</sup> This occurs because opioid antagonists create a stronger bond with opioid receptors than opioids. This forces the opioids from the opioid receptors and allows the transmission of signals for respiration to resume.<sup>21</sup> This effect lasts only for a short period of time<sup>22</sup> with the narcotic effect of the opioids returning if still present in large quantities in the body. In this scenario additional doses of an opioid antagonist would be required and it is why it is generally recommended that anyone who has experienced an overdose seek medical attention.

Community-based opioid antagonist prevention programs can be successful in increasing the number of opioid overdose reversals. Opioid antagonists were originally prescribed and distributed only to emergency personnel (EMTs, firefighters and law enforcement). In 1996, community-based programs began offering opioid antagonists and other opioid overdose prevention services, in states authorizing such activities, to persons who use drugs, their families and friends and service providers (health-care providers, homeless shelters and substance abuse treatment programs).<sup>23</sup> In October 2010, a national advocacy and capacity-building organization surveyed 50 programs known to distribute opioid antagonists in the United States, to collect data on various issues including overdose reversals.<sup>24</sup> Forty-eight programs responded to the survey and reported training and distributing opioid antagonists to 53,032 persons and receiving reports of 10,171<sup>25</sup> overdose reversals.<sup>26</sup> Based upon these findings, the report concluded that providing opioid overdose education and opioid antagonists to persons who use drugs and to persons who might be present at an opioid overdose can help reduce opioid overdose mortality.<sup>27</sup>

Multiple states have enacted statutes to allow for the prescription and lay-person use of opioid antagonists (figure 2). For example, as of November 2014:<sup>28</sup>

- Twenty-seven states have statutes which allow for “third-party” prescriptions of opioid antagonists.

---

<sup>20</sup> *Understanding Naloxone*, Harm Reduction Coalition. <http://harmreduction.org/issues/overdose-prevention/overview/overdose-basics/understanding-naloxone/> (last visited 2/27/15).

<sup>21</sup> *Guide to Developing and Managing Overdose Prevention and Take-Home Naloxone Projects*, Harm Reduction Coalition, Fall 2012. <http://harmreduction.org/our-work/overdose-prevention/> (last visited 2/27/15).

<sup>22</sup> The half-life for a common opioid antagonist in adults ranged from 30 to 81 minutes. Acute opiate withdrawal is a potential side-effect of naloxone; however, this would be time limited to the half-life of naloxone.

<sup>23</sup> *Community-Based Opioid Overdose Prevention Programs Providing Naloxone — United States, 2010*, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR), February 17, 2012 / 61(06);101-105. <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6106a1.htm> (last visited 2/27/15).

<sup>24</sup> Id.

<sup>25</sup> The findings in this report are subject to at least three limitations. First, other opioid antagonist distribution programs might exist that were unknown to the national advocacy group. Second, all data is based on unconfirmed self-reports from the 48 responding programs. Finally, the numbers of persons trained in opioid antagonist administration and the number of overdose reversals involving opioid antagonists likely were underreported because of incomplete data collection and unreported overdose reversals. However, because not all untreated opioid overdoses are fatal, some of the persons with reported overdose reversals likely would have survived without opioid antagonist administration. *Community-Based Opioid Overdose Prevention Programs Providing Naloxone — United States, 2010*, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR), February 17, 2012 / 61(06);101-105.

<sup>26</sup> *Community-Based Opioid Overdose Prevention Programs Providing Naloxone — United States, 2010*, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR), February 17, 2012 / 61(06);101-105. <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6106a1.htm> (last visited 2/27/15).

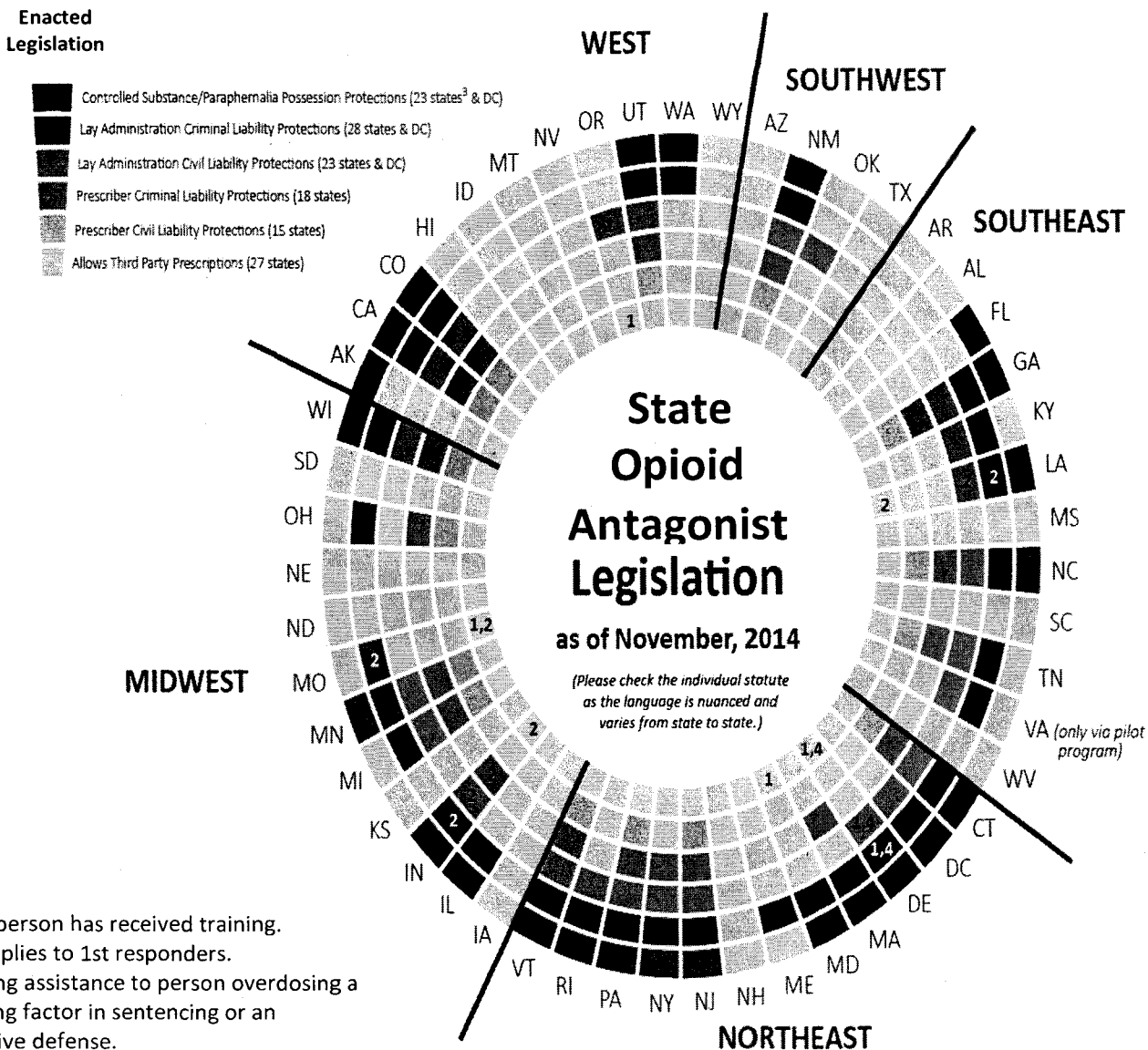
<sup>27</sup> Id.

<sup>28</sup> *Updated Infographic: Overdose Prevention, State by State*, Office of National Drug Control Policy.

<http://www.whitehouse.gov/blog/2014/12/17/updated-infographic-overdose-prevention-state-state> (last visited 2/27/15).

- Fifteen states have statutes which protect prescribers from civil liability actions.
- Eighteen states have statutes which protect prescribers from criminal liability actions.
- Twenty-three states and the District of Columbia have statutes which protect lay persons from civil liability for administering opioid antagonists to someone believed to be experiencing an opioid induced overdose.
- Twenty-eight states and the District of Columbia have statutes which protect lay persons from criminal liability for administering opioid antagonists to someone believed to be experiencing an opioid induced overdose.
- Twenty-three states and the District of Columbia have statutes which prevent charge or prosecution for possession of a controlled substance and/or paraphernalia for persons who seek medical/emergency assistance for someone that is experiencing an opioid induced overdose.

Figure 2



Source: Office of National Drug Control Policy

## Florida Opioid –Related Data

Opioids also play a prominent role in drug overdose deaths in Florida. In 2012, there were 8,330 drug-related deaths in the state.<sup>29</sup> Opioids were listed as the cause of death in 2,577 cases and were present in an additional 3,029 cases.<sup>30</sup> The four most harmful drugs, found in more than 50 percent of the deaths in which these drugs were present, were all opioids.<sup>31</sup>

- Heroin (92.3 percent)
- Methadone (68.3 percent)
- Fentanyl (54.2 percent)
- Oxycodone (51.5 percent).

## Florida's Good Samaritan Act

The Good Samaritan Act, found in s. 768.13, F.S., provides immunity from civil liability for those who render emergency care and treatment to individuals in need of assistance. The statute provides immunity from liability for civil damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situation or at the scene of an emergency, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances;<sup>32</sup>
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within scope of his or her training;<sup>33</sup> or
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>34</sup>

## **Effect of Proposed Changes**

HB 751 creates the Emergency Treatment and Recovery Act in s. 381.887, F.S., which authorizes health care practitioners to prescribe, and pharmacists to dispense, emergency opioid antagonists to patients and caregivers. Patients and caregivers are authorized to store and possess emergency opioid antagonists. In an emergency situation when a physician is not immediately available, patients and caregivers are authorized to administer the emergency opioid antagonist to a person believed in good faith to be experiencing an opioid overdose, regardless of whether that person has a prescription for an emergency opioid antagonist.

The bill authorizes emergency responders to possess, store, and administer approved emergency opioid antagonists. The bill does not limit any existing immunities for emergency responders or others provided under this chapter or any other applicable provision of law.

The bill provides civil liability immunity under s. 768.13, F.S., (Good Samaritan Act) for any person who possesses, administers, prescribes, dispenses, or stores an approved emergency opioid antagonist in compliance with the bill's requirements. The bill also provides that any authorized health care practitioner, dispensing health care practitioner, or pharmacist will not be subject to professional

---

<sup>29</sup> *Drugs Identified in Deceased Persons by Florida Medical Examiners 2012 Report*, Florida Department of Law Enforcement, September 2013.

<sup>30</sup> *Id.* It also important to note that a decedent may have more than one drug listed as the cause of death.

<sup>31</sup> *Id.*

<sup>32</sup> Section 768.13(2)(a), F.S.

<sup>33</sup> Section 768.13(2)(d), F.S.

<sup>34</sup> Section 768.13(3), F.S.

sanction or other disciplinary licensing action for acts or omissions if he or she is otherwise in compliance with the bill's requirements.

The bill defines emergency opioid antagonist as a drug that blocks the effects of exogenously administered opioids and is approved by the United States Food and Drug Administration for the treatment of opioid overdose.

The bill defines caregiver as a family member, friend, or person or entity in a position to have recurring contact with a person at risk of experiencing an opioid overdose.

The act will take effect upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1:** Provides citation for the Emergency Treatment and Recovery Act.

**Section 2:** Creates s. 381.887, F.S., relating to emergency treatment for suspected opioid overdose.

**Section 3:** Provides the act shall take effect upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2       An act relating to emergency treatment for opioid  
 3       overdose; providing a short title; creating s.  
 4       381.887, F.S.; providing definitions; providing  
 5       purpose; authorizing certain health care practitioners  
 6       to prescribe an emergency opioid antagonist to a  
 7       patient or caregiver under certain conditions;  
 8       authorizing storage, possession, and administration of  
 9       an emergency opioid antagonist by such patient or  
 10      caregiver and certain emergency responders; providing  
 11      immunity from liability; providing immunity from  
 12      professional sanction or disciplinary action for  
 13      certain health care practitioners; providing  
 14      applicability; providing an effective date.

15  
 16 Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. This act may be cited as the "Emergency  
 19 Treatment and Recovery Act."

20           Section 2. Section 381.887, Florida Statutes, is created  
 21 to read:

22           381.887 Emergency treatment for suspected opioid  
 23 overdose.-

24           (1) As used in this section, the term:

25           (a) "Administer" or "administration" means to introduce an  
 26 emergency opioid antagonist into the body of a person, using a



27 formulation approved by the United States Food and Drug  
 28 Administration.

29 (b) "Authorized health care practitioner" means a licensed  
 30 practitioner authorized by the laws of the state to prescribe  
 31 drugs.

32 (c) "Caregiver" means a family member, friend, or person  
 33 or entity in a position to have recurring contact with a person  
 34 at risk of experiencing an opioid overdose.

35 (d) "Emergency opioid antagonist" means a drug that blocks  
 36 the effects of exogenously administered opioids and is approved  
 37 by the United States Food and Drug Administration for the  
 38 treatment of opioid overdose.

39 (e) "Patient" means a person at risk of experiencing an  
 40 opioid overdose.

41 (2) The purpose of this section is to provide for the  
 42 prescription of an emergency opioid antagonist to patients and  
 43 caregivers and to encourage the prescription of emergency opioid  
 44 antagonists by health care practitioners in a formulation  
 45 approved by the United States Food and Drug Administration for  
 46 emergency treatment of known or suspected opioid overdoses when  
 47 a physician is not immediately available.

48 (3) An authorized health care practitioner may prescribe  
 49 an emergency opioid antagonist to a patient or caregiver for use  
 50 in accordance with this section, and pharmacists may dispense an  
 51 emergency opioid antagonist pursuant to a prescription issued in  
 52 the name of the patient or caregiver, appropriately labeled with

53 instructions for use. Such patient or caregiver is authorized to  
54 store and possess approved emergency opioid antagonists and, in  
55 an emergency situation when a physician is not immediately  
56 available, administer the emergency opioid antagonist to a  
57 person believed in good faith to be experiencing an opioid  
58 overdose, regardless of whether that person has a prescription  
59 for an emergency opioid antagonist.

60 (4) Emergency responders, including, but not limited to,  
61 law enforcement officers, paramedics, and emergency medical  
62 technicians, are authorized to possess, store, and administer  
63 approved emergency opioid antagonists as clinically indicated.

64 (5) A person, including, but not limited to, an authorized  
65 health care practitioner, a dispensing health care practitioner,  
66 or a pharmacist, who possesses, administers, prescribes,  
67 dispenses, or stores an approved emergency opioid antagonist in  
68 compliance with this section and s. 768.13 is afforded the civil  
69 liability immunity protections provided under s. 768.13.

70 (6) An authorized health care practitioner, dispensing  
71 health care practitioner, or pharmacist is not subject to  
72 professional sanction or other disciplinary licensing action for  
73 acts or omissions if otherwise in compliance with this section.

74 (7) This section does not limit any existing immunities  
75 for emergency responders or others provided under this chapter  
76 or any other applicable provision of law.

77 Section 3. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Gonzalez offered the following:

**Amendment**

5 Remove lines 26-47 and insert:

6 emergency opioid antagonist into the body of a person.

7 (b) "Authorized health care practitioner" means a licensed  
 8 practitioner authorized by the laws of the state to prescribe  
 9 drugs.

10 (c) "Caregiver" means a family member, friend, or person  
 11 in a position to have recurring contact with a person at risk of  
 12 experiencing an opioid overdose.

13 (d) "Emergency opioid antagonist" means naloxone  
 14 hydrochloride or any similarly acting drug that blocks the  
 15 effects of opioids administered from outside the body and that  
 16 is approved by the United States Food and Drug Administration  
 17 for the treatment of an opioid overdose.



Amendment No. 1

18        (e) "Patient" means a person at risk of experiencing an  
19 opioid overdose.

20        (2) The purpose of this section is to provide for the  
21 prescription of an emergency opioid antagonist to patients and  
22 caregivers and to encourage the prescription of emergency opioid  
23 antagonists by health care practitioners.



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Gonzalez offered the following:

**Amendment**

5 Remove lines 70-73 and insert:

6 (6) Any authorized health care practitioner, acting in  
 7 good faith, is not subject to discipline or other adverse action  
 8 under any professional licensure statute or rule and is immune  
 9 from any civil or criminal liability as a result of prescribing  
 10 an opioid antagonist in accordance with this section. Any  
 11 dispensing healthcare practitioner or pharmacist, acting in good  
 12 faith, is not subject to discipline or other adverse action  
 13 under any professional licensure statute or rule and is immune  
 14 from any civil or criminal liability as a result of dispensing  
 15 an opioid antagonist in accordance with this section.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 791 Residential Properties
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None IDEN./SIM. BILLS: SB 748

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Civil Justice Subcommittee, Malcolm, Bond

SUMMARY ANALYSIS

The bill amends the statutes relating to various forms of residential properties, including condominiums, cooperatives, and homeowners' associations. Specifically, the bill:

- Creates new provisions in the Condominium Act to replace current bulk buyer and bulk assignee provisions...
Amends the definition of "developer" to exclude certain owners who own small numbers of condominium units...
Modifies the calculation of the documentary stamp tax due on real property transferred to a condominium, cooperative, or homeowners' associations in lieu of foreclosure of an assessment lien;
Removes uninsured losses as a common expense of a condominium association;
Provides for unit owner liability for special assessments and for joint and several liability with previous unit owners for costs associated with unpaid assessments;
Regulates the order of application of payments received by a condominium or cooperative association for past due assessments;
Creates new events that trigger the transfer of control of a condominium board of administration from a developer;
Revises provisions related to fines and penalties assessed by associations;
Provides that a homeowners' association may only levy fines up to \$100, unless otherwise provided in the association's governing documents;
Provides that a homeowners' association member that fails to pay a fine may be suspended from the board of directors or barred from running for the board;
Provides that a homeowners' association's failure to provide notice of the recording of an amendment does not affect the validity or enforceability of the amendment;
Authorizes non-profit corporation proxy voting based on a reproduction of the original proxy; and
Updates the definition of "governing documents" for homeowners' associations to include the rules and regulations that have been adopted by the association.

The bill appears to have an indeterminate negative recurring fiscal impact on state revenue. The bill does not appear to have a fiscal impact on local government.

The bill provides an effective date of July 1, 2015.

HB 791 as filed is referred to the Civil Justice Subcommittee, the Finance and Tax Committee, and the Judiciary Committee.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### ***Condominiums***

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which is comprised of units which are individually owned, but have an undivided share of access to common facilities.<sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.<sup>2</sup> A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.<sup>3</sup>

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights.<sup>4</sup> The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."<sup>5</sup> The association enacts condominium association bylaws, which govern the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.<sup>6</sup>

##### ***Cooperative Associations***

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association,<sup>7</sup> and individual units are leased to the residents, who own shares in the cooperative association.<sup>8</sup> The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives are, in practice, operated in a fashion very similar to condominiums, and the laws regulating cooperatives are in many instances nearly identical.

##### ***Homeowners' Associations***

A homeowners' association is a corporation responsible for the operation of a community subdivision. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute.<sup>9</sup>

##### ***Distressed Condominium Relief Act***

In 2010, the Legislature passed the Distressed Condominium Relief Act (Act) in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act. The Act was intended to relieve specific parties from certain liabilities so as to enable economic opportunities for successor purchasers of distressed condominiums.<sup>10</sup>

---

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

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

<sup>3</sup> *Id.* at (5).

<sup>4</sup> Section 718.103(2), F.S.

<sup>5</sup> *Id.* at (4).

<sup>6</sup> Section 718.112, F.S.

<sup>7</sup> Section 719.103(2), F.S.

<sup>8</sup> *Id.* at (26).

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

<sup>10</sup> Chapter 2010-174, L.O.F.



Specifically, the Act created categories of "bulk buyers" and "bulk assignees." A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents.<sup>11</sup> Similarly, a bulk buyer is a person who acquires more than seven condominium parcels, but who does not receive an assignment of developer rights other than the right to: conduct sales, leasing, and marketing activities within the condominium; be exempt from payment of working capital contributions; and be exempt from rights of first refusal.<sup>12</sup>

Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for "a specific and defined period."<sup>13</sup> Accordingly, the time limitation for classification as a bulk assignee or bulk buyer is until July 1, 2016.

### **Effect of the Bill**

#### **Condominiums - Bulk-Unit Purchasers and Lender-Unit Purchasers**

The bill creates Part VIII of ch. 718, F.S., consisting of ss. 718.801-718.812, F.S., entitled "Bulk-Unit Purchasers and Lender-Unit Purchasers," to replace the Distressed Condominium Relief Act.

Newly-created s. 718.801, F.S., provides a statement of legislative intent that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to bulk-unit purchasers or lender-unit purchasers of condominium units and that there is a need to balance such interests by limiting the applicability of the Distressed Condominium Relief Act.

#### *Definitions*

The bill creates s. 718.802, F.S., to define "bulk-unit purchaser" as a person who acquires title to the greater of at least eight units or 20 percent of the units that ultimately will be operated by the same association. The term does not include a purchaser who acquired title to defraud or harm a purchaser, unit owner, or the association; where the acquirer would be an insider of the bulk-unit purchaser or the developer; or where the acquisition is a fraudulent transfer under ch. 726, F.S.

It also defines "lender-unit purchaser" as a mortgagee, who holds a mortgage from a developer or bulk-unit purchaser, who subsequently obtains title to the units through foreclosure or deed in lieu of foreclosure, and who elects to become a lender-unit purchaser by providing written notice of the election to the condominium association.

#### *Developer Rights of Bulk-Unit Purchasers and Lender-Unit Purchasers*

The bill creates s. 718.803, F.S., relating to the developer rights of bulk-unit purchasers and lender-unit purchasers. Generally, a lender-unit purchaser may exercise any developer rights that the lender-unit purchaser acquires. However, a bulk-unit purchaser may only exercise the following developer rights, provided they are contained in the condominium declaration:

- The right to conduct sales, leasing, and marketing activities within the condominium;
- The right to assign limited common elements and use rights to common elements and association property which were not assigned before the bulk-unit purchaser acquired title; and
- For a phase condominium, the right to add phases.

---

<sup>11</sup> Section 718.703(1), F.S.

<sup>12</sup> *Id.* at (2).

<sup>13</sup> Section 718.702, F.S.

If a bulk-unit purchaser exercises developer rights other than those specified, it is no longer deemed to be a bulk-unit purchaser.

The bill also provides a time-frame by which a bulk-unit purchaser must pay a working capital contribution to the association in situations where the initial purchaser of a unit from the developer is required to make a working capital contribution to the association.

