

**SB 258 by Bradley (CO-INTRODUCERS) Dean, Hays;** (Identical to H 0141) Florida Clean Indoor Air Act  
883770 D S RCS RI, Thrasher Delete everything after 02/21 12:27 PM

**SB 372 by Latvala;** (Identical to H 0045) Beverage Law  
262472 D S RCS RI, Legg Delete everything after 02/21 12:28 PM

**SB 436 by Altman;** (Compare to CS/H 0073) Residential Properties  
780354 D S RCS RI, Legg Delete everything after 02/21 12:28 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**REGULATED INDUSTRIES**  
**Senator Stargel, Chair**  
**Senator Braynon, Vice Chair**

**MEETING DATE:** Thursday, February 21, 2013

**TIME:** 11:00 a.m.—1:30 p.m.

**PLACE:** 301 Senate Office Building

**MEMBERS:** Senator Stargel, Chair; Senator Braynon, Vice Chair; Senators Detert, Flores, Galvano, Gibson, Legg, Sachs, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 258</b> Bradley (Similar H 439, Identical H 141)	Florida Clean Indoor Air Act; Authorizing municipalities and counties to restrict smoking on certain properties, etc.  RI      02/21/2013 Fav/CS HP CA	Fav/CS Yeas 10 Nays 0
2	<b>SB 372</b> Latvala (Identical H 45)	Beverage Law; Authorizing a licensed vendor to transport alcoholic beverages from a distributor's place of business in vehicles owned or leased by the vendor's authorized employees; revising permit requirements for such vehicles; revising permit fees; providing for cancellation of vehicle permits; authorizing the inspection and search of such vehicles without a search warrant; providing requirements for the use and storage of vehicle permits, etc.  RI      02/21/2013 Fav/CS TR AGG AP	Fav/CS Yeas 10 Nays 0
3	<b>SB 436</b> Altman (Compare CS/H 73, CS/H 175, H 7025, CS/S 120, S 696)	Residential Properties; Exempting certain elevators from specific code update requirements; providing requirements for a condominium association board relating to the installation of hurricane shutters, impact glass, code-compliant windows or doors, and other types of code-compliant hurricane protection under certain circumstances; revising provisions relating to imposing remedies against a noncompliant or delinquent condominium unit owner or member; revising the types of records that are not accessible to homeowners' association members and parcel owners, etc.  RI      02/21/2013 Fav/CS JU AP	Fav/CS Yeas 10 Nays 0

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

**BILL:** CS/SB 258

**INTRODUCER:** Regulated Industries Committee and Senator Bradley

**SUBJECT:** Florida Clean Indoor Air Act

**DATE:** February 21, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			HP	
3.			CA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 258 authorizes municipalities and counties to restrict smoking on at entrances to public indoor workplaces and outdoor areas of such workplaces, and on property owned or controlled by a municipality or county, including beaches, playgrounds as defined in s. 775.215, public parks, sports and recreation areas, and walkways within those areas. The county or municipal restriction must comply with the restrictions specified in the bill.

The restricted areas must be identified by “No Smoking” signs that delineate the area where smoking is restricted. Designated smoking areas must also be provided and identified by signs that delineate the areas where smoking is authorized.

The county or municipality may only restrict smoking on sidewalks or other footpaths that are located within a beach, playground, public park, or sports and recreation area. However, the county or municipality may also restricted smoking at entrances to an enclosed public indoor workplace for a distance of no more than 75 feet from the entrance or more than 75 feet from air intakes for HVAC systems, operable windows, vents, or other openings through which smoke may enter the workplace.

The bill defines the term “public indoor workplace” to mean enclosed areas owned or controlled by a municipality or county which is public property used for public and governmental purposes and to which the public is invited or allowed, including, but is not limited to, administrative facilities, educational facilities, cultural and civic centers, healthcare facilities, and recreational facilities.

The bill provides that the smoking restriction cannot limit the ability of a person to authorize smoking to the extent not prohibited by ch. 386, F.S. The bill would permit a county or municipality to require, as a condition for a lease on property that it owns or controls, that smoking be prohibited on the property.

In regards to enforcement, the bill requires that a law enforcement officer, before issuing a citation for a violation, must first direct the violator to stop smoking and advise him or her of the penalties for a violation. The officer then must direct the person to leave the premises if he or she continues to smoke. The citation would be issued if the person refuses to leave the premises. Any ordinances adopted by a municipality or county under the authority provided in this bill would be subject to the fines provided in s. 386.208, F.S., of not more than \$100 for a first violation and not more than \$500 for a subsequent violation.

The bill provides an effective date of July 1, 2013.

This bill substantially amends section 386.209, Florida Statutes.

## II. Present Situation:

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates tobacco smoking in Florida. The legislative purpose of the act is to protect people from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.<sup>1</sup>

### Florida Constitution

On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an “enclosed indoor workplace,” in part, as “any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers ... without regard to whether work is occurring at any given time.” The amendment defines “work” as “any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not.” The amendment provides limited exceptions for private residences “whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof,” retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

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<sup>1</sup> Section 386.202, F.S.

The constitutional amendment directs the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The amendment requires that the implementing legislation have an effective date of no later than July 1, 2003, and requires that the implementing legislation must also provide civil penalties for violations; provide for administrative enforcement; and require and authorize agency rules for implementation and enforcement. The amendment further provides that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

### **Florida’s Clean Indoor Air Act**

The Legislature implemented the smoking ban by enacting ch. 2003-398, L.O.F., effective July 1, 2003, which amended pt. II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment’s prohibition. Specifically, s. 386.204, F.S., prohibits smoking in an enclosed indoor workplace, unless the act provides an exception. The act adopts and implements the amendment’s definitions and adopts the amendment’s exceptions for private residences whenever not being used for certain commercial purposes;<sup>2</sup> stand-alone bars;<sup>3</sup> designated smoking rooms in hotels and other public lodging establishments;<sup>4</sup> and retail tobacco shops, including businesses that manufacture, import or distribute tobacco products and tobacco loose leaf dealers.<sup>5</sup>

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department’s specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.<sup>6</sup> The penalty for a first violation is a fine of not less than \$250 and not more than \$750. The act provides fines for subsequent violations in the amount of not less than \$500 and not more than \$2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine in the amount of not more than \$100 for a first violation and not more than \$500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.

### **Smoking Prohibited Near School Property**

Section 386.212(1), F.S., prohibits smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

### **Enforcement**

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as

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<sup>2</sup> Section 386.2045(1), F.S. See also definition of the term “private residence” in s. 386.203(1), F.S.

<sup>3</sup> Section 386.2045(4), F.S. See also definition of the term “stand-alone bar” in s. 386.203(11), F.S.

<sup>4</sup> Section 386.2045(3), F.S. See also definition of the term “designated guest smoking room” in s. 386.203(4), F.S.