#### *Compliance with Existing Sales and Reservation Laws*

The bill creates s. 718.804, F.S., to require bulk-unit purchasers and lender-unit purchasers to comply with the requirements of s. 718.202, F.S.,<sup>14</sup> and part V of ch. 718, F.S.,<sup>15</sup> in connection with any units they own or sell.

#### *Voting Rights Related to Funding of Reserves*

The bill creates s. 718.805, F.S., to provide that for the first two years following the first conveyance of a unit to a bulk-unit purchaser or lender-unit purchaser, the bulk-unit purchaser or lender-unit purchaser may vote the voting interests allocated to its units to waive reserves or reduce the funding of reserves. After these two years, the bulk-unit purchaser or lender-unit purchaser may not vote its voting interests to waive reserves or reduce the funding of reserves until the bulk-unit purchaser or lender-unit purchaser holds less than a majority of the voting interests in the association.

#### *Assessment Liability and Election of Directors*

The bill creates s. 718.806, F.S., relating to the liability of bulk-unit purchasers and lender-unit purchasers for assessments. A bulk-unit purchaser is liable for all assessments on its units that become due while it holds title to the units. Additionally, the bulk-unit purchaser is jointly and severally liable with the previous owner for all unpaid assessments which became due before the acquisition of title, for all other monetary obligations accrued which are secured by the association's lien, and for all costs advanced by the association for the maintenance and repair of the units acquired by the bulk-unit purchaser.

A director who has been elected or appointed by a bulk-unit purchaser is automatically suspended from board service 30 days following the failure of the bulk-unit purchaser to timely pay monetary obligations on a unit the bulk-unit purchaser owns. The remaining directors may temporarily fill the vacancy created by the suspension.

A lender-unit purchaser's liability for assessments for the units the lender-unit purchaser owns is limited to the lesser of:

- The units' unpaid regular assessments that accrued during the 12 months immediately preceding the lender-unit purchaser's acquisition of title; or
- One percent of the original mortgage debt.

The lender-unit purchaser acquiring title must comply with the current law requirement that the person acquiring title must pay the amount owed to the association within 30 days after transfer of title.<sup>16</sup>

---

<sup>14</sup> Section 718.202, F.S., relates to sales or reservation deposits made prior to closing.

<sup>15</sup> Part V of ch. 718, F.S., regulates sales and disclosures prior to sales of residential condominiums.

<sup>16</sup> Section 718.116(1)(c), F.S.

### *Amendments and Material Alterations*

The bill creates s. 718.807, F.S., to provide that the following amendments or alterations that may not be made unless they are approved by a majority vote of unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser:

- An amendment related to the configuration of a unit or to create a timeshare;
- An amendment creating, changing, or terminating leasing restrictions;
- An amendment of the declaration pertaining to the condominium's status as housing for older persons;
- An amendment related to reclassification as a limited common element; and
- Material alterations to the common elements or association property any time a bulk-unit purchaser, a lender-unit purchaser, developer, or a combination thereof owns a percentage of voting interests equal to or greater than the percentage required to approve the amendment.

Additionally, the bill requires consent of the developer, a bulk-unit purchaser, or a lender-unit purchaser for an amendment that would otherwise require the approval of their voting interests as required by the declaration, articles of incorporation, bylaws or current law.

### *Warranties and Disclosures*

Current law, s. 718.203, F.S., provides that a developer grants an implied warranty of fitness and merchantability as to the each unit, improvements, personal property, and other components associated with the sale of a unit.

The bill creates s. 718.808, F.S., related to the warranties and disclosures that bulk-unit purchasers and lender-unit purchasers are required to provide. A bulk-unit purchaser or lender-unit purchaser grants an implied warranty of fitness and merchantability to a purchaser of each unit sold for a period of 3 years, which begins on the date of the completion of repairs or improvements that the bulk-unit purchaser or lender-unit purchaser makes to the unit, common elements, or limited common elements.

A bulk-unit purchaser or lender-unit purchaser must include a disclosure to purchasers on any sales contract that states that the seller is not the developer of the condominium for any purpose under the Condominium Act. A lender-unit purchaser must also disclose that it took title to the units being sold by foreclosure or deed in lieu of foreclosure.

At or before the signing of a contract to sell a unit, a bulk-unit purchaser or lender-unit purchaser must provide a condition report to the prospective purchaser. The condition report must include a description of the repairs or replacements necessary to cure construction defects identified in the report. The report must be prepared before the bulk-unit purchaser or the lender-unit purchaser enters into its first sales contract, but not more than 6 months before the first sales contract is agreed upon. It must updated no later than 1 year after the first closing and each year thereafter.

If, during the course of preparing the condition report, the architect or engineer becomes aware of a component that violates an applicable building code or law or that deviates from the building plans, the architect or engineer must disclose such information in the report. The architect or engineer must make written inquiry to the applicable local government of any building code violations and include in the condition report the government's response or failure to respond.

If a condition report is not provided to a purchaser, the bulk-unit purchaser or lender-unit purchaser grants and implied warranties of fitness and merchantability, which are not limited to the construction, improvements, or repairs that it undertakes to the condominium.

### *Joint and Several Liability*

The bill creates s. 718.809, F.S., to provide that for the purposes of ch. 718, F.S., if there are multiple bulk-unit purchasers, the units owned by the bulk-unit purchasers and the rights of the bulk-unit purchasers will be aggregated as if there were only one bulk-unit purchaser. Each bulk-unit purchaser is jointly and severally liable with his or her predecessor bulk-unit purchasers.

### *Construction Disputes*

The bill creates s. 718.810, F.S., to provide that a condominium board of administration composed of a majority of directors elected or appointed by a bulk-unit purchaser may not resolve a construction dispute that is subject to ch. 558, F.S.,<sup>17</sup> unless such resolution is approved by a majority of the voting interests of the unit owners other than the developer and a bulk-unit purchaser.

### *Noncompliance*

The bill creates s. 718.811, F.S., to provide that a bulk-unit purchaser or a lender-unit purchaser who fails to comply with the requirements of ch. 718, F.S., relating to the obligations and rights of bulk-unit purchasers and lender-unit purchasers forfeits all protections provided under the Condominium Act.

### *Documents to be Delivered Upon Turnover*

In an ordinary turnover, the developer is required to deliver certain items and documents to the new board of administration that is controlled by unit owners. The bill creates s. 718.812, F.S., to provide that when a turn-over occurs after a bulk-unit purchaser no longer elects a board of administration, the bulk-unit purchaser must deliver all of the items specified in s. 718.301(4), F.S., to the association that are in the bulk-unit purchaser's possession. The bulk-unit purchaser must try to get turnover materials from the original developer and must list materials that it was unable to obtain.

### **Condominiums - Definition of Developer**

Section 718.103(16), F.S., defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . ." In essence, the statute creates two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business. There are advantages that may accrue with the status as successor developer, including acquisition of certain developer-retained rights under the condominium documents and the ability to control the condominium association by electing or designating a majority of the directors of the condominium association board of directors. On the other hand, there are certain disadvantages, including potential warranty liability, liability for prior financial mismanagement of the condominium association, and loss of the ability to control the condominium association.<sup>18</sup> In light of these advantages and disadvantages for successor developers, current law excludes a bulk assignee and a bulk buyer from the definition of developer.<sup>19</sup>

The bill amends the definition of "developer" in s. 718.103(16), F.S., to exclude bulk-unit purchasers and lender-unit purchasers to reflect their creation and regulation in the bill. The bill also excludes from the definition of "developer" a person who owns 7 or fewer units operated by an association consisting of 40 or fewer units or who owns less than 20 percent of the units operated by an association consisting of more than 40 units.

<sup>17</sup> Chapter 558, F.S., provides for presuit notice and an opportunity to cure construction defects.

<sup>18</sup> Schwartz, *The Successor Developer Conundrum in Distressed Condominium Projects*, The Florida Bar Journal, Vol. 83, No. 7, July/August 2009.

<sup>19</sup> See *Distressed Condominium Relief Act* discussion above.

## **Documentary Stamp Tax**

Section 201.02(1), F.S., currently imposes documentary stamp tax on documents that transfer an interest in Florida real property. The tax is calculated based on the "consideration" of the transfer. Consideration includes money paid or to be paid, the discharge of an obligation, and the amount of any mortgage or other encumbrance. The current tax is \$0.70 for each \$100 of consideration.

Subsections (6) through (9) of s. 201.02, F.S., provide exemptions and limitations to the imposition of the documentary stamp tax, including certain judicial sales of real property under a foreclosure order. Currently, there is no exemption or limitation for transfers to condominium, cooperative, or homeowners' associations, or vacation and timeshare plans, when the property is transferred in lieu of foreclosure of an assessment lien.

The bill amends s. 201.02(9), F.S., to provide that a document that transfers property to a condominium, cooperative, or homeowners' associations, or vacation and timeshare management or owners' association in lieu of foreclosure of an assessment lien is subject to documentary stamp tax based solely on the amount of unpaid assessments on the date of the transfer.

## **Condominiums - Association Insurance and Repair of Uninsured Events**

Current law, s. 718.111(11), F.S., provides that condominium property that is damaged by an insurable event must be repair or replaced by as the association as a common expense. If the damage is not the result of an insurable event, the association or the unit owners are responsible for the repair or replacement, as determined by the declaration or bylaws. The bill specifies that in cases where the damage is not the result of an insurable event, the *maintenance* provisions of declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement.

## **Condominiums and Cooperatives - Assessments**

Condominium and cooperative associations collect regular assessments from the unit owners in order to pay for management, maintenance, insurance, and reserves for anticipated future major expenses. Currently, s. 718.116, F.S., provides for the collection of periodic and special assessments to fund the condominium association. A unit owner is liable for all assessments which come due while he or she is the owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. However, the unit owner may recover from the previous owner the amounts paid by the owner. Additionally, current law generally limits the liability of a mortgagee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure for unpaid assessments

The bill amends s. 718.116, F.S., to specify that a condominium unit owner is liable for any special assessments or installments on special assessments due during his or her period of ownership, regardless of when it was levied. It also provides that a unit owner is jointly and severally liable with the previous unit owner for all interest, late fees, costs and reasonable attorney fees incurred by the association in collecting unpaid assessments; however, this joint and several liability does not apply to an owner who acquires title through purchase of a tax deed. The bill also limits the liability of a mortgagee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure for unpaid interest, late fees, costs and reasonable attorney fees, and any other fee, cost, or expense incurred by the association in the collection process.

Sections 718.112(3) and 719.108(3), F.S., provide that any payment received by a condominium or cooperative association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. This payment structure applies in spite of any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

The bill amends ss. 718.112(3) and 719.108(3), F.S., to provide that the required distribution of delinquent assessment payments also applies in spite of any purported accord and satisfaction.<sup>20</sup> The bill states that the amended sentences are intended to clarify existing law.

### **Condominiums - Transfer of Control**

Section 718.301, F.S., requires that the control of a condominium association must be turned over to the nondeveloper unit owners upon the occurrence of any one of a number of identified events, such as three years after 50 percent of the units have been conveyed, when some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer; and, when the developer files a petition seeking bankruptcy protection.

The bill amends s. 718.301, F.S., to add three events that trigger transfer of control from the developer:

- When a bulk-unit purchaser who owns a majority of the units files a bankruptcy petition;
- When a receiver for a bulk-unit purchaser who owns a majority of the units is appointed by a circuit court and is not discharged within 30 days after such appointment; and
- Five years after the date of recording of the first conveyance to a bulk-unit purchaser that owns a majority of the units.

### **Condominiums - Agreements Entered Into by the Association**

Section 718.302, F.S., currently provides that contracts for the operation, maintenance, or management of a condominium association entered into by a developer and contracts that require the association to purchase condominium property or lease condominium property to another party are subject to cancellation by unit owners once certain conditions are met.

The bill amends s. 718.302, F.S., to prohibit a lender-unit purchaser from voting on the cancellation of a contract made by the association while the association is under control of that lender-unit purchaser.

### **Condominiums, Cooperatives, and Homeowners' Associations - Fines and Penalties**

Current law authorizes condominium, cooperative, and homeowners' associations to levy fines against owners or members who violate the association's rules or other governing documents.<sup>21</sup> A fine may only be levied after the association has provided the owner or member notice and a hearing. If an owner or member fails to pay an imposed monetary obligation, the association may suspend his or her right to use common elements, facilities, or areas and may suspend his or her voting rights. Additionally, failure by an owner or member of a condominium or cooperative association to pay a monetary obligation bars him or her from being nominated for the board,<sup>22</sup> and, if he or she is a condominium board member, failure to pay after 90 days results in abandonment in his or her seat on the board.<sup>23</sup>

The bill amends ss. 718.303, 719.303, and 720.305, F.S., to provide general uniformity among the three provisions. The bill specifies that it is the board of administration of the association that levies any fines and that the committee formed to hear potential fines is limited to that purpose and must be impartial.

---

<sup>20</sup> Generally, an accord and satisfaction occurs when a person against whom a claim is asserted proves that debt payment instrument or an accompanying written communication contained a conspicuous statement that the instrument was tendered as full satisfaction of the claim. The result is that the claimed debt is discharged. See s. 673.3111, F.S.

<sup>21</sup> Sections 718.303, 719.303, and 720.305, F.S.

<sup>22</sup> Sections 718.112(2)(d)(2) and 719.106(1)(a)2., F.S.

<sup>23</sup> Section 718.112(2)(n)

With regard to condominium and homeowners' associations, the bill provides that when an owner or member's voting rights have been suspended, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. Additionally, any suspensions imposed apply even if the suspension arose from less than all of the units or parcels owned by the member.

With regard to homeowners' associations only, the bill provides that a fine may not exceed \$100 per violation, unless a greater amount is provided in the association's governing documents. The bill also provides that an association member's failure to pay a monetary obligation bars him or her from being nominated for the board, and, if he or she is a board member, failure to pay after 90 days results in abandonment in his or her seat on the board.

### **Homeowners' Associations - Amendments to Governing Documents**

Section 720.306(1), F.S., provides that a homeowners' association may amend its governing documents. The process for amendment, and the vote required is generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. Generally, a homeowners' association must furnish each member with a copy of an amendment within 30 days of recording; however, in lieu of providing a copy of the recorded amendment, the association may provide notice to members that the amendment was adopted and identify the book and page number or instrument number of the recorded amendment.

The bill amends 720.306(1), F.S., to provide that the association's failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

### **Other Effects of the Bill**

The bill amends s. 617.0721, F.S., related to proxy voting for members of a non-profit corporation, to provide that a copy, fax, or other reliable reproduction of an original proxy may be substituted for any purpose for which the original proxy could be used.

The bill amends s. 718.111, F.S., and s. 719.104, F.S., to specify that "all other *written* records" of the condominium association and cooperative association which are related to the association but not otherwise specifically required in current law, are considered official records that must be maintained by the association.

This bill amends the regulatory authority of the DBPR at s. 718.501, F.S., to provide that the department has jurisdiction over, and regulatory authority over, bulk-unit purchasers and lender-unit purchasers.

The bill creates s. 718.709, F.S., to specifically provide that the Distressed Condominium Relief Act only applies to title to units acquired on or after July 1, 2010, but before July 1, 2016.

The bill amends s. 720.301, F.S., to update the definition of "governing documents" for homeowners' associations, to include the rules and regulations adopted under the authority of the association's declaration, articles of incorporation, or bylaws.

The bill creates s. 720.3015, F.S., to identify ch. 720, F.S., as the "Homeowners' Association Act."

The bill makes technical, drafting, and conforming changes to ch. 718, F.S., due to the creation of Part VIII of ch. 718, F.S., related to bulk-unit purchasers and lender-unit purchasers.

The bill provides an effective date of July 1, 2015.

**B. SECTION DIRECTORY:**

Section 1 amends s. 201.02, F.S., related to tax on deeds and other instruments relating to real property or interests in real property.

Section 2 amends s. 617.0721, F.S., related to voting by members.

Section 3 amends s. 718.103, F.S., related to definitions.

Section 4 amends s. 718.111, F.S., related to condominium associations.

Section 5 amends s. 718.112, F.S., related to condominium association bylaws.

Section 6 amends s. 718.116, F.S., related to assessments; liability; lien and priority; interest; and collection.

Section 7 amends s. 718.301, F.S., related to transfers of association control and claims of defect by association.

Section 8 amends s. 718.302, F.S., related agreements entered into by the condominium association.

Section 9 amends s. 718.303, F.S., related to the obligations of owners and occupants, and remedies.

Section 10 amends s. 718.501, F.S., related to the authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.

Section 11 amends s. 718.709, F.S., related to the applicability of the Distressed Condominium Relief Act.

Section 12 creates Part VIII of ch. 718, F.S., consisting of ss. 718.801-718.812, F.S., related to bulk-unit purchasers and lender-unit purchasers.

Section 13 amends 719.104, F.S., related to cooperatives; access to units; records; financial reports; assessments; and purchase of leases.

Section 14 amends s. 791.108, F.S., related to rents and assessments; liability; lien and priority; interest; collection; and cooperative ownership.

Section 15 amends s. 719.303, F.S., related to obligations of owners.

Section 16 amends s. 720.301, F.S., related to definitions.

Section 17 creates s. 720.3015, F.S., related to the short title.

Section 18 amends s. 720.305, F.S., related to the obligations of members; remedies at law or in equity; and levy of fines and suspension of use rights.

Section 19 amends 720.306, F.S., related to meetings of members; voting and election procedures; amendments.

Section 20 provides an effective date of July 1, 2015.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Section 1 of the bill may have a negative recurring fiscal impact on state documentary stamp tax revenue. The Revenue Estimating Conference has not determined the fiscal impact of the bill on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1                                   A bill to be entitled  
 2           An act relating to residential properties; amending s.  
 3           201.02, F.S.; providing that a certain deed, transfer,  
 4           or conveyance from an owner of property is subject to  
 5           certain taxes; amending s. 617.0721, F.S.; authorizing  
 6           the use of a copy, facsimile transmission, or other  
 7           reliable reproduction of an original proxy vote for  
 8           certain purposes; amending s. 718.103, F.S.; revising  
 9           a definition; amending s. 718.111, F.S.; revising  
 10          liability of unit owners under certain conditions;  
 11          revising what constitutes official records of an  
 12          association; amending s. 718.112, F.S.; clarifying the  
 13          voting process for providing reserves; amending s.  
 14          718.116, F.S.; revising provisions relating to the  
 15          liability of condominium unit owners and mortgagees;  
 16          revising applicability; revising effect of a claim of  
 17          lien; amending s. 718.301, F.S.; adding conditions  
 18          under which certain unit owners are entitled to elect  
 19          at least a majority of the members of the board of  
 20          administration of an association; requiring a bulk-  
 21          unit purchaser to deliver certain items during the  
 22          transfer of association control from the bulk-unit  
 23          purchaser; amending s. 718.302, F.S.; revising the  
 24          conditions under which certain grants, reservations,  
 25          or contracts made by an association may be cancelled;  
 26          prohibiting a lender-unit purchaser from voting on

27 | cancellation of certain grants, reservations, or  
 28 | contracts while the association is under control of  
 29 | that lender-unit purchaser; amending s. 718.303, F.S.;  
 30 | providing that a fine may be levied by the board under  
 31 | certain conditions; revising requirements for levying  
 32 | a fine or suspension; amending s. 718.501, F.S.;  
 33 | conforming provisions of chapter 718, F.S., relating  
 34 | to the enforcement powers of the Division of Florida  
 35 | Condominiums, Timeshares, and Mobile Homes; creating  
 36 | s. 718.709, F.S.; providing applicability of  
 37 | provisions relating to the Distressed Condominium  
 38 | Relief Act; creating part VIII of chapter 718, F.S.;  
 39 | providing legislative intent; providing definitions;  
 40 | authorizing a bulk-unit purchaser to exercise certain  
 41 | developer rights; requiring a bulk-unit purchaser to  
 42 | pay a working capital contribution under certain  
 43 | circumstances; providing applicability; authorizing a  
 44 | lender-unit purchaser to exercise any developer rights  
 45 | he or she acquires; requiring a bulk-unit purchaser  
 46 | and a lender-unit purchaser to comply with specified  
 47 | provisions under chapter 718, F.S.; limiting the  
 48 | rights of bulk-unit purchasers and lender-unit  
 49 | purchasers to vote on reserves or funding of reserves;  
 50 | prohibiting the transfer of such voting rights;  
 51 | providing assessment liability for bulk-unit  
 52 | purchasers and lender-unit purchasers; providing for

53 suspension of a director who has been elected or  
 54 appointed by a bulk-unit purchaser in certain  
 55 circumstances; specifying amendments and alterations  
 56 for which majority approval of unit owners is  
 57 required; requiring consent of a bulk-unit purchaser,  
 58 lender-unit purchaser, or developer to certain  
 59 amendments; requiring certain warranties and  
 60 disclosures; subjecting multiple bulk-unit purchasers  
 61 to joint and several liability; prohibiting a board of  
 62 administration, a majority of which is elected by a  
 63 bulk-unit purchaser, from resolving certain  
 64 construction disputes unless other conditions are  
 65 satisfied; providing that a bulk-unit purchaser or  
 66 lender-unit purchaser who does not comply with chapter  
 67 718, F.S., forfeits all protections or exemptions  
 68 under chapter 718, F.S.; clarifying conditions under  
 69 which a bulk-unit purchaser must deliver certain items  
 70 during the transfer of association control from the  
 71 bulk-unit purchaser; amending s. 719.104, F.S.;  
 72 revising what constitutes the official records of an  
 73 association; amending s. 719.108, F.S.; revising  
 74 applicability; revising effect of a claim of lien;  
 75 amending s. 719.303, F.S.; providing that a fine may  
 76 be levied by the board under certain conditions;  
 77 revising requirements for levying a fine or  
 78 suspension; amending s. 720.301, F.S.; revising the

79 definition of the term "governing documents"; creating  
 80 s. 720.3015, F.S.; providing a short title; amending  
 81 s. 720.305, F.S.; revising requirements for levying a  
 82 fine or suspension; revising application of certain  
 83 provisions; amending s. 720.306, F.S.; revising  
 84 requirements for the adoption of amendments to the  
 85 governing documents; revising requirements for the  
 86 election of directors; providing an effective date.

87  
 88 Be It Enacted by the Legislature of the State of Florida:

89  
 90 Section 1. Subsection (9) of section 201.02, Florida  
 91 Statutes, is amended to read:

92 201.02 Tax on deeds and other instruments relating to real  
 93 property or interests in real property.—

94 (9) (a) A certificate of title issued by the clerk of court  
 95 under s. 45.031(5) in a judicial sale of real property under an  
 96 order or final judgment issued pursuant to a foreclosure  
 97 proceeding is subject to the tax imposed by subsection (1).

98 However, the amount of the tax shall be computed based solely on  
 99 the amount of the highest and best bid received for the property  
 100 at the foreclosure sale. This paragraph ~~subsection~~ is intended  
 101 to clarify existing law and shall be applied retroactively.

102 (b) A deed, transfer, or conveyance from an owner of  
 103 property, subject to assessments authorized by chapter 718,  
 104 chapter 719, chapter 720, or chapter 721, to an association

105 having lien rights against the property in lieu of the  
 106 foreclosure of an assessment lien held by the association  
 107 against such property is subject to the tax imposed by  
 108 subsection (1). However, the amount of the tax shall be computed  
 109 based solely on the amount of the unpaid assessments which are  
 110 due and owing to the association on the date of said transfer.

111 Section 2. Subsection (2) of section 617.0721, Florida  
 112 Statutes, is amended to read:

113 617.0721 Voting by members.—

114 (2) A member who is entitled to vote may vote in person  
 115 or, unless the articles of incorporation or the bylaws otherwise  
 116 provide, may vote by proxy executed in writing by the member or  
 117 by his or her duly authorized attorney in fact. Notwithstanding  
 118 any provision to the contrary in the articles of incorporation  
 119 or bylaws, any copy, facsimile transmission, or other reliable  
 120 reproduction of the original proxy may be substituted or used in  
 121 lieu of the original proxy for any purpose for which the  
 122 original proxy could be used if the copy, facsimile  
 123 transmission, or other reproduction is a complete reproduction  
 124 of the entire proxy. An appointment of a proxy is not valid  
 125 after 11 months following the date of its execution unless  
 126 otherwise provided in the proxy.

127 (a) If directors or officers are to be elected by members,  
 128 the bylaws may provide that such elections may be conducted by  
 129 mail.

130 (b) A corporation may reject a vote, consent, waiver, or

131 proxy appointment if the secretary or other officer or agent  
 132 authorized to tabulate votes, acting in good faith, has a  
 133 reasonable basis for doubting the validity of the signature on  
 134 it or the signatory's authority to sign for the member.

135 Section 3. Subsections (16) of section 718.103, Florida  
 136 Statutes, is amended, to read:

137 718.103 Definitions.—As used in this chapter, the term:

138 (16) "Developer" means a person who creates a condominium  
 139 or offers condominium parcels for sale or lease in the ordinary  
 140 course of business, but does not include:

141 (a) An owner or lessee of a condominium or cooperative  
 142 unit who has acquired the unit for his or her own occupancy;

143 (b) A cooperative association that creates a condominium  
 144 by conversion of an existing residential cooperative after  
 145 control of the association has been transferred to the unit  
 146 owners if, following the conversion, the unit owners are the  
 147 same persons who were unit owners of the cooperative and no  
 148 units are offered for sale or lease to the public as part of the  
 149 plan of conversion;

150 (c) A bulk-unit purchaser, lender-unit purchaser, bulk  
 151 assignee, or bulk buyer as defined in s. 718.802 ~~718.703~~;

152 (d) A person who acquires title to 7 or fewer units  
 153 operated by the same association consisting of 40 or fewer units  
 154 or who acquires title to less than 20 percent of the units  
 155 operated by the same association consisting of more than 40  
 156 units, regardless of whether that person offers any of those

157 | units for sale; or

158 |       ~~(e)~~(d) A state, county, or municipal entity acting as a  
 159 | lessor and not otherwise named as a developer in the declaration  
 160 | of condominium.

161 |       Section 4. Paragraph (j) of subsection (11) and paragraph  
 162 | (a) of subsection (12) of section 718.111, Florida Statutes, are  
 163 | amended to read:

164 |       718.111 The association.—

165 |       (11) INSURANCE.—In order to protect the safety, health,  
 166 | and welfare of the people of the State of Florida and to ensure  
 167 | consistency in the provision of insurance coverage to  
 168 | condominiums and their unit owners, this subsection applies to  
 169 | every residential condominium in the state, regardless of the  
 170 | date of its declaration of condominium. It is the intent of the  
 171 | Legislature to encourage lower or stable insurance premiums for  
 172 | associations described in this subsection.

173 |       (j) Any portion of the condominium property that must be  
 174 | insured by the association against property loss pursuant to  
 175 | paragraph (f) which is damaged by an insurable event shall be  
 176 | reconstructed, repaired, or replaced as necessary by the  
 177 | association as a common expense. In the absence of an insurable  
 178 | event, the association or the unit owners shall be responsible  
 179 | for the reconstruction, repair, or replacement, as determined by  
 180 | the maintenance provisions of the declaration or bylaws. All  
 181 | property insurance deductibles, ~~uninsured losses,~~ and other  
 182 | damages in excess of property insurance coverage under the



183 property insurance policies maintained by the association are a  
 184 common expense of the condominium, except that:

185 1. A unit owner is responsible for the costs of repair or  
 186 replacement of any portion of the condominium property not paid  
 187 by insurance proceeds if such damage is caused by intentional  
 188 conduct, negligence, or failure to comply with the terms of the  
 189 declaration or the rules of the association by a unit owner, the  
 190 members of his or her family, unit occupants, tenants, guests,  
 191 or invitees, without compromise of the subrogation rights of the  
 192 insurer.

193 2. The provisions of subparagraph 1. regarding the  
 194 financial responsibility of a unit owner for the costs of  
 195 repairing or replacing other portions of the condominium  
 196 property also apply to the costs of repair or replacement of  
 197 personal property of other unit owners or the association, as  
 198 well as other property, whether real or personal, which the unit  
 199 owners are required to insure.

200 3. To the extent the cost of repair or reconstruction for  
 201 which the unit owner is responsible under this paragraph is  
 202 reimbursed to the association by insurance proceeds, and the  
 203 association has collected the cost of such repair or  
 204 reconstruction from the unit owner, the association shall  
 205 reimburse the unit owner without the waiver of any rights of  
 206 subrogation.

207 4. The association is not obligated to pay for  
 208 reconstruction or repairs of property losses as a common expense

209 | if the property losses were known or should have been known to a  
 210 | unit owner and were not reported to the association until after  
 211 | the insurance claim of the association for that property was  
 212 | settled or resolved with finality, or denied because it was  
 213 | untimely filed.

214 |       (12) OFFICIAL RECORDS.—

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

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

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

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

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

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

229 |           6. A book or books that contain the minutes of all  
 230 | meetings of the association, the board of administration, and  
 231 | the unit owners, which minutes must be retained for at least 7  
 232 | years.

233 |           7. A current roster of all unit owners and their mailing  
 234 | addresses, unit identifications, voting certifications, and, if

235 known, telephone numbers. The association shall also maintain  
 236 the electronic mailing addresses and facsimile numbers of unit  
 237 owners consenting to receive notice by electronic transmission.  
 238 The electronic mailing addresses and facsimile numbers are not  
 239 accessible to unit owners if consent to receive notice by  
 240 electronic transmission is not provided in accordance with  
 241 subparagraph (c)5. However, the association is not liable for an  
 242 inadvertent disclosure of the electronic mail address or  
 243 facsimile number for receiving electronic transmission of  
 244 notices.

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

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

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

253 11. Accounting records for the association and separate  
 254 accounting records for each condominium that the association  
 255 operates. All accounting records must be maintained for at least  
 256 7 years. Any person who knowingly or intentionally defaces or  
 257 destroys such records, or who knowingly or intentionally fails  
 258 to create or maintain such records, with the intent of causing  
 259 harm to the association or one or more of its members, is  
 260 personally subject to a civil penalty pursuant to s.

261 718.501(1)(d). The accounting records must include, but are not  
 262 limited to:

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

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

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

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

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

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

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

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

286 16. A copy of the inspection report as described in s.

287 718.301(4)(p).

288 Section 5. Paragraph (f) of subsection (2) of section  
 289 718.112, Florida Statutes, are amended to read:

290 718.112 Bylaws.—

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

294 (f) Annual budget.—

295 1. The proposed annual budget of estimated revenues and  
 296 expenses must be detailed and must show the amounts budgeted by  
 297 accounts and expense classifications, including, at a minimum,  
 298 any if applicable, ~~but not limited to,~~ those expenses listed in  
 299 s. 718.504(21). A multicondominium association shall adopt a  
 300 separate budget of common expenses for each condominium the  
 301 association operates and shall adopt a separate budget of common  
 302 expenses for the association. In addition, if the association  
 303 maintains limited common elements with the cost to be shared  
 304 only by those entitled to use the limited common elements as  
 305 provided for in s. 718.113(1), the budget or a schedule attached  
 306 to it must show the amount budgeted for this maintenance. If,  
 307 after turnover of control of the association to the unit owners,  
 308 any of the expenses listed in s. 718.504(21) are not applicable,  
 309 they need not be listed.

310 2.a. In addition to annual operating expenses, the budget  
 311 must include reserve accounts for capital expenditures and  
 312 deferred maintenance. These accounts must include, but are not

313 limited to, roof replacement, building painting, and pavement  
 314 resurfacing, regardless of the amount of deferred maintenance  
 315 expense or replacement cost, and ~~for~~ any other item that has a  
 316 deferred maintenance expense or replacement cost that exceeds  
 317 \$10,000. The amount to be reserved must be computed using a  
 318 formula based upon estimated remaining useful life and estimated  
 319 replacement cost or deferred maintenance expense of each reserve  
 320 item. The association may adjust replacement reserve assessments  
 321 annually to take into account any changes in estimates or  
 322 extension of the useful life of a reserve item caused by  
 323 deferred maintenance. This subsection does not apply to an  
 324 adopted budget in which the members of an association have  
 325 determined, by a majority vote at a duly called meeting of the  
 326 association, to provide no reserves or less reserves than  
 327 required by this subsection.

328 b. ~~Before~~ ~~However,~~ ~~prior to~~ turnover of control of an  
 329 association by a developer to unit owners other than a developer  
 330 pursuant to s. 718.301, the developer may vote the voting  
 331 interests allocated to its units to waive the reserves or reduce  
 332 the funding of reserves through the period expiring at the end  
 333 of the second fiscal year after the fiscal year in which the  
 334 certificate of a surveyor and mapper is recorded pursuant to s.  
 335 718.104(4)(e) or an instrument that transfers title to a unit in  
 336 the condominium which is not accompanied by a recorded  
 337 assignment of developer rights in favor of the grantee of such  
 338 unit is recorded, whichever occurs first, after which time

339 reserves may be waived or reduced only upon the vote of a  
 340 majority of all nondeveloper voting interests voting in person  
 341 or by limited proxy at a duly called meeting of the association.  
 342 If a meeting of the unit owners has been called to determine  
 343 whether to waive or reduce the funding of reserves, and no such  
 344 result is achieved or a quorum is not attained, the reserves  
 345 included in the budget shall go into effect. After the turnover,  
 346 the developer may vote its voting interest to waive or reduce  
 347 the funding of reserves.

348 3. Reserve funds and any interest accruing thereon shall  
 349 remain in the reserve account or accounts, and may be used only  
 350 for authorized reserve expenditures unless their use for other  
 351 purposes is approved in advance by a majority vote at a duly  
 352 called meeting of the association. Before ~~Prior to~~ turnover of  
 353 control of an association by a developer to unit owners other  
 354 than the developer pursuant to s. 718.301, the developer-  
 355 controlled association may ~~shall~~ not vote to use reserves for  
 356 purposes other than those ~~that~~ for which they were intended  
 357 without the approval of a majority of all nondeveloper voting  
 358 interests, voting in person or by limited proxy at a duly called  
 359 meeting of the association.

360 4. The only voting interests that are eligible to vote on  
 361 questions that involve waiving or reducing the funding of  
 362 reserves, or using existing reserve funds for purposes other  
 363 than purposes for which the reserves were intended, are the  
 364 voting interests of the units subject to assessment to fund the

365 reserves in question. Proxy questions relating to waiving or  
 366 reducing the funding of reserves or using existing reserve funds  
 367 for purposes other than purposes for which the reserves were  
 368 intended must ~~shall~~ contain the following statement in  
 369 capitalized, bold letters in a font size larger than any other  
 370 used on the face of the proxy ballot: WAIVING OF RESERVES, IN  
 371 WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING  
 372 RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF  
 373 UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

374 Section 6. Paragraphs (a) and (b) of subsection (1),  
 375 subsection (3), and paragraph (b) of subsection (5) of section  
 376 718.116, Florida Statutes, are amended to read:

377 718.116 Assessments; liability; lien and priority;  
 378 interest; collection.-

379 (1) (a) A unit owner, regardless of how the unit owner has  
 380 acquired his or her title has been acquired, including, but not  
 381 limited to, by purchase at a foreclosure sale or by deed in lieu  
 382 of foreclosure, is liable for all assessments that which come  
 383 due while he or she is the unit owner, including any special  
 384 assessments or installments on special assessments coming due  
 385 during the period of ownership, regardless of when the special  
 386 assessment was levied. Additionally, a unit owner is jointly and  
 387 severally liable with the previous unit owner for all unpaid  
 388 monthly and special assessments, interest and late fees on both  
 389 unpaid assessments and unpaid special assessments, and costs and  
 390 reasonable attorney fees incurred by the association in an



391 | attempt to collect all such amounts that came due up to the time  
 392 | of transfer of title. This joint and several liability of a  
 393 | subsequent unit owner does not apply to an owner who acquires  
 394 | title through purchase of a tax deed and is without prejudice to  
 395 | any right the present unit owner may have to recover from the  
 396 | previous unit owner the amounts paid by the present unit owner.  
 397 | For the purposes of this section paragraph, the term "previous  
 398 | unit owner" does not include an association that acquires title  
 399 | to a unit delinquent property through foreclosure or by deed in  
 400 | lieu of foreclosure. A present unit owner's liability for unpaid  
 401 | assessments, interest, late fees, and costs and reasonable  
 402 | attorney fees is limited to any unpaid assessments, interest,  
 403 | late fees, and costs and reasonable attorney fees that accrued  
 404 | before the association acquired title to the unit delinquent  
 405 | property through foreclosure or by deed in lieu of foreclosure.

406 | (b)1. The liability of a first mortgagee or its successor  
 407 | or assignees who acquire title to a unit by foreclosure or by  
 408 | deed in lieu of foreclosure for the unpaid assessments,  
 409 | interest, late fees, costs and reasonable attorney fees, and any  
 410 | other fee, cost, or expense incurred by or on behalf of the  
 411 | association in the collection process that became due before the  
 412 | mortgagee's acquisition of title is limited to the lesser of:

413 | a. The unit's unpaid common expenses and regular periodic  
 414 | assessments which accrued or came due during the 12 months  
 415 | immediately preceding the acquisition of title and for which  
 416 | payment in full has not been received by the association; or

PCS for HB 791

ORIGINAL

2015

417           b. One percent of the original mortgage debt. The  
418 provisions of this paragraph apply only if the first mortgagee  
419 joined the association as a defendant in the foreclosure action.  
420 Joinder of the association is not required if, on the date the  
421 complaint is filed, the association was dissolved or did not  
422 maintain an office or agent for service of process at a location  
423 which was known to or reasonably discoverable by the mortgagee.

424           2. An association, or its successor or assignee, that  
425 acquires title to a unit through the foreclosure of its lien for  
426 assessments is not liable for any unpaid assessments, late fees,  
427 interest, or reasonable attorney ~~attorney's~~ fees and costs that  
428 came due before the association's acquisition of title in favor  
429 of any other association, as defined in s. 718.103(2) or s.  
430 720.301(9), which holds a superior lien interest on the unit.  
431 This subparagraph is intended to clarify existing law.

432           (3) Assessments and installments on assessments which are  
433 not paid when due bear interest at the rate provided in the  
434 declaration, from the due date until paid. The rate may not  
435 exceed the rate allowed by law, and, if no rate is provided in  
436 the declaration, interest accrues at the rate of 18 percent per  
437 year. If provided by the declaration or bylaws, the association  
438 may, in addition to such interest, charge an administrative late  
439 fee of up to the greater of \$25 or 5 percent of each delinquent  
440 installment for which the payment is late. Any payment received  
441 by an association must be applied first to any interest accrued  
442 by the association, then to any administrative late fee, then to

Page 17 of 77

PCS for HB 0791

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

V

443 any costs and reasonable attorney ~~attorney's~~ fees incurred in  
 444 collection, and then to the delinquent assessment. The foregoing  
 445 is applicable notwithstanding s. 673.3111, any purported accord  
 446 and satisfaction, or any restrictive endorsement, designation,  
 447 or instruction placed on or accompanying a payment. The  
 448 preceding sentence is intended to clarify existing law. A late  
 449 fee is not subject to chapter 687 or s. 718.303(4).

450 (5)

451 (b) To be valid, a claim of lien must state the  
 452 description of the condominium parcel, the name of the record  
 453 owner, the name and address of the association, the amount due,  
 454 and the due dates. It must be executed and acknowledged by an  
 455 officer or authorized agent of the association. The lien is not  
 456 effective 1 year after the claim of lien was recorded unless,  
 457 within that time, an action to enforce the lien is commenced.  
 458 The 1-year period is automatically extended for any length of  
 459 time during which the association is prevented from filing a  
 460 foreclosure action by an automatic stay resulting from a  
 461 bankruptcy petition filed by the parcel owner or any other  
 462 person claiming an interest in the parcel. The claim of lien  
 463 secures all unpaid assessments that are due and that may accrue  
 464 after the claim of lien is recorded and through the entry of a  
 465 final judgment, as well as interest, administrative late fees,  
 466 and all reasonable costs and attorney ~~attorney's~~ fees incurred  
 467 by the association incident to the collection process. Upon  
 468 payment in full, the person making the payment is entitled to a

469 satisfaction of the lien.

470 Section 7. Subsections (1) and (4) of section 718.301,  
 471 Florida Statutes, are amended to read:

472 718.301 Transfer of association control; claims of defect  
 473 by association.—

474 (1) If unit owners other than the developer own 15 percent  
 475 or more of the units ~~in a condominium~~ that ultimately will be  
 476 operated ~~ultimately~~ by an association, as provided in the  
 477 declaration, articles of incorporation, or bylaws as originally  
 478 recorded, the unit owners other than the developer are entitled  
 479 to elect at least one-third of the members of the board of  
 480 administration of the association. Unit owners other than the  
 481 developer are entitled to elect at least a majority of the  
 482 members of the board of administration of an association, upon  
 483 the first ~~to occur of any~~ of the following events that occurs:

484 (a) Three years after 50 percent of the units that  
 485 ultimately will be operated ~~ultimately~~ by the association, as  
 486 provided in the declaration, articles of incorporation, or  
 487 bylaws as originally recorded, have been conveyed to  
 488 purchasers.†

489 (b) Three months after 90 percent of the units that  
 490 ultimately will be operated ~~ultimately~~ by the association, as  
 491 provided in the declaration, articles of incorporation, or  
 492 bylaws as originally recorded, have been conveyed to  
 493 purchasers.†

494 (c) When all the units that ultimately will be operated

495 ultimately by the association, as provided in the declaration,  
 496 articles of incorporation, or bylaws as originally recorded,  
 497 have been completed, some of them have been conveyed to  
 498 purchasers, and none of the others is ~~are~~ being offered for sale  
 499 by the developer in the ordinary course of business.†

500 (d) When some of the units have been conveyed to  
 501 purchasers and none of the others is ~~are~~ being constructed or  
 502 offered for sale by the developer in the ordinary course of  
 503 business.†

504 (e) When the developer files a petition seeking protection  
 505 in bankruptcy.†

506 (f) When a bulk-unit purchaser who owns a majority of the  
 507 units that ultimately will be operated by the association, as  
 508 provided in the declaration, articles of incorporation, or  
 509 bylaws as originally recorded, files a petition seeking  
 510 protection in bankruptcy.

511 ~~(g)~~ (f) When a receiver for the developer is appointed by a  
 512 circuit court and is not discharged within 30 days after such  
 513 appointment, unless the court determines within 30 days after  
 514 appointment of the receiver that transfer of control would be  
 515 detrimental to the association or its members.† ~~or~~

516 (h) When a receiver for a bulk-unit purchaser who owns a  
 517 majority of the units that ultimately will be operated by the  
 518 association, as provided in the declaration, articles of  
 519 incorporation, or bylaws as originally recorded, is appointed by  
 520 a circuit court and is not discharged within 30 days after such

521 appointment, unless the court determines within 30 days after  
 522 appointment of the receiver that transfer of control would be  
 523 detrimental to the association or its members.

524 (i) Five years after the date of recording of the first  
 525 conveyance to a bulk-unit purchaser that owns a majority of the  
 526 units that ultimately will be operated by the association, as  
 527 provided in the declaration, articles of incorporation, or  
 528 bylaws as originally recorded. Notwithstanding that unit owners  
 529 other than the developer are entitled to elect a majority of the  
 530 members of the board of administration and notwithstanding s.  
 531 718.112(2)(f)2., 5 years after the date of recording of the  
 532 first conveyance of a unit to a bulk-unit purchaser that owns a  
 533 majority of the units, the bulk-unit purchaser may exercise the  
 534 right to vote for each unit owned by the bulk-unit purchaser in  
 535 the same manner as any other unit owner except for the purposes  
 536 of reacquiring control of the association or electing or  
 537 appointing a majority of the members of the board of  
 538 administration.

539 (j)~~(g)~~ Seven years after the date of the recording of the  
 540 certificate of a surveyor and mapper pursuant to s.  
 541 718.104(4)(e) or the recording of an instrument that transfers  
 542 title to a unit in the condominium which is not accompanied by a  
 543 recorded assignment of developer rights in favor of the grantee  
 544 of such unit, whichever occurs first; or, in the case of an  
 545 association that ~~may~~ ultimately may operate more than one  
 546 condominium, 7 years after the date of the recording of the

547 certificate of a surveyor and mapper pursuant to s.  
 548 718.104(4)(e) or the recording of an instrument that transfers  
 549 title to a unit which is not accompanied by a recorded  
 550 assignment of developer rights in favor of the grantee of such  
 551 unit, whichever occurs first, for the first condominium it  
 552 operates; or, in the case of an association operating a phase  
 553 condominium created pursuant to s. 718.403, 7 years after the  
 554 date of the recording of the certificate of a surveyor and  
 555 mapper pursuant to s. 718.104(4)(e) or the recording of an  
 556 instrument that transfers title to a unit which is not  
 557 accompanied by a recorded assignment of developer rights in  
 558 favor of the grantee of such unit, whichever occurs first.