<sup>5</sup> Section 386.2045(2), F.S. See also definition of the term “retail tobacco shop” in s. 386.203(8), F.S.

<sup>6</sup> The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

prescribed by a county or municipality to any person violating the provisions of s. 386, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.<sup>7</sup>

If a person fails to comply with the directions on the citation, the person would waive his or her right to contest the citation and an order to show cause may be issued by the court.<sup>8</sup>

### **Regulation of Smoking Preempted to State**

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

As an exception to the state’s preemption of smoking regulation, s. 386.209, F.S., permits school districts to further restrict smoking by persons on school district property,

Regarding the issue of preemption, a recent Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all persons on district property.<sup>9</sup> The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation for indoor and outdoor smoking. The Attorney General noted that the 2011 amendment of s. 386.209, F.S.,<sup>10</sup> to authorize school districts to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

### **III. Effect of Proposed Changes:**

The bill amends s. 386.209, F.S., to authorize municipalities and counties to restrict smoking on at entrances to public indoor workplaces and outdoor areas of such workplaces. They may also restrict smoking on property owned or controlled by a municipality or county, including beaches, playgrounds as defined in s. 775.215, F.S.,<sup>11</sup> public parks, and sports and recreation areas. The county or municipal restriction must comply with the restrictions specified in the bill.

The restricted areas must be identified by “No Smoking” signs that delineate the area where smoking is restricted. The municipality or county must also provide designated smoking areas and those areas must be identified by signs that delineate the areas where smoking is authorized.

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<sup>7</sup> Section 386.212(3), F.S.

<sup>8</sup> Section 386.212(4), F.S.

<sup>9</sup> Fla. AGO 2011-15 (July 21, 2011). *See also*, Fla. AGO 2005-63 (November 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

<sup>10</sup> Chapter 2011-108, L.O.F.

<sup>11</sup> Section 775.215(1)(c), F.S., relating to residency restriction for persons convicted of certain sex offenses, defines the term “playground” to mean “a designated independent area in the community or neighborhood that is designated solely for children and has one or more play structures.”

The county or municipality may only restrict smoking on sidewalks or other footpaths that are located within a beach, playground, public park, or sports and recreation area. However, the county or municipality may also restricted smoking at entrances to an enclosed public indoor workplace for a distance of no more than 75 feet from the entrance or more than 75 feet from air intakes for HVAC systems, operable windows, vents, or other openings through which smoke may enter the workplace.

The bill defines the term “public indoor workplace” to enclosed area owned or controlled by a municipality or county which is public property used for public and governmental purposes and to which the public is invited or allowed, including, but is not limited to, administrative facilities, educational facilities, cultural and civic centers, healthcare facilities, and recreational facilities.

The bill provides that the smoking restriction cannot limit the ability of a person to authorize smoking to the extent not prohibited by ch. 386, F.S. The bill would permit a county or municipality to require, as a condition for a lease on property that it owns or controls, that smoking be prohibited on the property.

In regards to enforcement, the bill requires that the county or municipal restriction must require a law enforcement officer, before issuing a citation for a violation, to first direct the violator to stop smoking and to advise him or her of the penalties for a violation. If the person continues to smoke in violation of the law enforcement officer’s directive, the officer must then ask the person to leave the premises. The law enforcement officer may issue the citation, punishable as provided in s. 386.208, F.S., if the person refuses to leave the premises.

Any ordinances adopted by a municipality or county under the authority provided in this bill would be subject to the fines provided in s. 386.208, F.S., of not more than \$100 for a first violation and not more than \$500 for a subsequent violation.

The bill provides an effective date of July 1, 2013.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries Committee on February 21, 2013:**

The committee substitute substantially amends to the bill. It authorizes municipalities and counties to restrict smoking on at entrances to public indoor workplaces and outdoor areas of such workplaces, and on property owned or controlled by a municipality or county, including beaches, playgrounds as defined in s. 775.215, F.S., public parks, sports and recreation areas, and walkways within those areas. The county or municipal restriction must comply with the restrictions specified in the bill.

It also includes requirements for no smoking signs, designated smoking areas, restriction of smoking on leased property, and procedures for issuing citations by law enforcement. It includes a definition for “public indoor workplace.”

## B. Amendments:

None.



883770

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2013	.	
	.	
	.	
	.	

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The Committee on Regulated Industries (Thrasher) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 386.209, Florida Statutes, is amended to  
read:

386.209 Regulation of smoking preempted to state.—This part  
expressly preempts regulation of smoking to the state and  
supersedes any municipal or county ordinance on the subject,  
except that: ~~however,~~

(1) School districts may further restrict smoking by  
persons on school district property.



883770

13           (2) Municipalities or counties may further restrict smoking  
14 at entrances to public indoor workplaces and outdoor areas of  
15 such workplaces, and property owned or controlled by a  
16 municipality or county, including beaches, playgrounds as  
17 defined in s. 775.215, public parks, and sports and recreation  
18 areas, provided:

19           (a) The areas where smoking is restricted are identified by  
20 "No Smoking" signs that delineate the area where smoking is  
21 restricted;

22           (b) Designated smoking areas are provided and identified by  
23 signs that delineate the areas where smoking is authorized;

24           (c) Except as provided in paragraph (d), restrictions on  
25 sidewalks or other footpaths are limited to sidewalks or  
26 footpaths that are located within a beach, playground, public  
27 park, or sports and recreation area;

28           (d) Restricted areas at entrances to an enclosed public  
29 indoor workplace do not extend more than 75 feet from the  
30 entrance or more than 75 feet from air intakes for HVAC systems,  
31 operable windows, vents, or other openings through which smoke  
32 may enter the workplace;

33           (e) The smoking restriction does not limit the ability of a  
34 person to authorize smoking to the extent not prohibited by this  
35 chapter. However, if a business is located on property owned or  
36 operated by a municipality or county, the municipality or county  
37 may require, as a condition for granting a lease, that smoking  
38 be prohibited on such property; and

39           (f) A law enforcement officer, before issuing a citation  
40 for a violation of this subsection, first directs the violator  
41 to stop smoking and advises him or her of the penalties for a



883770

42 violation. If the person does not heed the directive, the  
43 officer must then ask the person to leave the premises. If the  
44 person refuses to leave the premises, a civil citation may be  
45 issued, punishable as provided in s. 386.208.

46  
47 As used in this section, the term "public indoor workplace"  
48 means any enclosed area owned or controlled by a municipality or  
49 county which is public property used for public and governmental  
50 purposes and to which the public is invited or allowed and which  
51 includes, but is not limited to, administrative facilities,  
52 educational facilities, cultural and civic centers, healthcare  
53 facilities, and recreational facilities.