559  
 560 The developer is entitled to elect at least one member of the  
 561 board of administration of an association as long as the  
 562 developer holds for sale in the ordinary course of business at  
 563 least 5 percent, in condominiums with fewer than 500 units, and  
 564 2 percent, in condominiums with more than 500 units, of the  
 565 units in a condominium operated by the association. After the  
 566 developer relinquishes control of the association, the developer  
 567 may exercise the right to vote any developer-owned units in the  
 568 same manner as any other unit owner except for purposes of  
 569 reacquiring control of the association or selecting a ~~the~~  
 570 majority of the members of the board of administration.

571 (4) At the time that unit owners other than the developer  
 572 elect a majority of the members of the board of administration

573 of an association, the developer or bulk-unit purchaser shall  
 574 relinquish control of the association, and the unit owners shall  
 575 accept control. Simultaneously, or for the purposes of paragraph  
 576 (c) not more than 90 days thereafter, the developer or bulk-unit  
 577 purchaser shall deliver to the association, at the developer's  
 578 or bulk-unit purchaser's expense, all property of the unit  
 579 owners and of the association which is held or controlled by the  
 580 developer or bulk-unit purchaser, including, but not limited to,  
 581 the following items, if applicable, as to each condominium  
 582 operated by the association:

583 (a)1. The original or a photocopy of the recorded  
 584 declaration of condominium and all amendments thereto. If a  
 585 photocopy is provided, it must be certified by affidavit of the  
 586 developer, a bulk-unit purchaser, or an officer or agent of the  
 587 developer or bulk-unit purchaser as being a complete copy of the  
 588 actual recorded declaration.

589 2. A certified copy of the articles of incorporation of  
 590 the association or, if the association was created before ~~prior~~  
 591 ~~to~~ the effective date of this act and it is not incorporated,  
 592 copies of the documents creating the association.

593 3. A copy of the bylaws.

594 4. The minute books, including all minutes, and other  
 595 books and records of the association, if any.

596 5. Any house rules and regulations that have been adopted  
 597 ~~promulgated~~.

598 (b) Resignations of officers and members of the board of



599 administration who are required to resign because the developer  
 600 or bulk-unit purchaser is required to relinquish control of the  
 601 association.

602 (c) The financial records, including financial statements  
 603 of the association, and source documents from the incorporation  
 604 of the association through the date of turnover. The records  
 605 must be audited for the period from the incorporation of the  
 606 association or from the period covered by the last audit, if an  
 607 audit has been performed for each fiscal year since  
 608 incorporation, by an independent certified public accountant.  
 609 All financial statements must be prepared in accordance with  
 610 generally accepted accounting principles and must be audited in  
 611 accordance with generally accepted auditing standards, as  
 612 prescribed by the Florida Board of Accountancy, pursuant to  
 613 chapter 473. The accountant performing the audit shall examine  
 614 to the extent necessary supporting documents and records,  
 615 including the cash disbursements and related paid invoices, to  
 616 determine whether ~~if~~ expenditures were for association purposes  
 617 and the billings, cash receipts, and related records to  
 618 determine whether ~~that~~ the developer or bulk-unit purchaser was  
 619 charged and paid the proper amounts of assessments.

620 (d) Association funds or control thereof.

621 (e) All tangible personal property that is property of the  
 622 association, which is represented by the developer or bulk-unit  
 623 purchaser to be part of the common elements or which is  
 624 ostensibly part of the common elements, and an inventory of that

625 property.

626 (f) A copy of the plans and specifications used ~~utilized~~  
 627 in the construction or remodeling of improvements and the  
 628 supplying of equipment to the condominium and in the  
 629 construction and installation of all mechanical components  
 630 serving the improvements and the site with a certificate in  
 631 affidavit form of the developer, the bulk-unit purchaser, or the  
 632 developer's or bulk-unit purchaser's agent or an architect or  
 633 engineer authorized to practice in this state that such plans  
 634 and specifications represent, to the best of his or her  
 635 knowledge and belief, the actual plans and specifications used  
 636 ~~utilized~~ in the construction and improvement of the condominium  
 637 property and for the construction and installation of the  
 638 mechanical components serving the improvements. If the  
 639 condominium property has been declared a condominium more than 3  
 640 years after the completion of construction or remodeling of the  
 641 improvements, ~~the requirements of this paragraph~~ does ~~de~~ not  
 642 apply.

643 (g) A list of the names and addresses of all contractors,  
 644 subcontractors, and suppliers used ~~utilized~~ in the construction  
 645 or remodeling of the improvements and in the landscaping of the  
 646 condominium or association property which the developer or bulk-  
 647 unit purchaser had knowledge of at any time in the development  
 648 of the condominium.

649 (h) Insurance policies.

650 (i) Copies of any certificates of occupancy that may have

651 | been issued for the condominium property.

652 |       (j) Any other permits applicable to the condominium  
 653 | property which have been issued by governmental bodies and are  
 654 | in force or were issued within 1 year before ~~prior to~~ the date  
 655 | the unit owners other than the developer or bulk-unit purchaser  
 656 | took control of the association.

657 |       (k) All written warranties of the contractor,  
 658 | subcontractors, suppliers, and manufacturers, if any, that are  
 659 | still effective.

660 |       (l) A roster of unit owners and their addresses and  
 661 | telephone numbers, if known, as shown on the developer's or  
 662 | bulk-unit purchaser's records.

663 |       (m) Leases of the common elements and other leases to  
 664 | which the association is a party.

665 |       (n) Employment contracts or service contracts in which the  
 666 | association is one of the contracting parties or service  
 667 | contracts in which the association or the unit owners have an  
 668 | obligation or responsibility, directly or indirectly, to pay  
 669 | some or all of the fee or charge of the person or persons  
 670 | performing the service.

671 |       (o) All other contracts to which the association is a  
 672 | party.

673 |       (p) A report included in the official records, under seal  
 674 | of an architect or engineer authorized to practice in this  
 675 | state, attesting to required maintenance, useful life, and  
 676 | replacement costs of the following applicable common elements

677 comprising a turnover inspection report:

- 678 1. Roof.
- 679 2. Structure.
- 680 3. Fireproofing and fire protection systems.
- 681 4. Elevators.
- 682 5. Heating and cooling systems.
- 683 6. Plumbing.
- 684 7. Electrical systems.
- 685 8. Swimming pool or spa and equipment.
- 686 9. Seawalls.
- 687 10. Pavement and parking areas.
- 688 11. Drainage systems.
- 689 12. Painting.
- 690 13. Irrigation systems.

691 (q) A copy of the certificate of a surveyor and mapper  
 692 recorded pursuant to s. 718.104(4)(e) or the recorded instrument  
 693 that transfers title to a unit in the condominium which is not  
 694 accompanied by a recorded assignment of developer or bulk-unit  
 695 purchaser rights in favor of the grantee of such unit, whichever  
 696 occurred first.

697 Section 8. Subsections (1) through (4) of section 718.302,  
 698 Florida Statutes, are amended to read:

699 718.302 Agreements entered into by the association.—

700 (1) A ~~Any~~ grant or reservation made by a declaration,  
 701 lease, or other document, and a ~~any~~ contract made by an  
 702 association before ~~prior to~~ assumption of control of the

703 association by unit owners other than the developer, a bulk-unit  
 704 purchaser, or a lender-unit purchaser, which ~~that~~ provides for  
 705 operation, maintenance, or management of a condominium  
 706 association or property serving the unit owners of a condominium  
 707 must ~~shall~~ be fair and reasonable, and such grant, reservation,  
 708 or contract may be canceled by unit owners other than the  
 709 developer or a bulk-unit purchaser. A lender-unit purchaser may  
 710 not vote on cancellation of a grant, reservation, or contract  
 711 made by the association while the association is under control  
 712 of that lender-unit purchaser.÷

713 (a) If the association operates only one condominium and  
 714 the unit owners other than the developer, a bulk-unit purchaser,  
 715 or a lender-unit purchaser have assumed control of the  
 716 association, or if the unit owners other than the developer, a  
 717 bulk-unit purchaser, or a lender-unit purchaser own at least ~~not~~  
 718 ~~less than~~ 75 percent of the voting interests in the condominium,  
 719 the cancellation shall be by concurrence of the owners of at  
 720 least ~~not less than~~ 75 percent of the voting interests other  
 721 than the voting interests owned by the developer, a bulk-unit  
 722 purchaser, or a lender-unit purchaser. If a grant, reservation,  
 723 or contract is so canceled and the unit owners other than the  
 724 developer or a bulk-unit purchaser have not assumed control of  
 725 the association, the association shall make a new contract or  
 726 otherwise provide for maintenance, management, or operation in  
 727 lieu of the canceled obligation, at the direction of the owners  
 728 of ~~not less than~~ a majority of the voting interests in the

729 condominium other than the voting interests owned by the  
 730 developer, a bulk-unit purchaser, or a lender-unit purchaser.

731 (b) If the association operates more than one condominium  
 732 and the unit owners other than the developer, a bulk-unit  
 733 purchaser, or a lender-unit purchaser have not assumed control  
 734 of the association, and if the unit owners other than the  
 735 developer or a bulk-unit purchaser own at least 75 percent of  
 736 the voting interests in a condominium operated by the  
 737 association, any grant, reservation, or contract for  
 738 maintenance, management, or operation of buildings containing  
 739 the units in that condominium or of improvements used only by  
 740 the unit owners of that condominium may be canceled by  
 741 concurrence of the owners of at least 75 percent of the voting  
 742 interests in the condominium other than the voting interests  
 743 owned by the developer or a bulk-unit purchaser. ~~A~~ ~~no~~ grant,  
 744 reservation, or contract for maintenance, management, or  
 745 operation of recreational areas or any other property serving  
 746 more than one condominium, and operated by more than one  
 747 association, may not be canceled except pursuant to paragraph  
 748 (d).

749 (c) If the association operates more than one condominium  
 750 and the unit owners other than the developer, a bulk-unit  
 751 purchaser, or a lender-unit purchaser have assumed control of  
 752 the association, the cancellation shall be by concurrence of the  
 753 owners of at least ~~not less than~~ 75 percent of the total number  
 754 of voting interests in all condominiums operated by the

PCS for HB 791

ORIGINAL

2015

755 association other than the voting interests owned by the  
756 developer or a bulk-unit purchaser.

757 (d) If the owners of units in a condominium have the right  
758 to use property in common with owners of units in other  
759 condominiums and those condominiums are operated by more than  
760 one association, a ~~no~~ grant, reservation, or contract for  
761 maintenance, management, or operation of the property serving  
762 more than one condominium may not be canceled until the unit  
763 owners other than the developer, a bulk-unit purchaser, or a  
764 lender-unit purchaser have assumed control of all of the  
765 associations operating the condominiums that are to be served by  
766 the recreational area or other property, after which  
767 cancellation may be effected by concurrence of the owners of at  
768 least ~~not less than~~ 75 percent of the total number of voting  
769 interests in those condominiums other than voting interests  
770 owned by the developer, a bulk-unit purchaser, or a lender-unit  
771 purchaser.

772 (2) A ~~Any~~ grant or reservation made by a declaration,  
773 lease, or other document, or a ~~any~~ contract made by the  
774 developer or association before ~~prior to the time when~~ unit  
775 owners other than the developer or a bulk-unit purchaser elect a  
776 majority of the board of administration, which grant,  
777 reservation, or contract requires the association to purchase  
778 condominium property or to lease condominium property to another  
779 party, shall be deemed ratified unless rejected by a majority of  
780 the voting interests of the unit owners other than the developer

Page 30 of 77

PCS for HB 0791

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

V

781 | or a bulk-unit purchaser within 18 months after the unit owners  
 782 | other than the developer or a bulk-unit purchaser elect a  
 783 | majority of the board of administration. A lender-unit purchaser  
 784 | may not vote on cancellation of a grant, reservation, or  
 785 | contract made by the association while the association is under  
 786 | control of that lender-unit purchaser. This subsection does not  
 787 | apply to a ~~any~~ grant or reservation made by a declaration under  
 788 | which ~~whereby~~ persons other than the developer or the  
 789 | developer's or bulk-unit purchaser's heirs, assigns, affiliates,  
 790 | directors, officers, or employees are granted the right to use  
 791 | the condominium property, if so long as such persons are  
 792 | obligated to pay at least, ~~at a minimum~~, a proportionate share  
 793 | of the cost associated with such property.

794 | (3) A ~~Any~~ grant or reservation made by a declaration,  
 795 | lease, or other document, and a ~~any~~ contract made by an  
 796 | association, whether before or after assumption of control of  
 797 | the association by unit owners other than the developer, a bulk-  
 798 | unit purchaser, or a lender-unit purchaser, which ~~that~~ provides  
 799 | for operation, maintenance, or management of a condominium  
 800 | association or property serving the unit owners of a condominium  
 801 | may ~~shall~~ not ~~be in~~ conflict with the powers and duties of the  
 802 | association or the rights of the unit owners as provided in this  
 803 | chapter. This subsection is intended only as a clarification of  
 804 | existing law.

805 | (4) A ~~Any~~ grant or reservation made by a declaration,  
 806 | lease, or other document, and a ~~any~~ contract made by an



PCS for HB 791

ORIGINAL

2015

807 association before ~~prior to~~ assumption of control of the  
808 association by unit owners other than the developer, a bulk-unit  
809 purchaser, or a lender-unit purchaser, must ~~shall~~ be fair and  
810 reasonable.

811 Section 9. Subsections (3), (4), and (5) of section  
812 718.303, Florida Statutes, are amended, and subsection (7) is  
813 added to that section, to read:

814 718.303 Obligations of owners and occupants; remedies.—

815 (3) The association may levy reasonable fines for the  
816 failure of the owner of the unit or its occupant, licensee, or  
817 invitee to comply with any provision of the declaration, the  
818 association bylaws, or reasonable rules of the association. A  
819 fine may not become a lien against a unit. A fine may be levied  
820 by the board on the basis of each day of a continuing violation,  
821 with a single notice and opportunity for hearing before a  
822 committee as provided in paragraph (b). However, the fine may  
823 not exceed \$100 per violation, or \$1,000 in the aggregate.

824 (a) An association may suspend, for a reasonable period of  
825 time, the right of a unit owner, or a unit owner's tenant,  
826 guest, or invitee, to use the common elements, common  
827 facilities, or any other association property for failure to  
828 comply with any provision of the declaration, the association  
829 bylaws, or reasonable rules of the association. This paragraph  
830 does not apply to limited common elements intended to be used  
831 only by that unit, common elements needed to access the unit,  
832 utility services provided to the unit, parking spaces, or

833 elevators.

834 (b) A fine or suspension levied by the board of  
 835 administration may not be imposed unless the board association  
 836 first provides at least 14 days' written notice and an  
 837 opportunity for a hearing to the unit owner and, if applicable,  
 838 its occupant, licensee, or invitee. The hearing must be held  
 839 before a committee of other unit owners who are neither board  
 840 members nor persons residing in a board member's household. The  
 841 role of the committee is limited to determining whether to  
 842 confirm or reject the fine or suspension levied by the board. If  
 843 the committee does not agree, the fine or suspension may not be  
 844 imposed.

845 (4) If a unit owner is more than 90 days delinquent in  
 846 paying a fee, fine, or other monetary obligation due to the  
 847 association, the association may suspend the right of the unit  
 848 owner or the unit's occupant, licensee, or invitee to use common  
 849 elements, common facilities, or any other association property  
 850 until the fee, fine, or other monetary obligation is paid in  
 851 full. This subsection does not apply to limited common elements  
 852 intended to be used only by that unit, common elements needed to  
 853 access the unit, utility services provided to the unit, parking  
 854 spaces, or elevators. The notice and hearing requirements under  
 855 subsection (3) do not apply to suspensions imposed under this  
 856 subsection.

857 (5) An association may suspend the voting rights of a unit  
 858 or member due to nonpayment of any fee, fine, or other monetary

859 obligation due to the association which is more than 90 days  
 860 delinquent. A voting interest or consent right allocated to a  
 861 unit or member which has been suspended by the association shall  
 862 be subtracted from ~~may not be counted towards~~ the total number  
 863 of voting interests in the association, which shall be reduced  
 864 by the number of suspended voting interests when calculating the  
 865 total percentage or number of all voting interests available to  
 866 take or approve any action, and the suspended voting interests  
 867 shall not be considered for any purpose, including, but not  
 868 limited to, the percentage or number of voting interests  
 869 necessary to constitute a quorum, the percentage or number of  
 870 voting interests required to conduct an election, or the  
 871 percentage or number of voting interests required to approve an  
 872 action under this chapter or pursuant to the declaration,  
 873 articles of incorporation, or bylaws. The suspension ends upon  
 874 full payment of all obligations currently due or overdue the  
 875 association. The notice and hearing requirements under  
 876 subsection (3) do not apply to a suspension imposed under this  
 877 subsection.

878 (7) The suspensions permitted by paragraph (3)(a) and  
 879 subsections (4) and (5) apply to a member and, when appropriate,  
 880 the member's tenants, guests, or invitees, even if the  
 881 delinquency or failure that resulted in the suspension arose  
 882 from less than all of the multiple units owned by a member.

883 Section 10. Subsection (1) of section 718.501, Florida  
 884 Statutes, is amended to read:

885 | 718.501 Authority, responsibility, and duties of Division  
 886 | of Florida Condominiums, Timeshares, and Mobile Homes.—

887 | (1) The division may enforce and ensure compliance with  
 888 | ~~the provisions of~~ this chapter and rules relating to the  
 889 | development, construction, sale, lease, ownership, operation,  
 890 | and management of residential condominium units. In performing  
 891 | its duties, the division has complete jurisdiction to  
 892 | investigate complaints and enforce compliance with respect to  
 893 | associations that are still under the control of the developer,  
 894 | the control of a bulk-unit purchaser or lender-unit purchaser,  
 895 | or the control of a bulk assignee or bulk buyer pursuant to part  
 896 | VII of this chapter and complaints against developers, bulk-unit  
 897 | purchasers, lender-unit purchasers, bulk assignees, or bulk  
 898 | buyers involving improper turnover or failure to turnover,  
 899 | pursuant to s. 718.301. However, after turnover has occurred,  
 900 | the division has jurisdiction to investigate only complaints  
 901 | related ~~only~~ to financial issues, elections, and unit owner  
 902 | access to association records pursuant to s. 718.111(12).

903 | (a)1. The division may make necessary public or private  
 904 | investigations within or outside this state to determine whether  
 905 | any person has violated this chapter or any rule or order  
 906 | hereunder, to aid in the enforcement of this chapter, or to aid  
 907 | in the adoption of rules or forms.

908 | 2. The division may submit any official written report,  
 909 | worksheet, or other related paper, or a duly certified copy  
 910 | thereof, compiled, prepared, drafted, or otherwise made by and

911 | duly authenticated by a financial examiner or analyst to be  
 912 | admitted as competent evidence in any hearing in which the  
 913 | financial examiner or analyst is available for cross-examination  
 914 | and attests under oath that such documents were prepared as a  
 915 | result of an examination or inspection conducted pursuant to  
 916 | this chapter.

917 |         (b) The division may require or permit any person to file  
 918 | a statement in writing, under oath or otherwise, as the division  
 919 | determines, as to the facts and circumstances concerning a  
 920 | matter to be investigated.

921 |         (c) For the purpose of any investigation under this  
 922 | chapter, the division director or any officer or employee  
 923 | designated by the division director may administer oaths or  
 924 | affirmations, subpoena witnesses and compel their attendance,  
 925 | take evidence, and require the production of any matter that  
 926 | ~~which~~ is relevant to the investigation, including the existence,  
 927 | description, nature, custody, condition, and location of any  
 928 | books, documents, or other tangible things and the identity and  
 929 | location of persons having knowledge of relevant facts or any  
 930 | other matter reasonably calculated to lead to the discovery of  
 931 | material evidence. Upon the failure of ~~by~~ a person to obey a  
 932 | subpoena or to answer questions propounded by the investigating  
 933 | officer and upon reasonable notice to all affected persons, the  
 934 | division may apply to the circuit court for an order compelling  
 935 | compliance.

936 |         (d) Notwithstanding any remedies available to unit owners

937 and associations, if the division has reasonable cause to  
 938 believe that a violation of ~~any provision of~~ this chapter or a  
 939 related rule has occurred, the division may institute  
 940 enforcement proceedings in its own name against any developer,  
 941 bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk  
 942 buyer, association, officer, or member of the board of  
 943 administration, or his or her ~~its~~ assignees or agents, as  
 944 follows:

945 1. The division may permit a person whose conduct or  
 946 actions may be under investigation to waive formal proceedings  
 947 and enter into a consent proceeding under which ~~whereby~~ orders,  
 948 rules, or letters of censure or warning, whether formal or  
 949 informal, may be entered against the person.

950 2. The division may issue an order requiring the  
 951 developer, bulk-unit purchaser, lender-unit purchaser, bulk  
 952 assignee, bulk buyer, association, developer-designated officer,  
 953 or developer-designated member of the board of administration,  
 954 or his or her ~~developer-designated~~ assignees or agents, the ~~bulk~~  
 955 ~~assignee-designated assignees or agents, bulk buyer-designated~~  
 956 ~~assignees or agents,~~ community association manager, or the  
 957 ~~community association~~ management firm to cease and desist from  
 958 the unlawful practice and take such affirmative action as in the  
 959 judgment of the division to carry out the purposes of this  
 960 chapter. If the division finds that a developer, bulk-unit  
 961 purchaser, lender-unit purchaser, bulk assignee, bulk buyer,  
 962 association, officer, or member of the board of administration,

963 or his or her ~~its~~ assignees or agents, is violating or is about  
 964 to violate ~~any provision of~~ this chapter, any rule adopted or  
 965 order issued by the division, or any written agreement entered  
 966 into with the division, ~~and~~ the violation presents an immediate  
 967 danger to the public requiring an immediate final order, it may  
 968 issue an emergency cease and desist order reciting with  
 969 particularity the facts underlying such findings. The emergency  
 970 cease and desist order is effective for 90 days. If the division  
 971 begins nonemergency cease and desist proceedings, the emergency  
 972 cease and desist order remains effective until the conclusion of  
 973 the proceedings under ss. 120.569 and 120.57.

974 3. If a developer, bulk-unit purchaser, lender-unit  
 975 purchaser, bulk assignee, or bulk buyer, ~~fails to pay any~~  
 976 restitution determined by the division to be owed and, ~~plus~~ any  
 977 accrued interest charged at the highest rate permitted by law,  
 978 within 30 days after expiration of any appellate time period of  
 979 a final order requiring payment of restitution or the conclusion  
 980 of any appeal thereof, whichever is later, the division shall  
 981 ~~must~~ bring an action in circuit or county court on behalf of any  
 982 association, class of unit owners, lessees, or purchasers for  
 983 restitution, declaratory relief, injunctive relief, or any other  
 984 available remedy. The division may also temporarily revoke its  
 985 acceptance of the filing for the developer, bulk-unit purchaser,  
 986 or lender-unit purchaser, to which the restitution relates until  
 987 payment of restitution is made.

988 4. The division may petition the court for appointment of

989 a receiver or conservator who, ~~if appointed, the receiver or~~  
 990 ~~conservator~~ may take action to implement the court order to  
 991 ensure the performance of the order and to remedy any breach  
 992 thereof. In addition to all other means provided by law for the  
 993 enforcement of an injunction or temporary restraining order, the  
 994 circuit court may impound or sequester the property of a party  
 995 defendant, including books, papers, documents, and related  
 996 records, and allow the examination and use of the property by  
 997 the division and a court-appointed receiver or conservator.

998         5. The division may apply to the circuit court for an  
 999 order of restitution under which ~~whereby~~ the defendant in an  
 1000 action brought pursuant to subparagraph 4. is ordered to make  
 1001 restitution of those sums shown by the division to have been  
 1002 obtained by the defendant in violation of this chapter. At the  
 1003 option of the court, such restitution is payable to the  
 1004 conservator or receiver appointed pursuant to subparagraph 4. or  
 1005 directly to the persons whose funds or assets were obtained in  
 1006 violation of this chapter.

1007         6. The division may impose a civil penalty against a  
 1008 developer, bulk-unit purchaser, lender-unit purchaser, bulk  
 1009 assignee, ~~or~~ bulk buyer, or association, or its assignee or  
 1010 agent, for a ~~any~~ violation of this chapter or a related rule.  
 1011 The division may impose a civil penalty individually against an  
 1012 officer or board member who willfully and knowingly violates a  
 1013 ~~provision of~~ this chapter, an adopted rule, or a final order of  
 1014 the division; may order the removal of such individual as an



1015 officer or from the board of administration or as an officer of  
 1016 the association; and may prohibit such individual from serving  
 1017 as an officer or on the board of a community association for a  
 1018 period of time. The term "willfully and knowingly" means that  
 1019 the division informed the officer or board member that his or  
 1020 her action or intended action violates this chapter, a rule  
 1021 adopted under this chapter, or a final order of the division and  
 1022 that the officer or board member refused to comply with ~~the~~  
 1023 ~~requirements of~~ this chapter, a rule adopted under this chapter,  
 1024 or a final order of the division. ~~The division,~~ Before  
 1025 initiating formal agency action under chapter 120, the division  
 1026 must afford the officer or board member an opportunity to  
 1027 voluntarily comply, and an officer or board member who complies  
 1028 within 10 days is not subject to a civil penalty. A penalty may  
 1029 be imposed on the basis of each day of continuing violation, but  
 1030 the penalty for any offense may not exceed \$5,000. ~~By January 1,~~  
 1031 ~~1998,~~ The division shall adopt, by rule, penalty guidelines  
 1032 applicable to possible violations or to categories of violations  
 1033 of this chapter or rules adopted by the division. The guidelines  
 1034 must specify a meaningful range of civil penalties for each such  
 1035 violation of the statute and rules and must be based upon the  
 1036 harm caused by the violation, the repetition of the violation,  
 1037 and upon such other factors deemed relevant by the division. ~~For~~  
 1038 ~~example,~~ The division may consider whether the violations were  
 1039 committed by a developer, bulk-unit purchaser, lender-unit  
 1040 purchaser, bulk assignee, or bulk buyer, or owner-controlled

1041 association, the size of the association, and other factors. The  
 1042 guidelines must designate the possible mitigating or aggravating  
 1043 circumstances that justify a departure from the range of  
 1044 penalties provided by the rules. It is the legislative intent  
 1045 that minor violations be distinguished from those that ~~which~~  
 1046 endanger the health, safety, or welfare of ~~the~~ condominium  
 1047 residents or other persons and that such guidelines provide  
 1048 reasonable and meaningful notice to the public of likely  
 1049 penalties that may be imposed for proscribed conduct. This  
 1050 subsection does not limit the ability of the division to  
 1051 informally dispose of administrative actions or complaints by  
 1052 stipulation, agreed settlement, or consent order. All amounts  
 1053 collected shall be deposited with the Chief Financial Officer to  
 1054 the credit of the Division of Florida Condominiums, Timeshares,  
 1055 and Mobile Homes Trust Fund. If a developer, bulk-unit  
 1056 purchaser, lender-unit purchaser, bulk assignee, or bulk buyer  
 1057 fails to pay the civil penalty and the amount deemed to be owed  
 1058 to the association, the division shall issue an order directing  
 1059 that such developer, bulk-unit purchaser, lender-unit purchaser,  
 1060 bulk assignee, or bulk buyer cease and desist from further  
 1061 operation until such time as the civil penalty is paid or may  
 1062 pursue enforcement of the penalty in a court of competent  
 1063 jurisdiction. If an association fails to pay the civil penalty,  
 1064 the division shall pursue enforcement in a court of competent  
 1065 jurisdiction, and the order imposing the civil penalty or the  
 1066 cease and desist order is not effective until 20 days after the

1067 date of such order. Any action commenced by the division shall  
 1068 be brought in the county in which the division has its executive  
 1069 offices or in the county where the violation occurred.

1070 7. If a unit owner presents the division with proof that  
 1071 the unit owner has requested access to official records in  
 1072 writing by certified mail, and that after 10 days the unit owner  
 1073 again made the same request for access to official records in  
 1074 writing by certified mail, and that more than 10 days has  
 1075 elapsed since the second request and the association has still  
 1076 failed or refused to provide access to official records as  
 1077 required by this chapter, the division shall issue a subpoena  
 1078 requiring production of the requested records where the records  
 1079 are kept pursuant to s. 718.112.

1080 8. In addition to subparagraph 6., the division may seek  
 1081 the imposition of a civil penalty through the circuit court for  
 1082 any violation for which the division may issue a notice to show  
 1083 cause under paragraph (r). The civil penalty shall be at least  
 1084 \$500 but no more than \$5,000 for each violation. The court may  
 1085 also award to the prevailing party court costs and reasonable  
 1086 attorney ~~attorney's~~ fees and, if the division prevails, may also  
 1087 award reasonable costs of investigation.

1088 (e) The division may prepare and disseminate a prospectus  
 1089 and other information to assist prospective owners, purchasers,  
 1090 lessees, and developers of residential condominiums in assessing  
 1091 the rights, privileges, and duties pertaining thereto.

1092 (f) The division may adopt rules to administer and enforce

1093 | ~~the provisions of~~ this chapter.

1094 |       (g) The division shall establish procedures for providing  
 1095 | notice to an association and the developer, bulk-unit purchaser,  
 1096 | lender-unit purchaser, bulk assignee, or bulk buyer during the  
 1097 | period in which the developer, bulk-unit purchaser, lender-unit  
 1098 | purchaser, bulk assignee, or bulk buyer controls the association  
 1099 | if the division is considering the issuance of a declaratory  
 1100 | statement with respect to the declaration of condominium or any  
 1101 | related document governing such condominium community.

1102 |       (h) The division shall furnish each association that pays  
 1103 | the fees required by paragraph (2)(a) a copy of this chapter, as  
 1104 | amended, and the rules adopted thereto on an annual basis.

1105 |       (i) The division shall annually provide each association  
 1106 | with a summary of declaratory statements and formal legal  
 1107 | opinions relating to the operations of condominiums which were  
 1108 | rendered by the division during the previous year.

1109 |       (j) The division shall provide training and educational  
 1110 | programs for condominium association board members and unit  
 1111 | owners. The training may, at ~~in~~ the division's discretion,  
 1112 | include web-based electronic media, and live training and  
 1113 | seminars in various locations throughout the state. The division  
 1114 | may review and approve education and training programs for board  
 1115 | members and unit owners offered by providers, ~~and~~ shall maintain  
 1116 | a current list of approved programs and providers, and shall  
 1117 | make such list available to board members and unit owners in a  
 1118 | reasonable and cost-effective manner.

1119 (k) The division shall maintain a toll-free telephone  
 1120 number accessible to condominium unit owners.

1121 (l) The division shall develop a program to certify both  
 1122 volunteer and paid mediators to provide mediation of condominium  
 1123 disputes. Upon request, the division shall provide, ~~upon~~  
 1124 ~~request,~~ a list of such mediators to any association, unit  
 1125 owner, or other participant in arbitration proceedings under s.  
 1126 718.1255 requesting a copy of the list. The division shall  
 1127 include on the list of volunteer mediators only the names of  
 1128 individuals ~~persons~~ who have received at least 20 hours of  
 1129 training in mediation techniques or who have mediated at least  
 1130 20 disputes. In order to become initially certified by the  
 1131 division, paid mediators must be certified by the Supreme Court  
 1132 to mediate court cases in county or circuit courts. However, the  
 1133 division may adopt, by rule, additional factors for the  
 1134 certification of paid mediators, which must be related to  
 1135 experience, education, or background. In order to continue to be  
 1136 certified, an individual ~~Any person~~ initially certified as a  
 1137 paid mediator by the division must, ~~in order to continue to be~~  
 1138 ~~certified,~~ comply with the factors or requirements adopted by  
 1139 rule.

1140 (m) If a complaint is made, the division shall ~~must~~  
 1141 conduct its inquiry with due regard for the interests of the  
 1142 affected parties. Within 30 days after receipt of a complaint,  
 1143 the division shall acknowledge the complaint in writing and  
 1144 notify the complainant as to whether the complaint is within the

PCS for HB 791

ORIGINAL

2015

1145 jurisdiction of the division and whether additional information  
1146 is needed by the division from the complainant. The division  
1147 shall conduct its investigation and, within 90 days after  
1148 receipt of the original complaint or of timely requested  
1149 additional information, take action upon the complaint. However,  
1150 the failure to complete the investigation within 90 days does  
1151 not prevent the division from continuing the investigation,  
1152 accepting or considering evidence obtained or received after 90  
1153 days, or taking administrative action if reasonable cause exists  
1154 to believe that a violation of this chapter or a rule has  
1155 occurred. If an investigation is not completed within the time  
1156 limits established in this paragraph, the division shall, on a  
1157 monthly basis, notify the complainant in writing of the status  
1158 of the investigation. When reporting its action to the  
1159 complainant, the division shall inform the complainant of any  
1160 right to a hearing pursuant to ss. 120.569 and 120.57.

1161 (n) Condominium association directors, officers, and  
1162 employees; condominium developers; bulk-unit purchasers, lender-  
1163 unit purchasers, bulk assignees, bulk buyers, and community  
1164 association managers; and community association management firms  
1165 have an ongoing duty to reasonably cooperate with the division  
1166 in any investigation pursuant to this section. The division  
1167 shall refer to local law enforcement authorities any person who  
1168 ~~whom~~ the division believes has altered, destroyed, concealed, or  
1169 removed any record, document, or thing required to be kept or  
1170 maintained by this chapter with the purpose to impair its verity

Page 45 of 77

PCS for HB 0791

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

V

1171 or availability in the department's investigation.

1172 (o) The division may:

1173 1. Contract with agencies in this state or other  
1174 jurisdictions to perform investigative functions; or

1175 2. Accept grants-in-aid from any source.

1176 (p) The division shall cooperate with similar agencies in  
1177 other jurisdictions to establish uniform filing procedures and  
1178 forms, public offering statements, advertising standards, and  
1179 rules and common administrative practices.

1180 (q) The division shall consider notice to a developer,  
1181 bulk-unit purchaser, lender-unit purchaser, bulk assignee, or  
1182 bulk buyer to be complete when it is delivered to the address of  
1183 the developer, bulk-unit purchaser, lender-unit purchaser, bulk  
1184 assignee, or bulk buyer currently on file with the division.

1185 (r) In addition to its enforcement authority, the division  
1186 may issue a notice to show cause, which must provide for a  
1187 hearing, upon written request, in accordance with chapter 120.

1188 (s) The division shall submit to the Governor, the  
1189 President of the Senate, the Speaker of the House of  
1190 Representatives, and the chairs of the legislative  
1191 appropriations committees an annual report that includes, but  
1192 need not be limited to, the number of training programs provided  
1193 for condominium association board members and unit owners;; the  
1194 number of complaints received, ; by type;; the number and percent  
1195 of complaints acknowledged in writing within 30 days and the  
1196 number and percent of investigations acted upon within 90 days

PCS for HB 791

ORIGINAL

2015

1197 in accordance with paragraph (m);~~7~~ and the number of  
1198 investigations exceeding the 90-day requirement. The annual  
1199 report must also include an evaluation of the division's core  
1200 business processes and make recommendations for improvements,  
1201 including statutory changes. The report shall be submitted by  
1202 September 30 following the end of the fiscal year.

1203 Section 11. Section 718.709, Florida Statutes, is created  
1204 to read:

1205 718.709 Applicability.—Sections 718.701-718.708, relating  
1206 to the Distressed Condominium Relief Act, apply to title to  
1207 units acquired on or after July 1, 2010, but before July 1,  
1208 2016.

1209 Section 12. Part VIII of chapter 718, Florida Statutes,  
1210 consisting of sections 718.801-718.812, is created to read:

1211 PART VIII

1212 BULK-UNIT PURCHASERS AND LENDER-UNIT PURCHASERS

1213 718.801 Legislative intent.—The Legislature declares that  
1214 it is the public policy of this state to protect the interests  
1215 of developers, lenders, unit owners, and condominium  
1216 associations with regard to bulk-unit purchasers or lender-unit  
1217 purchasers of condominium units and that there is a need to  
1218 balance such interests by limiting the applicability of the  
1219 Distressed Condominium Relief Act. Notwithstanding the  
1220 limitation, the Distressed Condominium Relief Act applies to  
1221 title acquired on or after July 1, 2010, but before July 1,  
1222 2016.



1223        718.802 Definitions.—As used in this part:

1224        (1) "Bulk-unit purchaser" means a person who acquires

1225 title to the greater of at least eight units or 20 percent of

1226 the units that ultimately will be operated by the same

1227 association, as provided in the declaration, articles of

1228 incorporation, or bylaws as originally recorded. Multiple bulk-

1229 unit purchasers may be members of an association simultaneously

1230 or successively. There may be one or more bulk-unit purchasers

1231 while the developer still owns units operated by the

1232 association. The term does not include a lender-unit purchaser.

1233 Further, the term does not include an acquirer of units if any

1234 transfer of title to the acquirer is made:

1235        (a) With intent to defraud or materially harm a purchaser,

1236 a unit owner, or the association;

1237        (b) Where the acquirer is a person or limited liability

1238 company that would be an insider, as defined in s. 726.102, of

1239 the bulk-unit purchaser or of the developer; or

1240        (c) As a fraudulent transfer under chapter 726.

1241        (2) "Bulk assignee" means a person who is not a bulk buyer

1242 and who:

1243        (a) Acquires more than seven condominium parcels in a

1244 single condominium;

1245        (b) Receives an assignment of any of the developer rights,

1246 other than or in addition to those rights described in

1247 subsection (3), as set forth in the declaration of condominium

1248 or this chapter:

1249        1. By a written instrument recorded as part of or as an  
 1250 exhibit of the deed;  
 1251        2. By a separate instrument recorded in the public records  
 1252 of the county in which the condominium is located; or  
 1253        3. Pursuant to a final judgment or certificate of title  
 1254 issued in favor of a purchaser at a foreclosure sale; and  
 1255        (c) Acquired condominium parcels on or after July 1, 2010,  
 1256 but before July 1, 2016. The date of such acquisition shall be  
 1257 determined by the date of recoding a deed or other instrument of  
 1258 conveyance for such parcels in the public records of the county  
 1259 in which the condominium is located, or by the date of issuing a  
 1260 certificate of title in a foreclosure proceeding with respect to  
 1261 such condominium parcels.  
 1262  
 1263 A mortgagee or its assignee may not be deemed a bulk assignee or  
 1264 developer by reason of the acquisition of condominium units and  
 1265 receipt of an assignment of some or all of a developer's rights  
 1266 unless the mortgage or its assignee exercises any of the  
 1267 developer rights other than those described in subsection (3).  
 1268        (3) "Bulk buyer" means a person who acquired condominium  
 1269 parcels on or after July 1, 2010, but before July 1, 2016, and  
 1270 the date of acquisition shall be determined in the same manner  
 1271 as in subsection (2). Further, the term means a person who  
 1272 acquires more than seven condominium parcels in a single  
 1273 condominium but who does not receive an assignment of any  
 1274 developer rights or receives only some or all of the following

PCS for HB 791

ORIGINAL

2015

1275 rights:

1276 (a) The right to conduct sales, leasing, and marketing  
1277 activities within the condominium.

1278 (b) The right to be exempt from the payment of working  
1279 capital contributions to the condominium association arising out  
1280 of, or in connection with, the bulk buyer's acquisition of the  
1281 units.

1282 (c) The right to be exempt from any rights of first  
1283 refusal which may be held by the condominium association and  
1284 would otherwise be applicable to subsequent transfers of title  
1285 from the bulk buyer to a third-party purchaser concerning one or  
1286 more units.

1287 (4) "Lender-unit purchaser" means a person, or the  
1288 person's successors, assigns, or wholly owned subsidiaries, who  
1289 holds a mortgage from a developer or from a bulk-unit purchaser  
1290 on the greater of at least eight units or 20 percent of the  
1291 units that, as provided in the declaration, articles of  
1292 incorporation, or bylaws as originally recorded, ultimately will  
1293 be operated by the same association; who subsequently obtains  
1294 title to such units through foreclosure or deed in lieu of  
1295 foreclosure; and who makes the election to become a lender-unit  
1296 purchaser pursuant to 718.808(4). However, a mortgagee or his or  
1297 her wholly owned subsidiary that acquires and sells units to one  
1298 or more bulk-unit purchasers is not a developer or a lender-unit  
1299 purchaser with respect to the sale.

1300 718.803 Exercise of rights.-

Page 50 of 77

PCS for HB 0791

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

V

1301       (1) A bulk-unit purchaser may exercise only the following  
 1302 developer rights, provided such rights are contained in the  
 1303 declaration:

1304       (a) The right to conduct sales, leasing, and marketing  
 1305 activities within the condominium, including the use of the  
 1306 sales and leasing office.

1307       (b) The right to assign limited common elements and use  
 1308 rights to common elements and association property which were  
 1309 not assigned before the bulk-unit purchaser acquired title to  
 1310 the units. Such rights may include, without limitation, the  
 1311 rights to garages, parking spaces, storage areas, and cabanas.  
 1312 If there is more than one bulk-unit purchaser, this right must  
 1313 be established in a written assignment from the developer which  
 1314 specifies the bulk-unit purchaser who has such a right as to  
 1315 specified limited common elements, common elements, and  
 1316 association property.

1317       (c) For a phase condominium, the right to add phases.

1318       (2) If the initial purchaser of a unit from the developer  
 1319 is required to make a working capital contribution to the  
 1320 association, a bulk-unit purchaser shall pay a working capital  
 1321 contribution to the association, which must be calculated in the  
 1322 same manner for each unit acquired, upon the earlier of:

1323       (a) Sale of a unit by the bulk-unit purchaser to a third  
 1324 party other than the bulk-unit purchaser; or

1325       (b) Five years from the date of acquisition of title to a  
 1326 unit by the bulk-unit purchaser.

PCS for HB 791

ORIGINAL

2015

1327 (3) If a bulk-unit purchaser exercises developer rights  
1328 other than those specified in subsection (1), he or she is no  
1329 longer deemed to be a bulk-unit purchaser, and this part does  
1330 not apply to such person.

1331 (4) Except as set forth in this part, a lender-unit  
1332 purchaser may exercise any developer rights that the lender-unit  
1333 purchaser acquires.

1334 718.804 Compliance.—A bulk-unit purchaser and a lender-  
1335 unit purchaser shall comply with all applicable requirements of  
1336 s. 718.202 and part V of this chapter in connection with any  
1337 units that they own or sell.

1338 718.805 Voting rights.—

1339 (1) For the first 2 fiscal years following the first  
1340 conveyance of a unit to a bulk-unit purchaser or lender-unit  
1341 purchaser, the bulk-unit purchaser or lender-unit purchaser may  
1342 vote the voting interests allocated to his or her units to waive  
1343 reserves or reduce the funding of reserves. After these 2 fiscal  
1344 years, the bulk-unit purchaser or lender-unit purchaser may not  
1345 vote his or her voting interests to waive reserves or reduce the  
1346 funding of reserves until the bulk-unit purchaser or lender-unit  
1347 purchaser holds less than a majority of the voting interests in  
1348 the association.

1349 (2) A bulk-unit purchaser or lender-unit purchaser may not  
1350 transfer his or her right to vote to waive reserves or reduce  
1351 the funding of reserves to other bulk-unit purchasers or lender-  
1352 unit purchasers to extend the time period in subsection (1).

1353 718.806 Assessment liability; election of directors.-  
 1354 (1) BULK-UNIT PURCHASER ASSESSMENT LIABILITY.-A bulk-unit  
 1355 purchaser is liable for all assessments on his or her units  
 1356 which become due while the bulk-unit purchaser holds title to  
 1357 such units. Additionally, the bulk-unit purchaser is jointly and  
 1358 severally liable with the previous owner for all unpaid regular  
 1359 periodic assessments and special assessments which became due  
 1360 before the acquisition of title, for all other monetary  
 1361 obligations accrued which are secured by the association's lien,  
 1362 and for all costs advanced by the association for the  
 1363 maintenance and repair of the units acquired by the bulk-unit  
 1364 purchaser.

1365 (2) LENDER-UNIT PURCHASER ASSESSMENT LIABILITY.-The  
 1366 liability of a lender-unit purchaser or his or her successors or  
 1367 assignees for the units that the lender-unit purchaser owns is  
 1368 limited to the lesser of:

1369 (a) The units' unpaid regular periodic assessments that  
 1370 accrued or became due during the 12 months immediately preceding  
 1371 the lender-unit purchaser's acquisition of title and for which  
 1372 payment in full has not been received by the association; or

1373 (b) One percent of the original mortgage debt.

1374  
 1375 The lender-unit purchaser acquiring title must comply with s.  
 1376 718.116(1)(c).

1377 (3) DIRECTOR ELECTED BY BULK-UNIT PURCHASER.-A director  
 1378 who has been elected or appointed by a bulk-unit purchaser is

1379 automatically suspended from board service for 30 days following  
 1380 the failure of the bulk-unit purchaser to timely pay monetary  
 1381 obligations on a unit the bulk-unit purchaser owns. The  
 1382 remaining directors may temporarily fill the vacancy created by  
 1383 the suspension. Once the bulk-unit purchaser has cured all  
 1384 outstanding delinquencies on the unit, the suspended director  
 1385 shall replace the temporary appointee and resume service on the  
 1386 board for the unexpired term.