54 Section 2. This act shall take effect July 1, 2013.

55  
56 ===== T I T L E A M E N D M E N T =====

57 And the title is amended as follows:

58 Delete everything before the enacting clause  
59 and insert:

60 A bill to be entitled  
61 An act relating to the Florida Clean Indoor Air Act;  
62 amending s. 386.209, F.S.; authorizing municipalities  
63 and counties to restrict smoking on certain  
64 properties; providing limitations on such  
65 restrictions; authorizing a law enforcement officer to  
66 issue a citation under certain circumstances;  
67 providing a definition; providing an effective date.

By Senator Bradley

7-00360-13

2013258\_\_

1                   A bill to be entitled  
2           An act relating to the Florida Clean Indoor Air Act;  
3           amending s. 386.209, F.S.; authorizing municipalities  
4           and counties to restrict smoking on certain  
5           properties; providing an effective date.  
6

7 Be It Enacted by the Legislature of the State of Florida:  
8

9           Section 1. Section 386.209, Florida Statutes, is amended to  
10          read:

11           386.209 Regulation of smoking preempted to state.—This part  
12          expressly preempts regulation of smoking to the state and  
13          supersedes any municipal or county ordinance on the subject,  
14          ~~except that:; however,~~

15           (1) School districts may further restrict smoking by  
16          persons on school district property.

17           (2) Municipalities may further restrict outdoor smoking on  
18          municipal property.

19           (3) Counties may further restrict outdoor smoking on county  
20          property.

21           Section 2. This act shall take effect July 1, 2013.



The Florida Senate

## Committee Agenda Request

**To:** Senator Kelli Stargel, Chair  
Committee on Regulated Industries

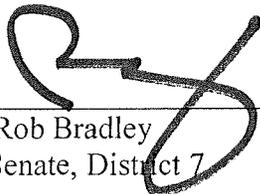
**Subject:** Committee Agenda Request

**Date:** January 22, 2013

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I respectfully request that **Senate Bill # 258**, relating to Florida Clean Indoor Air Act, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



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Senator Rob Bradley  
Florida Senate, District 7



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on Criminal and Civil Justice, *Chair*  
Appropriations  
Appropriations Subcommittee on General Government  
Community Affairs  
Criminal Justice  
Governmental Oversight and Accountability  
Judiciary

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

**SENATOR ROB BRADLEY**  
7th District

# MEMORANDUM

**To:** Senator Kelli Stargel  
**From:** Senator Rob Bradley  
**Subject:** Legislative Assistant to present SB 258  
**Date:** February 21, 2013

---

Due to a scheduling conflict, please allow Mr. Steven Richardson, my legislative assistant, to present Senate Bill 258: Florida Clean Indoor Air Act in the Senate Committee on Regulated Industries, scheduled for February 21, 2013.

Thanks so very much for considering my request.

A handwritten signature in black ink, appearing to read "Rob Bradley".

**REPLY TO:**

- 2233 Park Avenue, Suite 303, Orange Park, FL 32073 (904) 278-2085
- 208 Senate Office Building, 404 South Monroe Street, Tallahassee, FL 32399-1100 (850) 487-5007
- Santa Fe College, Center for Innovation & Economic Development, 530 W. University Ave., Building DB, Room 127, Gainesville, FL 32601 (352) 264-4004
- Starke, Florida (904) 966-6280 extension 3933

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2013

*Meeting Date*

Topic Florida Clean Indoor Air Act

Bill Number SB 258

Name Heather Wildermuth

Amendment Barcode 883770

*(if applicable)*

*(if applicable)*

Job Title Director of Government Relations

Address 2619 Centennial Boulevard, Suite 101

Phone 850-251-2111

*Street*

Tallahassee FL 32308

E-mail heather.wildermuth@cancer.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing American Cancer Society Cancer Action Network

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-21-13  
Meeting Date

Topic Florida Clean Indoor Air Act

Bill Number 258  
(if applicable)

Name Marsha Hosack

Amendment Barcode 883770  
(if applicable)

Job Title Intergovernmental Relations Manager

Address 11660 Ringling Blvd  
Street

Phone 941 650-6968

City State Zip

E-mail mhosack@scgov.net  
~~marsha.hosack~~

Speaking:  For  Against  Information

Representing Sarasota County Government

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/22  
Meeting Date

Topic Clean Indoor Air Act

Bill Number 258  
(if applicable)

Name Susan Harbin

Amendment Barcode 883770  
(if applicable)

Job Title Legislative Advocate

Address 110 S Monroe  
Street

Phone 850 922 4300

Tallahassee FL 32301  
City State Zip

E-mail s.harbin@fl-counties.com

Speaking:  For  Against  Information

Representing FL Association of Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.20.13

Meeting Date

Topic Clean Indoor Air Act

Bill Number 258

Name Virginia Haley

Amendment Barcode 883770  
(if applicable)

Job Title President Visit Sarasota County

Address 1777 Main St

Phone 941 955 0991

Sarasota  
City State Zip

E-mail vhaley@visitsarasota.org

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-21-13

*Meeting Date*

Topic Florida Clean Indoor Act - 2013

Bill Number 258  
*(if applicable)*

Name Richard Turner

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title General Counsel & V.P. Government Relations

Address 230 South Adams Street  
*Street*

Phone 850-224-2250

Tallahassee                      FL                      32301  
*City*                                      *State*                                      *Zip*

E-mail rturner@frla.org

Speaking:     For         Against         Information

Representing Florida Restaurant & Lodging Assoc

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

21 Feb 13

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Florida Clean Indoor Air Act

Bill Number 258  
(if applicable)

Name James Mosteller

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Government Relations Director

Address 2851 Remington Green Circle

Phone 850/727-3712

Street  
Tallahassee FL 32308  
City State Zip

E-mail James.Mosteller@heart.org

Speaking:  For  Against  Information

Representing American Heart Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13

Meeting Date

Topic SB 258

Bill Number SB 258  
*(if applicable)*

Name Casey Cook

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Advocate

Address Po Box 1757  
Street

Phone 850 701 3701

Tallahassee FL 32302  
City State Zip

E-mail ccook@flcities.com

Speaking:  For  Against  Information

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

*Meeting Date*

Topic CLEAN INDOOR AIR

Bill Number 258  
*(if applicable)*

Name BETH LABASKY

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Dir. Govt Relations

Address 13211 Boney Rd.  
*Street*

Phone 850 322 7335

Jacksonville FLA 32226  
*City State Zip*

E-mail BethLabasky@aol.com

Speaking:  For  Against  Information

Representing C.I.P.D. FOUNDATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2013

Meeting Date

Topic SB 258 Clean Indoor Air Act

Bill Number SB 258  
*(if applicable)*

Name Cari Roth

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 101 N. Monroe Street

Phone 850/222-8611

Tallahassee FL 32301  
*City State Zip*

E-mail Croth@bmdlaw.com

Speaking:  For  Against  Information

Representing Charlotte, Manatee Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2013

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 258  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13  
Meeting Date

Topic FL Clean Indoor Air Act Bill Number SB 258  
*(if applicable)*

Name JAMIE WILSON Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Vice President

Address 12902 Magnolia Dr. Phone 813-745-1521  
*Street*

JPA FL 33612 E-mail jami.wilson@moffitt.org  
*City State Zip*

Speaking:  For  Against  Information

Representing MOFFITT CANCER CENTER

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

**BILL:** CS/SB 372

**INTRODUCER:** Regulated Industries Committee and Senator Latvala

**SUBJECT:** Beverage Law

**DATE:** February 21, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Fav/CS</b>
2.	_____	_____	TR	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 372 permits licensed retail vendors to transport alcoholic beverages in vehicles which are owned or leased by the vendor, or by any person required to have been disclosed on a license application (authorized person) filed by a vendor and approved by the Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation. The vehicle must have been issued a permit from the division for that purpose.