1387 718.807 Amendments and material alterations.-

1388 (1) The following amendments or alterations may not go  
 1389 into effect unless approved by a majority vote of unit owners  
 1390 other than the developer, a bulk-unit purchaser, or a lender-  
 1391 unit purchaser:

1392 (a) An amendment described in s. 718.110(4) or (8).

1393 (b) An amendment creating, changing, or terminating  
 1394 leasing restrictions.

1395 (c) An amendment of the declaration pertaining to the  
 1396 condominium's status as housing for older persons.

1397 (d) An amendment pursuant to s. 718.110(14) or an  
 1398 amendment that otherwise reclassifies a portion of the common  
 1399 elements as a limited common element or that authorizes the  
 1400 association to change the limited common elements assigned to  
 1401 any unit.

1402 (e) Material alterations or substantial additions to the  
 1403 common elements or association property any time one of the  
 1404 following owns a percentage of voting interests equal to or

PCS for HB 791

ORIGINAL

2015

1405 greater than the percentage required to approve the amendment:

1406 1. A bulk-unit purchaser;

1407 2. A lender-unit purchaser;

1408 3. The developer and a bulk-unit purchaser;

1409 4. The developer and a lender-unit purchaser; or

1410 5. A bulk-unit purchaser and a lender-unit purchaser.

1411 (2) Notwithstanding subsection (1), consent of the  
1412 developer, a bulk-unit purchaser, or a lender-unit purchaser is  
1413 required for an amendment that would otherwise require the  
1414 approval of such voting interests based upon the requirements of  
1415 the declaration, articles of incorporation, or bylaws or s.  
1416 718.110 or s. 718.113.

1417 718.808 Warranties and disclosures.-

1418 (1) As the seller, a bulk-unit purchaser or lender-unit  
1419 purchaser is deemed to have granted an implied warranty of  
1420 fitness and merchantability to a purchaser of each unit sold for  
1421 a period of 3 years, which begins on the date of the completion  
1422 of repairs or improvements that the bulk-unit purchaser or  
1423 lender-unit purchaser makes to the unit, common elements, or  
1424 limited common elements. The bulk-unit purchaser or lender-unit  
1425 purchaser is not deemed to have granted a warranty on  
1426 improvements, repairs, or alterations to the condominium which  
1427 he or she did not undertake.

1428 (2) The statute of limitations in s. 718.203 is tolled  
1429 while the bulk-unit purchaser begins the process of appointing  
1430 or electing a majority of the board of administration.

Page 55 of 77

PCS for HB 0791

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

V



1431 (3) As the seller, the bulk-unit purchaser shall include  
 1432 the following disclosure to purchasers in conspicuous type on  
 1433 the first page of the sales contract:

1434  
 1435 SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.  
 1436 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE  
 1437 UNDER THE CONDOMINIUM ACT.

1438  
 1439 (4) A mortgagee who acquires units may elect to become a  
 1440 lender-unit purchaser by providing written notice of the  
 1441 election to the association addressed to the registered agent at  
 1442 the address specified in the records of the Department of State.  
 1443 The notice shall be delivered within the time period ending upon  
 1444 the earliest of:

1445 (a) The date on which the mortgagee exercises any  
 1446 developer rights other than the developer rights described in s.  
 1447 718.803(1)(a);

1448 (b) Before the sale of a unit by the mortgagee; or

1449 (c) One hundred eighty days after the recording of the  
 1450 certificate of title or of the deed in lieu of foreclosure if  
 1451 the mortgagee acquired the units by foreclosure or by deed in  
 1452 lieu of foreclosure.

1453 (5) As the seller, the lender-unit purchaser shall include  
 1454 the following disclosure to purchasers in conspicuous type on  
 1455 the first page of the sales contract:

1456

1457 SELLER IS A LENDER-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.  
 1458 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE  
 1459 UNDER THE CONDOMINIUM ACT. SELLER TOOK TITLE TO THE UNIT(S)  
 1460 BEING SOLD TO PURCHASER BY FORECLOSURE OR DEED IN LIEU OF  
 1461 FORECLOSURE.

1462  
 1463 (6) (a) At or before the signing of a contract to sell a  
 1464 unit, the bulk-unit purchaser and the lender-unit purchaser must  
 1465 provide a condition report that complies with s. 718.616(2) and  
 1466 (3) and this section to the prospective purchaser and must  
 1467 obtain verification of delivery of such condition report. A  
 1468 condition report is not required in connection with a sale to a  
 1469 bulk-unit purchaser or in connection with a deed in lieu of  
 1470 foreclosure to a lender-unit purchaser. A mortgagee is not  
 1471 required to deliver to a bulk-unit purchaser a condition report  
 1472 even if the mortgagee acquires and transfers developer rights to  
 1473 such bulk-unit purchaser.

1474 (b) The condition report must include a reasonably  
 1475 detailed description of the repairs or replacements necessary to  
 1476 cure defective construction identified in the condition report.

1477 (c) If, during the course of preparing the condition  
 1478 report, the architect or engineer becomes aware of a component  
 1479 that violates an applicable building code or federal or state  
 1480 law or that deviates from the building plans approved by the  
 1481 permitting authority, the architect or engineer shall disclose  
 1482 such information in the condition report. The architect or

1483 engineer shall make written inquiry to the applicable local  
 1484 government authority of any building code violations and shall  
 1485 include in the condition report any of the authority's responses  
 1486 or its failure to respond.

1487 (d) The condition report shall be prepared before the  
 1488 bulk-unit purchaser or the lender-unit purchaser enters into his  
 1489 or her first sales contract, but the condition report may not be  
 1490 prepared more than 6 months before the first sales contract is  
 1491 agreed upon. If the bulk-unit purchaser or lender-unit purchaser  
 1492 remains engaged in selling units, the condition report shall be  
 1493 updated no later than 1 year after the closing of the first  
 1494 sales contract and each year thereafter.

1495 (e) If a bulk-unit purchaser or lender-unit purchaser  
 1496 fails to provide the condition report in accordance with this  
 1497 section, the bulk-unit purchaser is deemed to grant implied  
 1498 warranties of fitness and merchantability which are not limited  
 1499 to the construction, improvements, or repairs that he or she  
 1500 undertakes to the units, common elements, or limited common  
 1501 elements.

1502 718.809 Joint and several liability.—For purposes of this  
 1503 chapter, if there are multiple bulk-unit purchasers within the  
 1504 same association, the units owned by the multiple bulk-unit  
 1505 purchasers and the rights of the bulk-unit purchasers shall be  
 1506 aggregated as if there were only one bulk-unit purchaser. Each  
 1507 bulk-unit purchaser is jointly and severally liable with his or  
 1508 her predecessor bulk-unit purchasers for compliance with this

1509 chapter.

1510 718.810 Construction disputes.—A board of administration  
 1511 composed of a majority of directors elected or appointed by a  
 1512 bulk-unit purchaser may not resolve a construction dispute that  
 1513 is subject to chapter 558 unless such resolution is approved by  
 1514 a majority of the voting interests of the unit owners other than  
 1515 the developer and a bulk-unit purchaser.

1516 718.811 Noncompliance.—A bulk-unit purchaser or a lender-  
 1517 unit purchaser who fails to substantially comply with the  
 1518 requirements of this chapter pertaining to the obligations and  
 1519 rights of bulk-unit purchasers and lender-unit purchasers  
 1520 forfeits all protections or exemptions provided under the  
 1521 Condominium Act.

1522 718.812 Documents to be delivered upon turnover.—If a  
 1523 bulk-unit purchaser elects a majority of the board of  
 1524 administration and, thereafter, the unit owners other than the  
 1525 bulk-unit purchaser elect a majority of the board of  
 1526 administration, the bulk-unit purchaser must deliver all of the  
 1527 items specified in s. 718.301(4) to the association. However,  
 1528 the bulk-unit purchaser is not required to deliver items that  
 1529 were never in the possession of the bulk-unit purchaser. In  
 1530 conjunction with the acquisition of units, the bulk-unit  
 1531 purchaser shall undertake a good faith effort to obtain the  
 1532 items specified in s. 718.301(4) which must be delivered to the  
 1533 association. If the bulk-unit purchaser cannot obtain such  
 1534 items, the bulk-unit purchaser must deliver a certificate in

1535 writing to the association which names or describes items that  
 1536 were not obtainable by the bulk-unit purchaser and which  
 1537 describes the good faith efforts that were undertaken to obtain  
 1538 the items. Delivery of the certificate relieves the bulk-unit  
 1539 purchaser of his or her responsibility under s. 718.301 to  
 1540 deliver the documents and materials referenced in the  
 1541 certificate. The responsibility of the bulk-unit purchaser to  
 1542 conduct the audit required by s. 718.301(4)(c) begins on the  
 1543 date the bulk-unit purchaser elects or appoints a majority of  
 1544 the members of the board of administration and ends on the date  
 1545 the bulk-unit purchaser no longer controls the board.

1546 Section 13. Paragraph (a) of subsection (2) of section  
 1547 719.104, Florida Statutes, is amended to read:

1548 719.104 Cooperatives; access to units; records; financial  
 1549 reports; assessments; purchase of leases.-

1550 (2) OFFICIAL RECORDS.-

1551 (a) From the inception of the association, the association  
 1552 shall maintain a copy of each of the following, where  
 1553 applicable, which shall constitute the official records of the  
 1554 association:

1555 1. The plans, permits, warranties, and other items  
 1556 provided by the developer pursuant to s. 719.301(4).

1557 2. A photocopy of the cooperative documents.

1558 3. A copy of the current rules of the association.

1559 4. A book or books containing the minutes of all meetings  
 1560 of the association, of the board of directors, and of the unit

1561 owners, which minutes shall be retained for a period of not less  
 1562 than 7 years.

1563 5. A current roster of all unit owners and their mailing  
 1564 addresses, unit identifications, voting certifications, and, if  
 1565 known, telephone numbers. The association shall also maintain  
 1566 the electronic mailing addresses and the numbers designated by  
 1567 unit owners for receiving notice sent by electronic transmission  
 1568 of those unit owners consenting to receive notice by electronic  
 1569 transmission. The electronic mailing addresses and numbers  
 1570 provided by unit owners to receive notice by electronic  
 1571 transmission shall be removed from association records when  
 1572 consent to receive notice by electronic transmission is revoked.  
 1573 However, the association is not liable for an erroneous  
 1574 disclosure of the electronic mail address or the number for  
 1575 receiving electronic transmission of notices.

1576 6. All current insurance policies of the association.

1577 7. A current copy of any management agreement, lease, or  
 1578 other contract to which the association is a party or under  
 1579 which the association or the unit owners have an obligation or  
 1580 responsibility.

1581 8. Bills of sale or transfer for all property owned by the  
 1582 association.

1583 9. Accounting records for the association and separate  
 1584 accounting records for each unit it operates, according to good  
 1585 accounting practices. All accounting records shall be maintained  
 1586 for a period of not less than 7 years. The accounting records

1587 shall include, but not be limited to:

1588 a. Accurate, itemized, and detailed records of all  
1589 receipts and expenditures.

1590 b. A current account and a monthly, bimonthly, or  
1591 quarterly statement of the account for each unit designating the  
1592 name of the unit owner, the due date and amount of each  
1593 assessment, the amount paid upon the account, and the balance  
1594 due.

1595 c. All audits, reviews, accounting statements, and  
1596 financial reports of the association.

1597 d. All contracts for work to be performed. Bids for work  
1598 to be performed shall also be considered official records and  
1599 shall be maintained for a period of 1 year.

1600 10. Ballots, sign-in sheets, voting proxies, and all other  
1601 papers relating to voting by unit owners, which shall be  
1602 maintained for a period of 1 year after the date of the  
1603 election, vote, or meeting to which the document relates.

1604 11. All rental records where the association is acting as  
1605 agent for the rental of units.

1606 12. A copy of the current question and answer sheet as  
1607 described in s. 719.504.

1608 13. All other written records of the association not  
1609 specifically included in the foregoing which are related to the  
1610 operation of the association.

1611 Section 14. Subsections (3) and (4) of section 719.108,  
1612 Florida Statutes, are amended to read:

1613           719.108 Rents and assessments; liability; lien and  
1614 priority; interest; collection; cooperative ownership.-

1615           (3) Rents and assessments, and installments on them, not  
1616 paid when due bear interest at the rate provided in the  
1617 cooperative documents from the date due until paid. This rate  
1618 may not exceed the rate allowed by law and, if a rate is not  
1619 provided in the cooperative documents, accrues at 18 percent per  
1620 annum. If the cooperative documents or bylaws so provide, the  
1621 association may charge an administrative late fee in addition to  
1622 such interest, not to exceed the greater of \$25 or 5 percent of  
1623 each installment of the assessment for each delinquent  
1624 installment that the payment is late. Any payment received by an  
1625 association must be applied first to any interest accrued by the  
1626 association, then to any administrative late fee, then to any  
1627 costs and reasonable attorney fees incurred in collection, and  
1628 then to the delinquent assessment. The foregoing applies  
1629 notwithstanding s. 673.3111, any purported accord and  
1630 satisfaction, or any restrictive endorsement, designation, or  
1631 instruction placed on or accompanying a payment. The preceding  
1632 sentence of is intended to clarify existing law. A late fee is  
1633 not subject to chapter 687 or s. 719.303(4).

1634           (4) The association has a lien on each cooperative parcel  
1635 for any unpaid rents and assessments, plus interest, and any  
1636 ~~authorized~~ administrative late fees. If authorized by the  
1637 cooperative documents, the lien also secures reasonable attorney  
1638 fees incurred by the association incident to the collection of



PCS for HB 791

ORIGINAL

2015

1639 the rents and assessments or enforcement of such lien. The lien  
 1640 is effective from and after recording a claim of lien in the  
 1641 public records in the county in which the cooperative parcel is  
 1642 located which states the description of the cooperative parcel,  
 1643 the name of the unit owner, the amount due, and the due dates.  
 1644 Except as otherwise provided in this chapter, a lien may not be  
 1645 filed by the association against a cooperative parcel until 30  
 1646 days after the date on which a notice of intent to file a lien  
 1647 has been delivered to the owner.

1648 (a) The notice must be sent to the unit owner at the  
 1649 address of the unit by first-class United States mail, and the  
 1650 notice must be in substantially the following form:

1651 NOTICE OF INTENT

1652 TO RECORD A CLAIM OF LIEN

1653 RE: Unit ...(unit number)... of ...(name of cooperative)...

1654 The following amounts are currently due on your account to  
 1655 ...(name of association)..., and must be paid within 30 days  
 1656 after your receipt of this letter. This letter shall serve as  
 1657 the association's notice of intent to record a Claim of Lien  
 1658 against your property no sooner than 30 days after your receipt  
 1659 of this letter, unless you pay in full the amounts set forth  
 1660 below:

1661	Maintenance due ...(dates)...	\$.....
1662	Late fee, if applicable	\$.....
1663	Interest through ...(dates)...*	\$.....
1664	Certified mail charges	\$.....

PCS for HB 791

ORIGINAL

2015

1665 Other costs \$.....

1666 TOTAL OUTSTANDING \$.....

1667 \*Interest accrues at the rate of .... percent per annum.

1668 1. If the most recent address of the unit owner on the  
 1669 records of the association is the address of the unit, the  
 1670 notice must be sent by certified mail, return receipt requested,  
 1671 to the unit owner at the address of the unit.

1672 2. If the most recent address of the unit owner on the  
 1673 records of the association is in the United States, but is not  
 1674 the address of the unit, the notice must be sent by certified  
 1675 mail, return receipt requested, to the unit owner at his or her  
 1676 most recent address.

1677 3. If the most recent address of the unit owner on the  
 1678 records of the association is not in the United States, the  
 1679 notice must be sent by first-class United States mail to the  
 1680 unit owner at his or her most recent address.

1681 (b) A notice that is sent pursuant to this subsection is  
 1682 deemed delivered upon mailing. A claim of lien must be executed  
 1683 and acknowledged by an officer or authorized agent of the  
 1684 association. The lien is not effective 1 year after the claim of  
 1685 lien was recorded unless, within that time, an action to enforce  
 1686 the lien is commenced. The 1-year period is automatically  
 1687 extended for any length of time during which the association is  
 1688 prevented from filing a foreclosure action by an automatic stay  
 1689 resulting from a bankruptcy petition filed by the parcel owner  
 1690 or any other person claiming an interest in the parcel. The

1691 claim of lien secures all unpaid rents and assessments that are  
 1692 due and that may accrue after the claim of lien is recorded and  
 1693 through the entry of a final judgment, as well as interest and  
 1694 all reasonable costs and attorney fees incurred by the  
 1695 association incident to the collection process. Upon payment in  
 1696 full, the person making the payment is entitled to a  
 1697 satisfaction of the lien.

1698 (c) By recording a notice in substantially the following  
 1699 form, a unit owner or the unit owner's agent or attorney may  
 1700 require the association to enforce a recorded claim of lien  
 1701 against his or her cooperative parcel:

1702 NOTICE OF CONTEST OF LIEN

1703 TO: ...(Name and address of association)...:

1704 You are notified that the undersigned contests the claim of lien  
 1705 filed by you on ....., ...(year)..., and recorded in Official  
 1706 Records Book .... at Page ....., of the public records of ....  
 1707 County, Florida, and that the time within which you may file  
 1708 suit to enforce your lien is limited to 90 days from the date of  
 1709 service of this notice. Executed this .... day of .....,  
 1710 ...(year)....

1711 Signed: ...(Owner or Attorney)...

1712 After notice of contest of lien has been recorded, the clerk of  
 1713 the circuit court shall mail a copy of the recorded notice to  
 1714 the association by certified mail, return receipt requested, at  
 1715 the address shown in the claim of lien or most recent amendment  
 1716 to it and shall certify to the service on the face of the

1717 notice. Service is complete upon mailing. After service, the  
 1718 association has 90 days in which to file an action to enforce  
 1719 the lien. If the action is not filed within the 90-day period,  
 1720 the lien is void. However, the 90-day period shall be extended  
 1721 for any length of time during which the association is prevented  
 1722 from filing its action because of an automatic stay resulting  
 1723 from the filing of a bankruptcy petition by the unit owner or by  
 1724 any other person claiming an interest in the parcel.

1725 (d) A release of lien must be in substantially the  
 1726 following form:

1727 RELEASE OF LIEN  
 1728 The undersigned lienor, in consideration of the final payment in  
 1729 the amount of \$...., hereby waives and releases its lien and  
 1730 right to claim a lien for unpaid assessments through .....,  
 1731 ...(year)..., recorded in the Official Records Book .... at Page  
 1732 ....., of the public records of .... County, Florida, for the  
 1733 following described real property:  
 1734 THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. .... OF ...(NAME  
 1735 OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE  
 1736 COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND  
 1737 FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK .....,  
 1738 PAGE ....., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.  
 1739 ...(Signature of Authorized Agent).....(Signature of Witness)...  
 1740 ...(Print Name)... .....(Print Name)...  
 1741 .....(Signature of Witness)...  
 1742 .....(Print Name)...

PCS for HB 791

ORIGINAL

2015

1743 Sworn to (or affirmed) and subscribed before me this .... day of  
 1744 ....., ...(year)..., by ...(name of person making statement)....  
 1745 ...(Signature of Notary Public)...  
 1746 ...(Print, type, or stamp commissioned name of Notary Public)...  
 1747 Personally Known .... OR Produced .... as identification.

1748 Section 15. Subsection (3) of section 719.303, Florida  
 1749 Statutes, is amended to read:

1750 719.303 Obligations of owners.-

1751 (3) The association may levy reasonable fines for failure  
 1752 of the unit owner or the unit's occupant, licensee, or invitee  
 1753 to comply with any provision of the cooperative documents or  
 1754 reasonable rules of the association. A fine may not become a  
 1755 lien against a unit. A fine may be levied by the board on the  
 1756 basis of each day of a continuing violation, with a single  
 1757 notice and opportunity for hearing before a committee as  
 1758 provided in paragraph (b). However, the fine may not exceed \$100  
 1759 per violation, or \$1,000 in the aggregate.

1760 (a) An association may suspend, for a reasonable period of  
 1761 time, the right of a unit owner, or a unit owner's tenant,  
 1762 guest, or invitee, to use the common elements, common  
 1763 facilities, or any other association property for failure to  
 1764 comply with any provision of the cooperative documents or  
 1765 reasonable rules of the association. This paragraph does not  
 1766 apply to limited common elements intended to be used only by  
 1767 that unit, common elements needed to access the unit, utility  
 1768 services provided to the unit, parking spaces, or elevators.

1769 (b) A fine or suspension levied by the board of  
 1770 administration may not be imposed unless the board first  
 1771 provides at least 14 days' written ~~except after giving~~  
 1772 ~~reasonable~~ notice and an opportunity for a hearing to the unit  
 1773 owner and, if applicable, its occupant, ~~the unit's~~ licensee, or  
 1774 invitee. The hearing must be held before a committee of other  
 1775 unit owners who are neither board members nor persons residing  
 1776 in a board member's household. The role of the committee is  
 1777 limited to determining whether to confirm or reject the fine or  
 1778 suspension levied by the board. If the committee does not agree  
 1779 with the fine or suspension, it may not be imposed.

1780 Section 16. Subsection (8) of section 720.301, Florida  
 1781 Statutes, is amended to read:

1782 720.301 Definitions.—As used in this chapter, the term:

1783 (8) "Governing documents" means:

1784 (a) The recorded declaration of covenants for a community,  
 1785 and all duly adopted and recorded amendments, supplements, and  
 1786 recorded exhibits thereto; ~~and~~

1787 (b) The articles of incorporation and bylaws of the  
 1788 homeowners' association, and any duly adopted amendments  
 1789 thereto; and

1790 (c) Rules and regulations adopted under the authority of  
 1791 the recorded declaration, articles of incorporation, or bylaws  
 1792 and duly adopted amendments thereto.

1793 Section 17. Section 720.3015, Florida Statutes, is created  
 1794 to read:

1795 720.3015 Short title.—This chapter may be cited as the  
 1796 "Homeowners' Association Act."

1797 Section 18. Section 720.305, Florida Statutes, is amended  
 1798 to read:

1799 720.305 Obligations of members; remedies at law or in  
 1800 equity; levy of fines and suspension of use rights.—

1801 (1) Each member and the member's tenants, guests, and  
 1802 invitees, and each association, are governed by, and must comply  
 1803 with, this chapter, the governing documents of the community,  
 1804 and the rules of the association. Actions at law or in equity,  
 1805 or both, to redress alleged failure or refusal to comply with  
 1806 these provisions may be brought by the association or by any  
 1807 member against:

1808 (a) The association;

1809 (b) A member;

1810 (c) Any director or officer of an association who  
 1811 willfully and knowingly fails to comply with these provisions;  
 1812 and

1813 (d) Any tenants, guests, or invitees occupying a parcel or  
 1814 using the common areas.

1815

1816 The prevailing party in any such litigation is entitled to  
 1817 recover reasonable attorney ~~attorney's~~ fees and costs. A member  
 1818 prevailing in an action between the association and the member  
 1819 under this section, in addition to recovering his or her  
 1820 reasonable attorney ~~attorney's~~ fees, may recover additional

1821 amounts as determined by the court to be necessary to reimburse  
 1822 the member for his or her share of assessments levied by the  
 1823 association to fund its expenses of the litigation. This relief  
 1824 does not exclude other remedies provided by law. This section  
 1825 does not deprive any person of any other available right or  
 1826 remedy.

1827 (2) The association may levy reasonable fines. A fine may  
 1828 not exceed ~~of up to~~ \$100 per violation against any member or any  
 1829 member's tenant, guest, or invitee for the failure of the owner  
 1830 of the parcel or its occupant, licensee, or invitee to comply  
 1831 with any provision of the declaration, the association bylaws,  
 1832 or reasonable rules of the association unless otherwise provided  
 1833 in the governing documents. A fine may be levied by the board  
 1834 for each day of a continuing violation, with a single notice and  
 1835 opportunity for hearing, except that the fine may not exceed  
 1836 \$1,000 in the aggregate unless otherwise provided in the  
 1837 governing documents. A fine of less than \$1,000 may not become a  
 1838 lien against a parcel. In any action to recover a fine, the  
 1839 prevailing party is entitled to reasonable attorney fees and  
 1840 costs from the nonprevailing party as determined by the court.

1841 (a) An association may suspend, for a reasonable period of  
 1842 time, the right of a member, or a member's tenant, guest, or  
 1843 invitee, to use common areas and facilities for the failure of  
 1844 the owner of the parcel or its occupant, licensee, or invitee to  
 1845 comply with any provision of the declaration, the association  
 1846 bylaws, or reasonable rules of the association. This paragraph



1847 does not apply to that portion of common areas used to provide  
 1848 access or utility services to the parcel. A suspension may not  
 1849 prohibit ~~impair the right of~~ an owner or tenant of a parcel from  
 1850 having ~~to have~~ vehicular and pedestrian ingress to and egress  
 1851 from the parcel, including, but not limited to, the right to  
 1852 park.

1853 (b) A fine or suspension may not be imposed by the board  
 1854 of administration without at least 14 days' notice to the person  
 1855 sought to be fined or suspended and an opportunity for a hearing  
 1856 before a committee of at least three members appointed by the  
 1857 board who are not officers, directors, or employees of the  
 1858 association, or the spouse, parent, child, brother, or sister of  
 1859 an officer, director, or employee. If the committee, by majority  
 1860 vote, does not approve a proposed fine or suspension, it may not  
 1861 be imposed. The role of the committee is limited to determining  
 1862 whether to confirm or reject the fine or suspension levied by  
 1863 the board. If the board of administration ~~association~~ imposes a  
 1864 fine or suspension, the association must provide written notice  
 1865 of such fine or suspension by mail or hand delivery to the  
 1866 parcel owner and, if applicable, to any tenant, licensee, or  
 1867 invitee of the parcel owner.

1868 (3) If a member is more than 90 days delinquent in paying  
 1869 any fee, fine, or other ~~a~~ monetary obligation due to the  
 1870 association, the association may suspend the rights of the  
 1871 member, or the member's tenant, guest, or invitee, to use common  
 1872 areas and facilities until the fee, fine, or other monetary

1873 obligation is paid in full. This subsection does not apply to  
 1874 that portion of common areas used to provide access or utility  
 1875 services to the parcel. A suspension may ~~does~~ not prohibit  
 1876 ~~impair the right of~~ an owner or tenant of a parcel from having  
 1877 ~~to have~~ vehicular and pedestrian ingress to and egress from the  
 1878 parcel, including, but not limited to, the right to park. The  
 1879 notice and hearing requirements under subsection (2) do not  
 1880 apply to a suspension imposed under this subsection.

1881 (4) An association may suspend the voting rights of a  
 1882 parcel or member for the nonpayment of any fee, fine, or other  
 1883 monetary obligation due to the association that is more than 90  
 1884 days delinquent. A voting interest or consent right allocated to  
 1885 a parcel or member which has been suspended by the association  
 1886 shall be subtracted from ~~may not be counted towards~~ the total  
 1887 number of voting interests in the association, which shall be  
 1888 reduced by the number of suspended voting interests when  
 1889 calculating the total percentage or number of all voting  
 1890 interests available to take or approve any action, and the  
 1891 suspended voting interests shall not be considered for any  
 1892 purpose, including, but not limited to, the percentage or number  
 1893 of voting interests necessary to constitute a quorum, the  
 1894 percentage or number of voting interests required to conduct an  
 1895 election, or the percentage or number of voting interests  
 1896 required to approve an action under this chapter or pursuant to  
 1897 the governing documents. The notice and hearing requirements  
 1898 under subsection (2) do not apply to a suspension imposed under

1899 | this subsection. The suspension ends upon full payment of all  
 1900 | obligations currently due or overdue to the association.

1901 |       (5) All suspensions imposed pursuant to subsection (3) or  
 1902 | subsection (4) must be approved at a properly noticed board  
 1903 | meeting. Upon approval, the association must notify the parcel  
 1904 | owner and, if applicable, the parcel's occupant, licensee, or  
 1905 | invitee by mail or hand delivery.

1906 |       (6) The suspensions permitted by paragraph (2)(a) and  
 1907 | subsections (3) and (4) apply to a member and, when appropriate,  
 1908 | the member's tenants, guests, or invitees, even if the  
 1909 | delinquency or failure that resulted in the suspension arose  
 1910 | from less than all of the multiple parcels owned by a member.

1911 |       Section 19. Paragraph (b) of subsection (1) and subsection  
 1912 | (9) of section 720.306, Florida Statutes, are amended to read:

1913 |       720.306 Meetings of members; voting and election  
 1914 | procedures; amendments.—

1915 |       (1) QUORUM; AMENDMENTS.—

1916 |       (b) Unless otherwise provided in the governing documents  
 1917 | or required by law, and other than those matters set forth in  
 1918 | paragraph (c), any governing document of an association may be  
 1919 | amended by the affirmative vote of two-thirds of the voting  
 1920 | interests of the association. Within 30 days after recording an  
 1921 | amendment to the governing documents, the association shall  
 1922 | provide copies of the amendment to the members. However, if a  
 1923 | copy of the proposed amendment is provided to the members before  
 1924 | they vote on the amendment and the proposed amendment is not

1925 changed before the vote, the association, in lieu of providing a  
 1926 copy of the amendment, may provide notice to the members that  
 1927 the amendment was adopted, identifying the official book and  
 1928 page number or instrument number of the recorded amendment and  
 1929 that a copy of the amendment is available at no charge to the  
 1930 member upon written request to the association. The copies and  
 1931 notice described in this paragraph may be provided  
 1932 electronically to those owners who previously consented to  
 1933 receive notice electronically. The failure to timely provide  
 1934 notice of the recording of the amendment does not affect the  
 1935 validity or enforceability of the amendment.

1936 (9) ELECTIONS AND BOARD VACANCIES.—

1937 (a) Elections of directors must be conducted in accordance  
 1938 with the procedures set forth in the governing documents of the  
 1939 association. Except as provided in paragraph (b), all members of  
 1940 the association are eligible to serve on the board of directors,  
 1941 and a member may nominate himself or herself as a candidate for  
 1942 the board at a meeting where the election is to be held;  
 1943 provided, however, that if the election process allows  
 1944 candidates to be nominated in advance of the meeting, the  
 1945 association is not required to allow nominations at the meeting.  
 1946 An election is not required unless more candidates are nominated  
 1947 than vacancies exist. Except as otherwise provided in the  
 1948 governing documents, boards of directors must be elected by a  
 1949 plurality of the votes cast by eligible voters. Any challenge to  
 1950 the election process must be commenced within 60 days after the

1951 election results are announced.

1952 (b) A person who is delinquent in the payment of any fee,  
 1953 fine, or other monetary obligation to the association on the day  
 1954 that he or she could last nominate himself or herself or be  
 1955 nominated for the board may not seek election to the board, and  
 1956 his or her name shall not be listed on the ballot. A person  
 1957 -serving as a board member who becomes more than 90 days  
 1958 delinquent in the payment of any fee, fine, or other monetary  
 1959 obligation to the association shall be deemed to have abandoned  
 1960 his or her seat on the board, creating a vacancy on the board to  
 1961 be filled according to law. For purposes of this paragraph, the  
 1962 term "any fee, fine, or other monetary obligation" means any  
 1963 delinquency to the association with respect to any parcel ~~for~~  
 1964 ~~more than 90 days is not eligible for board membership.~~ A person  
 1965 who has been convicted of any felony in this state or in a  
 1966 United States District or Territorial Court, or has been  
 1967 convicted of any offense in another jurisdiction which would be  
 1968 considered a felony if committed in this state, may not seek  
 1969 election to the board and is not eligible for board membership  
 1970 unless such felon's civil rights have been restored for at least  
 1971 5 years as of the date on which such person seeks election to  
 1972 the board. The validity of any action by the board is not  
 1973 affected if it is later determined that a person was ineligible  
 1974 to seek election to the board or that a member of the board is  
 1975 ineligible for board membership.

1976 (c) Any election dispute between a member and an

1977 association must be submitted to mandatory binding arbitration  
 1978 with the division. Such proceedings must be conducted in the  
 1979 manner provided by s. 718.1255 and the procedural rules adopted  
 1980 by the division. Unless otherwise provided in the bylaws, any  
 1981 vacancy occurring on the board before the expiration of a term  
 1982 may be filled by an affirmative vote of the majority of the  
 1983 remaining directors, even if the remaining directors constitute  
 1984 less than a quorum, or by the sole remaining director. In the  
 1985 alternative, a board may hold an election to fill the vacancy,  
 1986 in which case the election procedures must conform to the  
 1987 requirements of the governing documents. Unless otherwise  
 1988 provided in the bylaws, a board member appointed or elected  
 1989 under this section is appointed for the unexpired term of the  
 1990 seat being filled. Filling vacancies created by recall is  
 1991 governed by s. 720.303(10) and rules adopted by the division.

1992 Section 20. This act shall take effect July 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Moraitis offered the following:

**Amendment**

5 Remove lines 157-158 and insert:

6 units for sale;

7 (e) The trustee and any related trust association of a  
 8 timeshare trust, interests in which are qualified as timeshare  
 9 estates pursuant to ss. 721.08 or 721.53; or

10 (f)~~(d)~~ A state, county, or municipal entity acting as a



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Moraitis offered the following:

**Amendment**

Remove line 1232 and insert:

6 association. A person who acquires title to units or timeshare  
 7 interests in a condominium, which units or timeshare interests  
 8 are or ultimately will be included in a timeshare plan governed  
 9 by chapter 721, may elect to be a bulk-unit purchaser pursuant  
 10 to s. 718.813. The term does not include a lender-unit  
 11 purchaser.





Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
2 Representative Moraitis offered the following:

**Amendment (with directory and title amendments)**

Between lines 1545 and 1546, insert:

6 718.813 Timeshare Condominiums.—With respect to the  
7 acquisition of title to units or timeshare interests in a  
8 condominium, which units or timeshare interests are or  
9 ultimately will be included in a timeshare plan governed by ch.  
10 721:

11 (1) Any person otherwise qualified to be a bulk-unit  
12 purchaser pursuant to s. 718.802 is not a bulk-unit purchaser  
13 unless that person makes an election to become a bulk-unit  
14 purchaser by providing notice to the association addressed to  
15 the registered agent at the address specified in the records of  
16 Department of State. The notice shall be delivered within the  
17 time period ending upon the earliest of:



Amendment No. 3

18 (a) The date on which the person exercises any developer  
19 rights other than the developer rights described in s.  
20 718.803(1) (a);

21 (b) The sale of any unit or timeshare interest by the  
22 person; or

23 (c) One hundred eighty days after the recording of the deed  
24 or other instrument of conveyance by which the person acquired  
25 the units or timeshare interests.

26 (2) If a person has made an election to be a bulk-unit  
27 purchaser pursuant to subsection (1), the bulk-unit purchaser,  
28 when selling units or timeshare interests, shall include the  
29 following disclosure to purchasers in conspicuous type on the  
30 first page of the contract for sale of units or timeshare  
31 interests:

32 SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.  
33 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY  
34 PURPOSE UNDER THE CONDOMINIUM.

36 -----

37 **D I R E C T O R Y A M E N D M E N T**

38 Remove line 1210 and insert:  
39 consisting of sections 718.801-718.813, is created to read:

41 -----

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

43 Remove line 71 and insert:



Amendment No. 3

44 bulk-unit purchaser; providing conditions by which a person may  
45 become a bulk-unit purchaser following acquisition of title to  
46 timeshare interests that are or ultimately will be included in a  
47 timeshare plan; requiring disclosure to purchasers by certain  
48 bulk-unit purchasers of timeshare interests; amending s.  
49 719.104, F.S.;



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 961 Electronic Noticing of Trust Accounts  
SPONSOR(S): Broxson  
TIED BILLS: None IDEN./SIM. BILLS: SB 1314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		<i>TR</i> Robinson	Bond <i>YFB</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

A Florida trustee has a duty to keep the qualified beneficiaries (hereinafter "beneficiaries") of an irrevocable trust reasonably informed of the trust and its administration. Specifically, the trustee must provide beneficiaries with an accounting of the trust at specified periods, disclosure of documents related to the trust, and notice of specific events related to the administration of the trust.

The Florida Trust Code currently provides that the only permissible methods of sending notice or a document to such persons are by first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed facsimile or other electronic message. However, for many reasons, some beneficiaries, as also reflected in members of the public at large, prefer to receive, store, and access correspondence and documents through secured websites and accounts. Trustees also prefer to provide sensitive financial information through secured web accounts rather than through electronic messages which carry greater security risks. Although financial institutions commonly use secured websites for providing statements and other disclosures related to bank or credit accounts, such methods are rarely used for trust accounts due to a perceived lack of authorization within current law.

The bill authorizes a trustee to post required documents to a secured website or account if a beneficiary opts in to receiving electronic documents through a secured website or account. The bill also specifies when notice or the delivery of a document by electronic message or posting is complete and presumed received by the intended recipient for purposes of commencing a limitations period for breach of trust claims.

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

The bill has an effective date of July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

"A trust is a fiduciary relationship<sup>1</sup> with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it."<sup>2</sup> A trust involves three interest holders: the settlor<sup>3</sup> who establishes the trust; the trustee<sup>4</sup> who holds legal title to the property held for the benefit of the beneficiary; and lastly, the beneficiary<sup>5</sup> who has an equitable interest in property held subject to the trust.

The Florida Trust Code<sup>6</sup> (the "code") requires a trustee to administer the trust "in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with [the] code,"<sup>7</sup> and also imposes a duty of loyalty upon the trustee.<sup>8</sup> The violation by a trustee of a duty owed to a beneficiary is a breach of trust.<sup>9</sup>

##### **Disclosure and Notice of Trust Administration**

To be able to enforce the trustee's duties, the beneficiary of a trust must know of the existence of the trust and be informed about the administration of the trust:

If there were no duty to inform and report to the beneficiary, the beneficiary might never become aware of breaches of trust or might be unaware of breaches until it is too late to obtain relief. In addition, providing information to the beneficiary protects the trustee from claims being brought long after events that allegedly constituted a breach, because the statute of limitations or the doctrine of laches will prevent the beneficiary from pursuing stale claims. As a result, the duty to inform and report to the beneficiary is fundamental to the trust relationship.<sup>10</sup>

Accordingly, section 736.0813, F.S., imposes a duty on a Florida trustee to keep the qualified beneficiaries<sup>11</sup> (hereinafter "beneficiaries") of an irrevocable trust reasonably informed of the trust and its administration. The duty includes, but is not limited to:<sup>12</sup>

---

<sup>1</sup> *Brundage v. Bank of America*, 996 So. 2d 877, 882 (Fla. 4th D.C.A. 2008) (trustee owes a fiduciary duty to settlor/beneficiary).

<sup>2</sup> 55A FLA. JUR.2D *Trusts* § 1.

<sup>3</sup> "Settlor" means a person, including a testator, who creates or contributes property to a trust. Section 736.0103(18), F.S.

<sup>4</sup> "Trustee" means the original trustee and includes any additional trustee, any successor trustee, and any cotrustee. Section 736.0103(18), F.S.

<sup>5</sup> "Beneficiary" means a person who has a present or future beneficial interest in a trust, vested or contingent, or who holds a power of appointment over trust property in a capacity other than that of trustee. Section 736.0103(4), F.S.

<sup>6</sup> Chapter 736, F.S.

<sup>7</sup> Section 736.0801, F.S.

<sup>8</sup> Section 736.0802(1), F.S.

<sup>9</sup> Section 736.1001(1), F.S.

<sup>10</sup> Kevin D. Millard, *The Trustee's Duty to Inform and Report Under the Uniform Trust Code*, 40 Real Property, Probate and Trust J. 373 (Summer 2005), available at

[http://www.americanbar.org/content/dam/aba/publications/real\\_property\\_trust\\_and\\_estate\\_law\\_journal/V40/02/2005\\_aba\\_rpte\\_journal\\_v40\\_no2\\_summer\\_master.pdf](http://www.americanbar.org/content/dam/aba/publications/real_property_trust_and_estate_law_journal/V40/02/2005_aba_rpte_journal_v40_no2_summer_master.pdf), (last accessed March 9, 2015).

<sup>11</sup> The term "qualified beneficiary" encompasses only a limited subset of all trust beneficiaries. The class is limited to living persons who are current beneficiaries, intermediate beneficiaries, and first-line remainder beneficiaries, whether vested or contingent. Section 736.0103(16), F.S.

<sup>12</sup> Section 736.0813, F.S.

- Notice of the existence of the irrevocable trust, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings, and applicability of the fiduciary lawyer-client privilege.
- Notice of the acceptance of the trust, the full name and address of the trustee, and the applicability of the fiduciary lawyer-client privilege.
- Disclosure of a copy of the trust instrument upon reasonable request.
- An annual accounting of the trust to each beneficiary and an accounting on termination of the trust or on change of the trustee. The accounting must address the cash and property transactions in the accounting period and what trust assets are currently on hand.<sup>13</sup>
- Disclosure of relevant information about the assets and liabilities of the trust and the particulars relating to administration upon reasonable request.
- Such additional notices and disclosure requirements related to the trust administration as required by the Florida Trust Code.<sup>14</sup>

A beneficiary must bring an action for breach of trust as to any matter adequately disclosed within an accounting or any other written report of the trustee, also known as trust disclosure documents,<sup>15</sup> within 6 months of *receiving* the trust disclosure document or a limitation *notice*<sup>16</sup> from the trustee that applies to that trust disclosure document, whichever occurs later.<sup>17</sup> A limitation notice informs the beneficiary that an action against the trustee for breach of trust based on any matter adequately disclosed in the trust disclosure document may be barred unless the action is commenced within 6 months.

The code prescribes the permissible methods of sending a document or notice for receipt by a beneficiary.

### **Methods of Disclosure or Notice**

Current law requires that notice or sending a document to a person under the code must be accomplished "in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document."<sup>18</sup> However, s. 736.0109, F.S. specifies that the only permissible manners of providing notice, except notice of a judicial proceeding, or sending a document to a person under the code are:

- First-class mail;
- Personal delivery;
- Delivery to the person's last known place of residence or place of business; or
- A properly directed facsimile or other electronic message.

<sup>13</sup> Sections 736.0813 and 736.08135, F.S.

<sup>14</sup> See, e.g. Section 736.0108(6), F.S. (notice of a proposed transfer of a trust's principal place of administration); Section 736.04117(4), F.S. (notice of the trustee's exercise of the power to invade the principal of the trust); Section 736.0414(1), F.S. (notice of terminating certain minimally funded trusts); Section 736.0417(1), F.S. (notice prior to combining or dividing trusts); Section 736.0705 (notice of resignation of trustee); Section 736.0802, F.S. (disclose and provide notice of investments in funds owned or controlled by trustee; the identity of the investment instruments, and the identity and relationship to the trustee to any affiliate that owns or controls the investment instruments; and notice to beneficiaries whose share of the trust may be affected by certain legal claims); and Section 736.0902(5), F.S. (notice of the non-application of the prudent investor rule to certain transactions)

<sup>15</sup> "Trust disclosure document" means a trust accounting or any other written report of the trustee. A trust disclosure document adequately discloses a matter if the document provides sufficient information so that a beneficiary knows of a claim or reasonably should have inquired into the existence of a claim with respect to that matter. Section 736.1008(4)(a), F.S.

<sup>16</sup> "Limitation notice" means a written statement of the trustee that an action by a beneficiary against the trustee for breach of trust based on any matter adequately disclosed in a trust disclosure document may be barred unless the action is commenced within 6 months after receipt of the trust disclosure document or receipt of a limitation notice that applies to that trust disclosure document, whichever is later.

<sup>17</sup> Section 736.1008(2), F.S.

<sup>18</sup> Section 736.0109(1), F.S.

Notice of a judicial proceeding must be given as provided in the Florida Rules of Civil Procedure.<sup>19</sup>

The current methods of permissible notice or service of documents under the code restricts the ability of trustees to meet increasing beneficiary demands, as also reflected in members of the public at large, to receive information electronically. There is little guidance in the code as to how the sending of notice or a document by electronic message (hereinafter "email") can and should be accomplished, nor even when it is accomplished, implicating when the limitations period commences for a notice or document provided by email.<sup>20</sup>

Trustees have expressed concern regarding protecting confidential information and the privacy hazards inherent in the delivery of financial information via email.<sup>21</sup> Some trustees, sensitive to these privacy concerns, deliver required documents, such as a trust account statement, to beneficiaries by emailing notice that a trust statement is available to be viewed and downloaded on a secured website or account and providing a password for the beneficiary to access the account.<sup>22</sup> However, it is not clear that by using this method, although more secure than email, the trustee technically complies with the duty to provide a trust accounting under s. 736.0813, F.S. since the document itself is not delivered by the email but rather delivers information on how to access the document through a secured website. The failure to provide a trust accounting may be actionable as a breach of trust under the code if a beneficiary denies receipt of statements provided by this method. Further it is not clear that trust documents posted on a secured website have the benefit of the 6 months limitations period for matters adequately disclosed in a trust disclosure documents as they are provided in a manner that may not be permissible under the code. If the limitations period does not apply, a trustee may be subject to a breach of trust claim, even if the matters were adequately disclosed in the trust document, for up to four years.<sup>23</sup>

Due to the uncertainty regarding when the limitations period runs for notice or trust disclosure documents delivered by electronic message or posted on a secured website and whether attempts to provide trust disclosure documents through a secured website or account technically comply with the statutory duty to provide certain documents to a beneficiary, trustees have little incentive to respond to beneficiary requests for electronic communications. Prudent trustees that offer electronic delivery of trust disclosure documents via email or through a secured website may find it necessary to continue providing physical documents in order to comply with notice and disclosure requirements under the code and to secure the protection of the 6 months limitations period for breach of trust claims.