The bill requires that the vehicles must be operated by the vendor or by the authorized person when transporting alcoholic beverage from a distributor's place of business to the vendors licensed premises or off-premises storage. The signature of the authorized person is required on the vehicle permit application.

The authorized person's permit would expire when the person disposes of his or her vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division, whichever occurs first. In addition, the vehicle permit would be canceled by the division upon the vendor's or the authorized person's request.

An authorized person who accepts a vehicle permit would be subject to the same conditions regarding inspection and search as is a licensee under current law.

The bill requires that the invoices or sales tickets for the purchased alcoholic beverages must be attached to, or carried in, the vehicle used by the vendor or the authorized person when the alcoholic beverage are being transported.

The bill deletes the requirement that the division must have decals ready for issuance. This would permit the division to issue only paper permits.

The bill provides an effective date of July 1, 2013.

This bill substantially amends sections 561.57 and 562.07, Florida Statutes.

## II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law.<sup>1</sup> These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.<sup>3</sup>

### Three Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the “three-tier system.” The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.<sup>4</sup>

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,<sup>5</sup> allowing individuals to bring small quantities of alcohol back from trips out-of-state,<sup>6</sup> and allowing in-state wineries to manufacture and sell directly to consumers.<sup>7</sup>

---

<sup>1</sup> The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See s. 561.01(6), F.S.*

<sup>2</sup> *See s. 561.14, F.S.*

<sup>3</sup> Section 561.02, F.S.

<sup>4</sup> Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: [http://www.lanepowell.com/wp-content/uploads/2009/04/pricce\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf) (Last visited February 14, 2013).

<sup>5</sup> *See s. 561.221(2), F.S.*, which permits the limited manufacture of beer by vendors (brew pubs).

<sup>6</sup> *See s. 562.16, F.S.*, which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

<sup>7</sup> *See s. 561.221, F.S.*

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>8</sup> Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturer, or bottler.<sup>9</sup>

### **Deliveries by Licensees**

Section 561.57(3), F.S., provides that deliveries of alcoholic beverages by manufacturers, distributors and vendors may only be made in vehicles that are owned or leased by the vendor. According to the division, most retail vendor licensees are a corporate entity. Therefore, retail vendors who own their vehicles as individuals are prohibited from making deliveries away from their places of business and from transporting alcoholic beverage purchases from a distributor's place of business in their personal vehicles, ie., vehicles that are not registered in the name of the licensed vendor.

Section 561.57(4), F.S., requires the division to prepare permits or decals suitable to be attached to vendor's vehicles upon payment of a \$5 fee. According to the division, it prints vehicle permits on paper and does not issue decals for attachment to the vehicle. Vehicle permit holders keep the paper permits in their vehicles and produce them upon request. The permit expires when the vendor disposes of his or her vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division, whichever occurs first.

Section 561.57(4), F.S., also provides that, by acceptance of a vehicle permit, the licensee agrees that the vehicle will always be subject to inspection and searched without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

Deliveries that are made at the warehouse of a manufacturer or distributor to a vendor or his authorized agent must be made to a vehicle with an attached vehicle permit issued to the licensee making the purchase. The invoice or sales ticket covering all such purchases and deliveries must show, in addition to the information required by other rules, the permit number and the fact that the delivery was made at the warehouse of the manufacturer or distributor.<sup>10</sup>

Section 562.07, F.S., prohibits transporting more than 12 bottles of alcoholic beverages. Section 562.07(2), F.S., provides an exception to this prohibition for the transportation of alcoholic beverage vehicles owned or leased by licensed vendors who are transporting alcoholic beverage purchases from the distributor's place of business to the vendor's licensed place of business or off-premises storage and to which said vehicles are attached a permit or decal as provided for in the alcoholic beverage law.

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<sup>8</sup> Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

<sup>9</sup> Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

<sup>10</sup> Rule 61A-4.030, F.A.C.

### **III. Effect of Proposed Changes:**

The bill amends s. 561.57(3), F.S., to permit licensed retail vendors to transport alcoholic beverages in vehicles which are owned or leased by the vendor, or any person required to have been disclosed on a license application filed (authorized person) by a vendor and approved by the division. The vehicle must have been issued a permit from the division for that purpose.

The bill requires that the vehicles must be operated by the vendor or by the authorized person when transporting alcoholic beverages from a distributor's place of business to the vendors licensed premises or off-premises storage.

The bill amends s. 561.57(4), F.S., to provide that the signature of the authorized person is required on the vehicle permit application.

As with a vendor's vehicle permit, s. 561.57(4), F.S., also provides that the authorized person's permit would expire when the employee disposes of his or her vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division, whichever occurs first. In addition, the vehicle permit would be canceled by the division upon the vendor's or authorized person's request.

An authorized person who accepts a vehicle permit would be subject to the same conditions regarding inspection and search as is a licensee under current law.

The bill amends s. 562.57(4), F.S., to require that the invoices or sales tickets for the purchased alcoholic beverages must be attached to, or carried in, the vehicle used by the vendor or the authorized person when the alcoholic beverage are being transported.

The bill also amends s. 561.57(4), F.S., to delete the requirement that the division must have decals ready for issuance. This would permit the division to issue only paper permits.

The bill amends s. 562.07, F.S., which prohibits the transporting of more than 12 bottles of alcoholic beverages, to revise the exception in s. 562.07(2), F.S., to allow the transportation of alcoholic beverages in vehicles which are owned or leased by persons authorized under s. 561.57(3), F.S.

The bill provides an effective date of July 1, 2013.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

Alcoholic beverage vendors and other authorized persons would pay a \$5 fee for a vehicle permit to transport alcoholic beverages.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on February 21, 2013:**

The committee substitute (CS) does not amend s. 561.57(3), F.S., to permit license retail vendors to transport alcoholic beverages in vehicles owned or leased by authorized employees of the vendor. The CS amends this section to permit licensed retail vendors to transport alcoholic beverages in vehicles which are owned or leased by any person required to have been disclosed on a license application filed by a vendor and approved by the division.

The CS amends s. 561.57(4), F.S., to provide that the signature of the person authorized in s. 561.57(3), F.S., is required in the vehicle permit application.

The CS amends s. 562.57(4), F.S., to require that the invoices or sales tickets for the purchased alcoholic beverages must be attached to, or carried in, the vehicle used by the vendor or the authorized person when the alcoholic beverages are being transported.

The CS amends s. 562.57(4), F.S., to require that the invoices or sales tickets for the purchased alcoholic beverages must be attached to, or carried in, the vehicle used by the

---

vendor or the authorized person when the alcoholic beverages are being transported. The CS does not amend s. 562.57(4), F.S., to require that the permit must be carried in the vehicle when the vehicle is being used to transport or deliver alcoholic beverages and that the vehicle permit must remain on the licensed premises when the vehicle is not being used to transport or deliver alcoholic beverages.

**B. Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---



262472

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2013	.	
	.	
	.	
	.	

---

The Committee on Regulated Industries (Legg) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Subsections (3) and (4) of section 561.57, Florida Statutes, are amended to read:

561.57 Deliveries by licensees.—

(3) A licensed ~~Any~~ vendor may transport alcoholic beverage purchases from a distributor's place of business to the vendor's licensed premises or off-premises storage ~~if the, provided that~~ a vehicle used to transport the alcoholic beverages is owned or leased by the vendor or a person identified in a license



262472

13 application filed by the vendor and approved by the division and  
14 a valid vehicle permit has been issued for such ~~or decal is~~  
15 attached to the vendor's owned or leased vehicle. Vehicles owned  
16 or leased by a person authorized under this subsection must be  
17 operated by such persons when transporting alcoholic beverage  
18 purchases from a distributor's place of business to the vendor's  
19 licensed premises or off-premises storage.

20 (4) A vehicle permit ~~The division shall have prepared for~~  
21 ~~issuance vehicle permits or decals suitable to be attached to~~  
22 ~~such vehicles, with the words, "Beverage Vehicle No.," which may~~  
23 ~~be obtained by a licensed any vendor or other person authorized~~  
24 ~~under subsection (3) upon application and payment of a fee of \$5~~  
25 ~~per vehicle to the division. The signature of a person~~  
26 ~~authorized under subsection (3) is required on the vehicle~~  
27 ~~permit application. Such permit remains permits shall be valid~~  
28 ~~and does will not expire unless the vendor or other person~~  
29 ~~authorized under subsection (3) disposes of his or her vehicle,~~  
30 ~~or the vendor's alcoholic beverage license is transferred,~~  
31 ~~canceled, not renewed, or is revoked by the division, whichever~~  
32 ~~occurs first. The division shall cancel a vehicle permit issued~~  
33 ~~to a vendor upon request from the vendor. The division shall~~  
34 ~~cancel a vehicle permit issued to other persons authorized under~~  
35 ~~subsection (3) upon request from that person or the vendor. By~~  
36 ~~acceptance of a vehicle permit, the vendor or other person~~  
37 ~~authorized under subsection (3) licensee agrees that such~~  
38 ~~vehicle is shall always be subject to inspection and search be~~  
39 ~~inspected and searched without a search warrant, for the purpose~~  
40 ~~of ascertaining that all provisions of the alcoholic beverage~~  
41 ~~laws are complied with, by authorized employees of the division~~



262472

42 and also by sheriffs, deputy sheriffs, and police officers  
43 during business hours or other times that the vehicle is being  
44 used to transport or deliver alcoholic beverages. A vehicle  
45 permit issued under this subsection and invoices or sales  
46 tickets for alcoholic beverages purchased and transported must  
47 be attached to or carried in the vehicle used by the vendor or  
48 other person authorized under subsection (3) when the vendor's  
49 alcoholic beverages are being transported or delivered.

50 Section 2. Subsection (2) of section 562.07, Florida  
51 Statutes, is amended to read:

52 562.07 Illegal transportation of beverages.—It is unlawful  
53 for alcoholic beverages to be transported in quantities of more  
54 than 12 bottles except as follows:

55 (2) In the owned or leased vehicles of licensed vendors or  
56 other persons authorized under s. 561.57(3) transporting  
57 alcoholic beverage purchases from the distributor's place of  
58 business to the vendor's licensed place of business or off-  
59 premises storage and to which said vehicles are attached a  
60 permit or decal as provided for in the alcoholic beverage law;

61 Section 3. This act shall take effect July 1, 2013.

62  
63 ===== T I T L E A M E N D M E N T =====

64 And the title is amended as follows:

65 Delete everything before the enacting clause  
66 and insert:

67 A bill to be entitled

68 An act relating to vehicle permits; amending ss.

69 561.57 and 562.07, F.S.; authorizing a licensed vendor  
70 to transport alcoholic beverages from a distributor's



262472

71 place of business to the vendor's licensed premises in  
72 a vehicle owned or leased by a person identified on a  
73 license application filed by the vendor and approved  
74 by the division; requiring each operator to sign the  
75 application; revising permit requirements for such  
76 vehicles, including a specified fee per vehicle;  
77 providing for the cancellation of vehicle permits;  
78 authorizing the inspection and search of such vehicles  
79 without a search warrant; providing requirements for  
80 the use and storage of vehicle permits; providing an  
81 effective date.

By Senator Latvala

20-00465-13

2013372\_\_

A bill to be entitled

An act relating to the Beverage Law; amending s.

561.57, F.S.; authorizing a licensed vendor to transport alcoholic beverages from a distributor's place of business in vehicles owned or leased by the vendor's authorized employees; revising permit requirements for such vehicles; revising permit fees; providing for cancellation of vehicle permits; authorizing the inspection and search of such vehicles without a search warrant; providing requirements for the use and storage of vehicle permits; providing an effective date.

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

Section 1. Subsections (3) and (4) of section 561.57, Florida Statutes, are amended to read:

561.57 Deliveries by licensees.—

(3) A licensed ~~any~~ vendor may transport alcoholic beverage purchases from a distributor's place of business to the vendor's licensed premises or off-premises storage, if the provided that a vehicle used to transport the alcoholic beverages is owned or leased by the vendor or an authorized employee of the vendor and a valid vehicle permit has been issued for such or decal is attached to the vendor's owned or leased vehicle.

(4) A vehicle permit ~~The division shall have prepared for issuance vehicle permits or decals suitable to be attached to such vehicles, with the words, "Beverage Vehicle No. ....,"~~ which may be obtained by a licensed ~~any~~ vendor or an authorized

Page 1 of 2

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

20-00465-13

2013372\_\_

employee of the vendor upon application and payment of a fee of \$5 per vehicle to the division. Such permit remains ~~permits~~ ~~shall be valid and does will~~ not expire unless the vendor or authorized employee of the vendor disposes of his or her vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division, whichever occurs first. The division shall cancel a vehicle permit issued to a vendor upon request from the vendor. The division shall cancel a vehicle permit issued to an authorized employee of a vendor upon request from the vendor, upon request from the authorized employee, or upon the authorized employee's termination from employment by the vendor. By acceptance of a vehicle permit, the vendor or authorized employee of the vendor ~~licensee~~ agrees that such vehicle is ~~shall~~ always be subject to inspection and search ~~be inspected and searched~~ without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times that the vehicle is being used to transport or deliver alcoholic beverages. A vehicle permit issued under this subsection must be carried in the vehicle used by the vendor or authorized employee of the vendor when the vendor's alcoholic beverages are being transported or delivered. For a vehicle permit issued to an authorized employee of a vendor, the vehicle permit must remain on the vendor's licensed premises when not being used for transportation or delivery of the vendor's alcoholic beverages.