---

<sup>19</sup> Section 736.0109(4), F.S.

<sup>20</sup> The Uniform Electronic Transactions Act ("UETA") also references the ability of a trustee to deliver notice or documents electronically (Section 668.50, F.S.). The UETA provides that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means. However, the UETA may not apply to the delivery of most trust statements to beneficiaries. For the UETA to apply, the electronic records must relate to a "transaction". Under the UETA, "transaction" means an action or set of actions occurring between two or more persons relating to the *conduct of business, commercial, insurance, or governmental affairs*. To the extent that a trust administration, particularly the delivery of a trust statement, is considered the 'conduct of business', the UETA may apply. The drafters of the UETA noted that trusts can be used for both business and personal purposes, and that by virtue of the definition of "transaction", trusts used outside the area of business and commerce would not be governed by the UETA. This commentary does not consider banks or professional trustees that administer trusts as a business; although, arguably the fiduciary relationship between the trustee and the beneficiary takes the administration outside the scope of a "business" relationship. See *The Uniform Electronic Transactions Act (1999)* available at <http://euro.ecom.cmu.edu/program/law/08-732/Transactions/ueta.pdf>.

<sup>21</sup> *Subcommittee Report on Electronic Delivery of Trust Statements*, provided by the Florida Banker's Association to the Civil Justice Subcommittee on March 5, 2015 (on file with the Civil Justice Subcommittee, Florida House of Representatives).

<sup>22</sup> *Id.*

<sup>23</sup> Section 736.1008(1), F.S. provides that the applicable limitations period is determined under ch. 95, F.S. That is, the normal limitations period will be the four year period described in s. 95.11(3), F.S.



## Effect of the Proposed Changes

The bill authorizes a trustee to post documents that must be provided to a person under the code to a website or account if the person provides written authorization. The website or account must allow the recipient to download or print the posted document. A document provided solely through electronic posting must be retained on the website or account for at least 4 years after the date it is received. The written authorization to provide electronic posting of documents must:

- Be limited solely to posting documents on an electronic account or website.
- Enumerate the documents that may be posted on the electronic website or account.
- Contain specific instructions for accessing the electronic website or account, including any security measures.
- Advise that a separate notice will be sent, and the manner in which it will be sent, when a document is posted to the electronic website or account.
- Advise that the authorization may be amended or revoked at any time and provide instructions to amend or revoke authorization.
- Advise that the posting of a document on the electronic account or website may commence a limitations period as short as 6 months even if the recipient never access the electronic account, website, or document.

The trustee is required to send a notice to a person receiving trust documents by electronic posting each time a document is posted and the notice must identify each document that has been posted and how the person may access the document. Such notice may be made by any permissible method of notice under the code except electronic posting. The trustee must also send an annual notice to persons who have opted in to receive trust documents by electronic posting advising such persons that posting of a document commences a limitations period as short as 6 months even if the recipient never access the website, account, or document. The annual notice must also address the right to revoke a previous authorization to post trust documents on a website or account. The annual notice may be made by any permissible method under the code except electronic posting and the bill provides the suggested form of the notice, which is substantially similar to the suggested form of a limitations notice provided in s. 736.1008(4)(c), F.S. The failure of a trustee to provide the annual notice at the required time will automatically revoke the person's authorization to post trust documents on an electronic website or account.

A document delivered by electronic posting is deemed received by the recipient on the earlier of the date that notice of the document's posting is received or the date that the recipient accesses the document on the electronic account or website. The posting of a document to an electronic account or website is only effective if done in compliance with the requirements of this bill. The trustee has the burden of demonstrating compliance with such requirements. If a trustee provides notice or sends a document to person by electronic message, notice or sending of the document is complete when sent and presumed received on the date on which it is sent unless the sender has actual knowledge the electronic message did not reach the recipient.

The bill does not preclude the sending of a document by other permissible means under the code nor does it affect or alter the duties of a trustee to keep clear, distinct, and accurate records pursuant to s. 736.0810, F.S. or the time such records must be retained.

The bill also amends s. 736.0109(4), F.S. to more specifically delineate that notice and service of documents in a judicial proceeding related to a trust are governed by the Florida Rules of Civil Procedure rather than the code.

### B. SECTION DIRECTORY:

Section 1 amends s. 736.0109, F.S., relating to methods and waiver of notice.

Section 2 provides an effect date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

### D. FISCAL COMMENTS:

Trustees may see a reduction in stationary, postage, and labor costs by providing required notices and documents electronically to qualified beneficiaries that opt in to receive electronic notices. The reduction may be offset by additional costs for the technology to provide electronic notices and documents.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1                                   A bill to be entitled  
 2           An act relating to electronic noticing of trust  
 3           accounts; amending s. 736.0109, F.S.; authorizing a  
 4           sender to post a document to an electronic account or  
 5           website upon the approval of a recipient; providing  
 6           for effective authorization for such posting;  
 7           requiring a sender to provide a separate notice once a  
 8           document is electronically posted; specifying when a  
 9           document sent electronically is deemed received by the  
 10          recipient; requiring a sender to provide notice of the  
 11          beginning of a limitations period and authority of a  
 12          recipient to revoke authorization for electronic  
 13          posting; providing a form that may be used to  
 14          effectuate such notice; requiring documents posted to  
 15          an electronic website to remain accessible to the  
 16          recipient for a specified period; establishing burdens  
 17          of proof for purposes of determining whether proper  
 18          notifications were provided; specifying that  
 19          electronic messages are deemed received when sent;  
 20          specifying situations under which electronic messages  
 21          are not deemed received; specifying that service of  
 22          documents in a judicial proceeding are governed by the  
 23          Florida Rules of Civil Procedure; providing an  
 24          effective date.

25  
 26   Be It Enacted by the Legislature of the State of Florida:

27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52

Section 1. Subsections (3) and (4) of section 736.0109, Florida Statutes, are renumbered as subsections (5) and (6), respectively, present subsection (4) is amended, and new subsections (3) and (4) are added to that section, to read:

736.0109 Methods and waiver of notice.—

(3) In addition to the methods listed in subsection (1) for sending a document, a sender may post a document to an electronic account or website where the document can be accessed.

(a) Before a document may be posted to an electronic account or website, the recipient must sign a separate written authorization solely for the purpose of authorizing the sender to post documents on an electronic account or website. The written authorization must:

1. Enumerate the documents that may be posted in this manner.

2. Contain specific instructions for accessing the electronic account or website, including the security procedures required to access the electronic account or website, such as a username and password.

3. Advise the recipient that a separate notice will be sent when a document is posted to the electronic account or website and the manner in which the separate notice will be sent.

4. Advise the recipient that the authorization to receive

53 documents by electronic posting may be amended or revoked at any  
54 time and include specific instructions for revoking or amending  
55 the authorization, including the address designated for the  
56 purpose of receiving notice of the revocation or amendment.

57 5. Advise the recipient that posting a document on the  
58 electronic account or website may commence a limitations period  
59 as short as 6 months even if the recipient never actually  
60 accesses the electronic account, electronic website, or the  
61 document.

62 (b) Once the recipient signs the written authorization,  
63 the sender must provide a separate notice to the recipient when  
64 a document is posted to the electronic account or website. As  
65 used in this subsection, the term "separate notice" means a  
66 notice sent to the recipient by means other than electronic  
67 posting, which identifies each document posted to the electronic  
68 account or website and provides instructions for accessing the  
69 posted document. The separate notice requirement is satisfied if  
70 the recipient accesses the document on the electronic account or  
71 website.

72 (c) A document sent by electronic posting is deemed  
73 received by the recipient on the earlier of the date that the  
74 separate notice is received or the date that the recipient  
75 accesses the document on the electronic account or website.

76 (d) At least annually after a recipient signs a written  
77 authorization, a sender shall send a notice advising recipients  
78 who have authorized one or more documents to be posted to an

HB 961

2015

79 electronic account or website that such posting may commence a  
80 limitations period as short as 6 months even if the recipient  
81 never accesses the electronic account or website or the document  
82 and that authority to receive documents by electronic posting  
83 may be revoked at any time. This notice must be given by means  
84 other than electronic posting. Failure to provide such notice  
85 within 1 year after the last notice is deemed to automatically  
86 revoke the authorization to receive documents in the manner  
87 permitted under this subsection 1 year after the last notice is  
88 sent.

89 (e) The notice required in paragraph (d) may be in  
90 substantially the following form: "You have authorized  
91 receipt of documents through posting to an electronic account  
92 or website where the documents can be accessed. This notice  
93 is being sent to advise you that a limitations period, which  
94 may be as short as 6 months, may be running as to matters  
95 disclosed in a trust accounting or other written report of a  
96 trustee posted to the electronic account or website even if  
97 you never actually access the electronic account or website  
98 or the documents. You may revoke the authorization to receive  
99 documents by electronic posting at any time. If you have any  
100 questions, please consult your attorney."

101 (f) A sender may rely on the recipient's authorization  
102 until the recipient revokes the authorization by sending a  
103 notice to the address designated for that purpose in the  
104 authorization. An authorization to have documents posted on the

105 electronic account or website may be revoked at any time.

106 (g) A document provided to a recipient solely through  
 107 electronic posting must remain accessible to the recipient on  
 108 the electronic account or website for at least 4 years after the  
 109 date that the document is deemed received by the recipient. The  
 110 electronic account or website must allow the recipient to  
 111 download or print the document. This subsection does not affect  
 112 or alter the duties of a trustee to keep clear, distinct, and  
 113 accurate records pursuant to s. 736.0810 or affect or alter the  
 114 time periods for which the trustee must maintain those records.

115 (h) To be effective, the posting of a document to an  
 116 electronic account or website must be done in accordance with  
 117 this subsection. The sender has the burden of establishing  
 118 compliance with this subsection.

119 (i) This subsection does not preclude the sending of a  
 120 document by other means.

121 (4) Notice to a person under this code, or the sending of  
 122 a document to a person under this code by electronic message, is  
 123 complete when the document is sent.

124 (a) An electronic message is presumed received on the date  
 125 that the message is sent.

126 (b) If the sender has knowledge that an electronic message  
 127 did not reach the recipient, the electronic message is deemed to  
 128 have not been received. The sender has the burden to prove that  
 129 another copy of the notice or document was sent by electronic  
 130 message or by other means authorized by this section.

HB 961

2015

131 |        ~~(6)(4)~~ Notice and service of documents in ~~of~~ a judicial  
132 | proceeding are governed by ~~must be given as provided in the~~  
133 | Florida Rules of Civil Procedure.

134 |        Section 2. This act shall take effect July 1, 2015.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 961 (2015)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
2 Representative Broxson offered the following:

3  
4       **Amendment (with title amendment)**

5       Remove lines 33-36 and insert:

6       (3) In addition to the methods listed in subsection (1)  
7 for sending a document, a sender may post a document to a secure  
8 electronic account or website where the document can be  
9 accessed.

10  
11       -----  
12                                   **T I T L E   A M E N D M E N T**

13       Remove line 4 and insert:

14       sender to post a document to a secure electronic account or

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Broxson offered the following:

**Amendment (with title amendment)**

Remove lines 83-105 and insert:

3  
 4  
 5  
 6 may be amended or revoked at any time. This notice must be given  
 7 by means other than electronic posting and may not be  
 8 accompanied by any other written communication. Failure to  
 9 provide such notice within 380 days after the last notice is  
 10 deemed to automatically revoke the authorization to receive  
 11 documents in the manner permitted under this subsection 380 days  
 12 after the last notice is sent.

13 (e) The notice required in paragraph (d) may be in  
 14 substantially the following form: "You have authorized receipt  
 15 of documents through posting to an electronic account or website  
 16 where the documents can be accessed. This notice is being sent  
 17 to advise you that a limitations period, which may be as short

Amendment No. 2

18 as 6 months, may be running as to matters disclosed in a trust  
19 accounting or other written report of a trustee posted to the  
20 electronic account or website even if you never actually access  
21 the electronic account or website or the documents. You may  
22 amend or revoke the authorization to receive documents by  
23 electronic posting at any time. If you have any questions,  
24 please consult your attorney."

25 (f) A sender may rely on the recipient's authorization  
26 until the recipient amends or revokes the authorization by  
27 sending a notice to the address designated for that purpose in  
28 the authorization. An authorization to have documents posted on  
29 the electronic account or website may be amended or revoked at  
30 any time.



31  
32 -----  
33 **T I T L E A M E N D M E N T**

34 Remove line 12 and insert:  
35 recipient to amend or revoke authorization for electronic



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4021 Financial Reporting  
**SPONSOR(S):** Steube  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 796

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N	Whittier	Luczynski
2) Civil Justice Subcommittee		Malcolm 	Bond 
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Condominium associations, cooperative associations, and homeowners' associations are required to compile an annual financial report and provide it to unit owners and members. The type of financial statement or report required by an association is based on its total annual revenue. However, an association that operates fewer than 50 units, regardless of its annual revenues, must ("may" for homeowners' associations) prepare a report of cash receipts and expenditures in lieu of formal financial statements.

The bill repeals the provision that requires an association operating fewer than 50 units, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures in lieu of preparing formal financial statements. Thus, the form of financial reporting in all associations will depend on the level of revenue.

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

The bill provides an effective date of July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons, but have an undivided share of access to common facilities, and are governed by an association. A cooperative is a form of real property ownership created pursuant to ch. 719, F.S., whereby the real property is owned by the cooperative association, and individual units are leased to the residents, who own shares in the cooperative association. A homeowners' association is a corporation responsible for the operation of a community and is created pursuant to ch. 720, F.S.

State law requires that condominium associations, cooperative associations, and homeowners' associations prepare and complete a financial report for the preceding fiscal year.<sup>1</sup> The financial statement must be provided to unit owners or members.

The standard of reporting in the required financial statements is based on total annual revenues of the association as follows:

Association's Total Annual Revenues	Reporting Requirement
Less than \$150,000	Report of cash receipts and expenditures
\$150,000 to \$299,000	Compiled financial statements
\$300,000 to \$499,000	Reviewed financial statements
\$500,000 or more	Audited financial statements

However, an association that operates fewer than 50 units, regardless of its annual revenues, must ("may" for homeowners' associations) prepare a report of cash receipts and expenditures in lieu of financial statements.

Additionally, an association may vote to waive the default statutory reporting requirement that the association would otherwise be required to provide and instead provide a lower level of financial reporting for that fiscal year.<sup>2</sup>

##### Effect of Proposed Changes

The bill repeals the provisions in ss. 718.111(13), 719.104(4)(a), and 720.303(7), F.S., that provide that an association operating fewer than 50 units ("parcels" for homeowners' associations), regardless of the association's annual revenues, must ("may" for homeowners' associations) prepare a report of cash receipts and expenditures in lieu of financial statements. Consequently, the year-end financial reports would be based solely on the level of annual revenues unless waived to a lower standard of reporting by a vote of the association.

#### B. SECTION DIRECTORY:

Section 1 amends s. 718.111, F.S., relating to financial reporting by condominium associations.

Section 2 amends s. 719.104, F.S., relating to financial reporting by cooperative associations.

Section 3 amends s. 720.303, F.S., relating to financial reporting by homeowners' associations.

<sup>1</sup> Sections 718.111(13), 719.104(4)(a), and 720.303(7), F.S.

<sup>2</sup> Sections 718.111(13)(d), 719.104(4)(e), and 720.303(7)(d), F.S.

Section 4 provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

### D. FISCAL COMMENTS:

According to the Department of Business and Professional Regulation, there are currently 23,087 condominium associations, 15,215 of which have less than 50 units, and 809 cooperative associations, of which 465 have less than 50 units.<sup>3</sup> To the extent that the bill would require associations with less than 50 units to perform a higher level of financial review, the bill may have a negative fiscal impact on those associations and a corresponding positive fiscal impact on accounting professionals. However, because an association may, by a vote of its members, still elect to waive the higher level of review, the impact may be limited.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

---

<sup>3</sup> Email from Dan Olson, Director, Office of Legislative Affairs, Department of Business and Professional Regulation, RE: HB 4021 (March 9, 2015).  
STORAGE NAME: h4021b.CJS.DOCX  
DATE: 3/9/2015

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.



1                                   A bill to be entitled  
 2           An act relating to financial reporting; amending ss.  
 3           718.111, 719.104, and 720.303, F.S.; deleting  
 4           provisions with respect to the preparation by certain  
 5           condominium associations, cooperative associations,  
 6           and homeowners' associations of annual reports of cash  
 7           receipts and expenditures in lieu of certain financial  
 8           statements; providing an effective date.

9

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

11

12           Section 1. Paragraph (b) of subsection (13) of section  
 13           718.111, Florida Statutes, is amended to read:

14           718.111 The association.—

15           (13) FINANCIAL REPORTING.—Within 90 days after the end of  
 16           the fiscal year, or annually on a date provided in the bylaws,  
 17           the association shall prepare and complete, or contract for the  
 18           preparation and completion of, a financial report for the  
 19           preceding fiscal year. Within 21 days after the final financial  
 20           report is completed by the association or received from the  
 21           third party, but not later than 120 days after the end of the  
 22           fiscal year or other date as provided in the bylaws, the  
 23           association shall mail to each unit owner at the address last  
 24           furnished to the association by the unit owner, or hand deliver  
 25           to each unit owner, a copy of the financial report or a notice  
 26           that a copy of the financial report will be mailed or hand

27 delivered to the unit owner, without charge, upon receipt of a  
 28 written request from the unit owner. The division shall adopt  
 29 rules setting forth uniform accounting principles and standards  
 30 to be used by all associations and addressing the financial  
 31 reporting requirements for multicondominium associations. The  
 32 rules must include, but not be limited to, standards for  
 33 presenting a summary of association reserves, including a good  
 34 faith estimate disclosing the annual amount of reserve funds  
 35 that would be necessary for the association to fully fund  
 36 reserves for each reserve item based on the straight-line  
 37 accounting method. This disclosure is not applicable to reserves  
 38 funded via the pooling method. In adopting such rules, the  
 39 division shall consider the number of members and annual  
 40 revenues of an association. Financial reports shall be prepared  
 41 as follows:

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

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

49 2.3. A report of cash receipts and disbursements must  
 50 disclose the amount of receipts by accounts and receipt  
 51 classifications and the amount of expenses by accounts and  
 52 expense classifications, including, but not limited to, the

53 following, as applicable: costs for security, professional and  
 54 management fees and expenses, taxes, costs for recreation  
 55 facilities, expenses for refuse collection and utility services,  
 56 expenses for lawn care, costs for building maintenance and  
 57 repair, insurance costs, administration and salary expenses, and  
 58 reserves accumulated and expended for capital expenditures,  
 59 deferred maintenance, and any other category for which the  
 60 association maintains reserves.

61 Section 2. Paragraph (c) of subsection (4) of section  
 62 719.104, Florida Statutes, is amended to read:

63 719.104 Cooperatives; access to units; records; financial  
 64 reports; assessments; purchase of leases.-

65 (4) FINANCIAL REPORT.-

66 (c)1. An association with total annual revenues of less  
 67 than \$150,000 shall prepare a report of cash receipts and  
 68 expenditures.

69 ~~2. An association in a community of fewer than 50 units,~~  
 70 ~~regardless of the association's annual revenues, shall prepare a~~  
 71 ~~report of cash receipts and expenditures in lieu of the~~  
 72 ~~financial statements required by paragraph (b), unless the~~  
 73 ~~declaration or other recorded governing documents provide~~  
 74 ~~otherwise.~~

75 2.3. A report of cash receipts and expenditures must  
 76 disclose the amount of receipts by accounts and receipt  
 77 classifications and the amount of expenses by accounts and  
 78 expense classifications, including the following, as applicable:

79 costs for security, professional, and management fees and  
 80 expenses; taxes; costs for recreation facilities; expenses for  
 81 refuse collection and utility services; expenses for lawn care;  
 82 costs for building maintenance and repair; insurance costs;  
 83 administration and salary expenses; and reserves, if maintained  
 84 by the association.

85 Section 3. Paragraph (b) of subsection (7) of section  
 86 720.303, Florida Statutes, is amended to read:

87 720.303 Association powers and duties; meetings of board;  
 88 official records; budgets; financial reporting; association  
 89 funds; recalls.—

90 (7) FINANCIAL REPORTING.—Within 90 days after the end of  
 91 the fiscal year, or annually on the date provided in the bylaws,  
 92 the association shall prepare and complete, or contract with a  
 93 third party for the preparation and completion of, a financial  
 94 report for the preceding fiscal year. Within 21 days after the  
 95 final financial report is completed by the association or  
 96 received from the third party, but not later than 120 days after  
 97 the end of the fiscal year or other date as provided in the  
 98 bylaws, the association shall, within the time limits set forth  
 99 in subsection (5), provide each member with a copy of the annual  
 100 financial report or a written notice that a copy of the  
 101 financial report is available upon request at no charge to the  
 102 member. Financial reports shall be prepared as follows:

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

HB 4021

2015

105 expenditures.

106 ~~2. An association in a community of fewer than 50 parcels,~~  
 107 ~~regardless of the association's annual revenues, may prepare a~~  
 108 ~~report of cash receipts and expenditures in lieu of financial~~  
 109 ~~statements required by paragraph (a) unless the governing~~  
 110 ~~documents provide otherwise.~~

111 2.3. A report of cash receipts and disbursement must  
 112 disclose the amount of receipts by accounts and receipt  
 113 classifications and the amount of expenses by accounts and  
 114 expense classifications, including, but not limited to, the  
 115 following, as applicable: costs for security, professional, and  
 116 management fees and expenses; taxes; costs for recreation  
 117 facilities; expenses for refuse collection and utility services;  
 118 expenses for lawn care; costs for building maintenance and  
 119 repair; insurance costs; administration and salary expenses; and  
 120 reserves if maintained by the association.

121 Section 4. This act shall take effect July 1, 2015.