Section 2. This act shall take effect July 1, 2013.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Ethics and Elections, *Chair*  
Budget - Subcommittee on General Government  
Appropriations  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Community Affairs  
Environmental Preservation and Conservation  
Rules  
Judiciary  
Appropriations  
Select Committee on Gaming

### SENATOR JACK LATVALA

20th District

January 30, 2013

The Honorable Senator Kelli Stargel, Chair  
Senate Committee on Regulated Industries  
330 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Stargel:

I respectfully request consideration of Senate Bill 372 regarding the Beverage Law at your earliest convenience.

I have filed this bill at the request of a food and beverage retailer located in my district, and I would greatly appreciate the opportunity to present this legislation to the Committee on Regulated Industries as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jack Latvala".

Jack Latvala  
State Senator  
District 20

JL: JW

#### REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

Don Gaetz  
President of the Senate

Garrett Richter  
President Pro Tempore

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/21/2013

Date

SB 372

Bill Number

Name Richard Turner

Phone (850) 224. 2250

Address 230 South Adams Street

E-mail rturner@frla.org

Street

Tallahassee

FL

32301

Job Title General Counsel

City

State

Zip

Speaking:  For  Against  Information

Appearing at request of Chair

Subject Beverages LAW - Vehicle Permits

Representing Florida Restaurant and Lodging Association

Lobbyist registered with Legislature:  Yes

No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from \_\_\_\_\_ .m. to \_\_\_\_\_ .m.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21

Meeting Date

Topic Vehicle Permits

Bill Number 372  
*(if applicable)*

Name Jason Unger

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address ~~Madison~~ 301 S. Brenagh St.

Phone 577-9090

Street

TLH

E-mail j.unger@grayrobson.com

City

State

Zip

Speaking:  For  Against  Information

Representing Restaurant Depot

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

Waive in support

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13

Meeting Date

Topic Alcoholic Beverage Pick-ups

Bill Number 372  
(if applicable)

Name Scott Ashley

Amendment Barcode 262472  
(if applicable)

Job Title President

Address 215 S. Monroe St. # 800

Phone 850 681-8700

Talla. FL 32301  
City State Zip

E-mail scott@wsdflorida.com

Speaking:  For  Against  Information

Representing Wine and Spirits Distributors of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

STRIKE ALL Amendment

Meeting Date \_\_\_\_\_  
Topic Beverage Law - Vehicle Permits Bill Number 372  
Name Scott Dick Amendment Barcode \_\_\_\_\_  
*(if applicable)*  
*(if applicable)*

Job Title \_\_\_\_\_  
Address 210 South Monroe St. Phone 850 545-4526  
*Street* Tallahassee FL 32301  
*City* *State* *Zip* E-mail Scott@skdgrp.com

Speaking:  For  Against  Information  
Representing FLORIDA Retail Federation

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

Waive in Support!

THE FLORIDA SENATE  
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13  
Meeting Date

Topic Beverage Law

Bill Number SB 372  
(if applicable)

Name Mitch Rubin

Amendment Barcode 262472  
(if applicable)

Job Title Director

Address 215 S. Monroe St. #340  
Street  
Tallahassee FL 32301  
City State Zip

Phone (850) 224-2337

E-mail MIRubin2505@aol.com

Speaking:  For  Against  Information

Representing Florida Beer Wholesalers Assn

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2013

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 372  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

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Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

*This form is part of the public record of the meeting.*

S-001 (10/20/11)



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

**BILL:** CS/SB 436

**INTRODUCER:** Regulated Industries Committee and Senator Altman

**SUBJECT:** Residential Properties

**DATE:** February 21, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Fav/CS</b>
2.			JU	
3.			AP	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 436 revises several provisions relating to the governance of condominium, cooperative, and homeowners' associations.

The bill prohibits the enforcement of the Phase II Firefighter's Service requirement for existing elevators until the elevator is replaced or the elevator requires major modification. This requirement permits the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment during an emergency.

The bill provides an exemption from supervision by the Florida Department of Health for swimming pools in homeowners' association with no more than 32 parcels.

Regarding condominium, cooperative, and homeowners' associations, the bill:

- Gives association members the right to use their smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, and without charge to the member;

- Requires that any challenge to the election process be commenced within 60 days after the election results are announced;
- Prohibits election recalls when there are less than 60 days before the next election; and
- Provides that the suspension of an owner's rights does not apply to limited common elements that are intended to be used only by that owner, common elements needed to access the unit or home, utility services to the unit or home, parking spaces, or elevators, and that suspended interests are not needed for establishing a quorum, conducting an election, or obtaining member approval.

Regarding condominiums, the bill:

- Decreases the number of votes required for the purchase of a lease;
- Defines the unit owner's responsibility for the cost of reconstruction of condominium property;
- Clarifies that broadcast notice by closed-circuit television may be made in lieu of a notice posted physically on the condominium property;
- Clarifies that the board must maintain a copy of a board member's post election certification for at least 5 years or the duration of the board member's tenure, whichever is longer;
- Revises the hurricane protection provisions to include impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection and clarifies the conditions for a unit owner to receive credit for the prior installation of hurricane protection;
- Extends to 10 years from 7 years the period for completion of all phases of a phase condominium;
- Provides for the creation of a secondary condominium within a primary condominium; and
- Permits officers or full-time employees of the condominium ombudsman's office to engage in another profession or any other business that is not directly or indirectly related, or conflicts with, his or her work in the ombudsman's office.

Regarding cooperative associations, the bill provides that meetings of the board held for the purpose of discussing personnel matters are not subject to the open meetings requirement. It also expands the types of official records that are not accessible to members of the association, including records containing specified personal identifying information. The bill also requires newly elected or appointed members of the cooperative board to provide a post-election certification that they have read the governing documents of the association, or alternatively, to submit a certification showing the satisfactory completion of the educational curriculum within 1 year before the election or 90 days after the election or appointment.

Regarding homeowners' associations, the bill includes the personnel records of the management company among the records that are not accessible to the association's members. It also deletes the condition that the parcel owner must submit a written request to speak prior to the meeting in order to exercise his or her right to speak at a meeting.

Regarding cooperative and homeowners' associations, the bill provides a process for amending association documents without the approval of all mortgagees.

Regarding condominium and homeowners' associations, the bill also increases the total annual revenue amounts used to determine the type of financial report that association is required to prepare.

The bill provides an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 399.02, 514.0115, 718.111, 718.112, 718.113, 718.115, 718.303, 718.403, 718.5011, 719.104, 719.1055, 719.106, 719.303, 719.501, 720.303, 720.305, and 720.306. This bill creates section 718.406, Florida Statutes.

## II. Present Situation:

### Swimming Pool Regulation

Chapter 514, F.S., provides for the regulation and supervision of public swimming pools by the Florida Department of Health (DOH). Section 514.0115, provides several exceptions. Section 514.0115(1)(a), F.S., excepts pools that serve no more than 32 condominium or cooperative units which are not operated as a public lodging establishment from DOH supervision, but the pools are still subject to water quality supervision. Section 514.0115(1)(b), F.S., exempts pools that serve condominium or cooperative associations of more than 32 units and whose recorded documents prohibit the rental or sublease of the units for periods of less than 60 days if the condominium or cooperative owner or association has file applications with the DOH, obtained construction plans approval and receive an initial operating permit. The Department of Health must inspect the swimming pools at these places annually, at the fee set forth in s. 514.033(3), F.S.,<sup>1</sup> or upon request by a unit owner, to determine compliance with DOH rules relating to water quality and lifesaving equipment, but may not require compliance with rules relating to swimming pool lifeguard standards.

### Elevator Regulation

Chapter 399, F.S., the "Elevator Safety Act,"<sup>2</sup> establishes minimum standards for elevator safety. The Bureau of Elevator Safety (bureau) of the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the agency charged with enforcing the provisions of ch. 399, F.S. The department has rulemaking authority to enforce the provisions of ch. 399, F.S.<sup>3</sup> The Elevator Safety and Technical Advisory Council (advisory council) within the department provides technical assistance to the division.<sup>4</sup> It makes recommendations regarding the rules for the operation, maintenance, servicing, construction, alteration, installation, and inspection of vertical conveyances.<sup>5</sup>

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<sup>1</sup> Section 514.033(3), F.S., provides that the annual fee for a pool inspection under s. 514.0115(2)(b), F.S., is \$50.

<sup>2</sup> See s. 399.001, F.S.

<sup>3</sup> See s. 399.10, F.S.

<sup>4</sup> See s. 399.1061, F.S. The Elevator Safety and Technical Advisory Council consists of eight members appointed by the secretary of the department who meet the following criteria: one representative from a major elevator manufacturing company or its authorized representative; one representative from an elevator servicing company; one representative from a building design profession; one representative of the general public; one representative of a local government in this state; one representative of a building owner or manager; one representative of labor involved in the installation, maintenance, and repair of elevators; and one representative who is a certified elevator inspector from a private inspection service.

<sup>5</sup> The term "vertical conveyance" is not defined in ch. 399, F.S.

The term “elevator” includes a wide variety of mechanical devices, including escalators, dumbwaiters, moving walks, inclined stairway lifts, and inclined or vertical wheelchair lifts.<sup>6</sup> As of August 1, 2012 there were 51,552 licensed elevators in the state.<sup>7</sup>

Section 399.02(1), F.S., requires the elevator safety code to be the same as or similar to the code established by the American Society of Mechanical Engineers (ASME).<sup>8</sup> The codes established by ASME provide the minimum model standards for the installation, operation, and maintenance of elevators. The codes established by ASME are meant to be adopted by the state and local agencies with jurisdiction over elevator safety. Standard ASME A17 and Standard ASME A18 serve as the basis for the Florida Elevator Safety Act and Florida’s elevator safety code.<sup>9</sup>

The elevator safety code establishes minimum requirements that provide a reasonable degree of safety for the general public and the safe operation of conveyances. For example:

- ASME A17.1 (2004), provides requirements related to the installation, alteration, maintenance, repair, inspections, and testing to ensure the minimum safety requirements for *new and existing elevators*.
- ASME A17.2 (2004), provides a guide for the inspection of elevators, escalators, and moving walks.
- ASME A17.3 (1996) is a code for existing elevators to ensure rider safety. The code provision specifically states that it is intended to guide *retroactive requirements for existing elevators*.
- The ASME/ANSI A18.1 “Safety Standard for Platform Lifts and Stairway Chairlifts” provides minimum guidelines for the design, manufacture, and installation of platform lifts and stairway chairlifts.<sup>10</sup>

The Elevator Safety Code requires any alteration, relocation or reclassification of an existing elevator to be in compliance with the edition of the Florida Building Code which is in effect at the time of receipt of the construction permit application to alter, relocate, or change classification.<sup>11</sup> Specifically, ASME A17.3 requires owners of existing elevators to retrofit elevators to comply with revisions or updates to the code.<sup>12</sup>

For existing elevators in condominiums or multi-family dwellings, including those that are a part of a licensed continuing care facility licensed under ch. 651, F.S., or a retirement community with apartments, s. 399.02(9), F.S., prohibits the enforcement of the Phase II Firefighters’ Service requirements, as amended into ASME A17.1 and A17.3. The Phase II Firefighter’s

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<sup>6</sup> See s. 399.01(6), F.S.

<sup>7</sup> See *Annual Report, Fiscal Year 2011-2012*, Division of Hotels and Restaurants, Department of Business and Professional Regulation, p. 24. A copy is available at:

[http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2011\\_12.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2011_12.pdf)  
(Last visited Feb. 14, 2013).

<sup>8</sup> The ASME standards specified in s. 399.02(1), F.S., are ASME A17.1, A17.3, and A18.1.

<sup>9</sup> Section 399.02(1), F.S.

<sup>10</sup> The Bureau of Elevator Safety in the Department of Business and Professional Regulation has adopted and incorporated by reference ASME A17.1, ASME A17.3, and ASME 18.1 in rule 61C-5.001, F.A.C.

<sup>11</sup> See ASME A17.3.

<sup>12</sup> See *City of Miami Beach v. Dept. Business and Professional Regulation*, Case No. 03-5188RU, Final Order (Fla. DOAH 2009).

Service requirements permit the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment during an emergency.<sup>13</sup> The Phase II Firefighters' Service requirements cannot be enforced until July 1, 2015, or until the elevator is replaced or requires major modification before July 1, 2015. Section 399.02(9), F.S., does not restrict the elevator owner's ability to apply for a variance from the Phase II Firefighters' Service or the division's ability to issue variances. Section 399.02(9), F.S., requires the division to adopt rules to administer the exemption.

According to the department, the Division of Hotels and Restaurants is in the rulemaking process to define the term "major modification."

### **Condominiums**

A condominium is a "form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."<sup>14</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>15</sup> A declaration is like a constitution in that it:

strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.<sup>16</sup>

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."<sup>17</sup> A declaration of condominium may be amended as provided in the declaration.<sup>18</sup> If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.<sup>19</sup> Condominiums are administered by a board of directors referred to as a "board of administration."<sup>20</sup>

Section 718.103(8), F.S., defines the term "common elements" to mean the portions of the condominium property not included in the units.

Section 718.103(12), F.S., defines the term "condominium parcel" to mean a unit, together with the undivided share in the common elements appurtenant to the unit.

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<sup>13</sup> Rule 3.11.3, A.S.M.E. A17.3 (1996 edition). On October 1, 2005, ASME A17.3 (1996) was first adopted in the 2004 Florida Building Code as the code for the inspection and maintenance of existing elevators. On April 2, 2008, the Bureau of Elevator Safety in the Department of Business and Professional Regulation adopted the ASME elevator standards that were incorporated by reference in ch. 30, Florida Building Code. See Florida Building Code (2010), ch. 30, Elevators and Conveying Systems at [http://www2.iccsafe.org/states/florida\\_codes/](http://www2.iccsafe.org/states/florida_codes/) (last visited Feb. 13, 2012)..

<sup>14</sup> Section 718.103(11), F.S.

<sup>15</sup> Section 718.104(2), F.S.

<sup>16</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>17</sup> Section 718.104(5), F.S.

<sup>18</sup> See s. 718.110(1)(a), F.S.

<sup>19</sup> Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

<sup>20</sup> Section 718.103(4), F.S.

Section 718.130(19), F.S., defines the term “limited common elements” to mean those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

### **Cooperative Associations**

Section 719.103(12), F.S., defines a “cooperative” to mean:

that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.<sup>21</sup>

### **Division of Florida Condominiums, Timeshares, and Mobile Homes**

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) in accordance with ch. 718, F.S., and ch. 719, F.S.

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer control.<sup>22</sup> The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division’s jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.<sup>23</sup>

As part of the division’s authority to investigate complaints, s. 718.501(1), F.S., for condominium and s. 719.501(1)(c), F.S., for cooperatives, authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

### **Chapters 718, 719, and 720, F.S.**

Although condominiums and cooperatives are regulated by the division, homeowners’ associations are not regulated. Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners’ associations, provide for requirements for the governance of these associations. For example, they delineate requirements for notices of meetings,<sup>24</sup> recordkeeping requirements, including which records are accessible to

<sup>21</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>22</sup> Section 718.501(1), F.S., and s. 719.501(1), F.S., respectively.

<sup>23</sup> Section 718.501(1), F.S. See Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

<sup>24</sup> See s. 718.112(2), F.S., for condominiums, s. 719.106, F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners’ associations.

the members of the association,<sup>25</sup> and financial reporting.<sup>26</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.” Section 718.110(11), F.S., determines when the joinder of mortgagees is necessary if the declaration of condominiums is amended.

### **Post-Election Certification of Condominium Board Members**

Section 718.112(2)(d)4.b., F.S., outlines a post-election certification requirement for newly elected board members. Within 90 days after being elected or appointed, a new board member must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the association’s articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association’s members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.<sup>27</sup> The curriculum must be administered by a condominium education provider approved by the division.<sup>28</sup> A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.<sup>29</sup> If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a director’s election or appointment.<sup>30</sup> The validity of any action by the condominium board is not affected by the association’s failure to have the certification on file.<sup>31</sup>

### **Condominium, Cooperative, and Homeowners’ Associations-Voting Interests**

For condominium associations, s. 718.103(30), F.S., defines the term “voting interests” to mean:

the voting rights distributed to the association members pursuant to s. 718.104(4)(j). In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific

<sup>25</sup> See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners’ associations.

<sup>26</sup> See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners’ associations.

<sup>27</sup> *Id.* The department’s Internet site provides a listing of approved educational providers. See Division of Florida Condominiums, Timeshares, and Mobile Homes, *Approved Education Providers*, available at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/ApprovedEducationProviders.html> (Last visited Feb. 14, 2013).

<sup>28</sup> Section 718.112(2)(d)3.b., F.S.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

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

condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

For cooperative associations, s. 719.103(28), F.S., defines the term “voting interests” to mean, “the voting rights distributed to the association members as provided for in the articles of incorporation.” For homeowners’ associations, the term “voting interests” is defined in s. 720.301(13), F.S., as “the voting rights distributed to the members of the homeowners’ association, pursuant to the governing documents.”

### **Condominium Insurance**

Condominium associations must carry adequate property insurance.<sup>32</sup> Chapter 718, F.S., does not require unit owners to carry insurance. However, a unit owner’s insurance coverage must meet the minimum coverage specified in s. 718.111(11)(g), F.S., including that the unit owners is responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry property insurance, and such reconstruction work undertaken by the association is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116, F.S. The unit owner is responsible for all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit.<sup>33</sup> The unit owner is also responsible for the cost of reconstruction of any portions of the condominium property for which it is required to carry insurance.<sup>34</sup> The unit owner is also responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if the damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees.<sup>35</sup>

### **Condominium, Cooperative, and Homeowners’ Associations-Recall of Board Members**

Section 718.112(2)(j), F.S., outlines the procedure for the recall of board members. Any member of the board may be recalled and removed from office, with or without cause, by a majority of all of the voting interests. If a recall is approved by a majority of all voting interests at a meeting or by an agreement in writing, the board must notice and hold a board meeting within 5 business days in order to either certify the recall or not. If the board fails to duly notice and hold a board meeting within 5 business days, the recall will be deemed effective. Recall disputes are subject to arbitration by the division under s. 718.1255, F.S., which relates to the arbitration and mediation of disputes between condominium associations and members.

A recall petition may be filed at any time, even when another election is scheduled.

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<sup>32</sup> Section 718.111(11)(a), F.S.

<sup>33</sup> Section 718.111(11)(f)3., F.S.

<sup>34</sup> Section 718.111(11)(g)2., F.S.

<sup>35</sup> Section 718.111(11)(j), F.S.

Comparable provisions for the recall of the board members of cooperative associations are provided in s. 719.106(1)(f), F.S., and board members of homeowners' associations in s. 720.303(10), F.S.

### **Condominiums-Purchase of Leases**

Condominium associations may purchase land or a recreation lease with the vote set forth in the declaration, or if no such provision exists in the declaration, by the same vote required to amend the declaration.<sup>36</sup> A two-thirds vote of the units is required to amend a declaration, unless the declaration specifies a different vote requirement.<sup>37</sup>

Condominium associations may acquire leaseholds, memberships, and other possessory or use interests in lands or recreational facilities, if such lands and facilities are intended to provide enjoyment, recreation or other use or benefit to the unit owners. The acquisition of a leasehold after 12 months following the filing of the declaration must be agreed upon as set forth in the declaration, or if no such provision exists in the declaration, by the approval of a majority of the total voting interests of the condominium.<sup>38</sup>

### **Condominiums-Hurricane Protection**

Section 718.113(5), F.S., specifies the condominiums' powers and duties in regards to the installation and maintenance of hurricane protection. A condominium association must adopt hurricane shutter specifications for each building within each condominium operated by the association. The board may, subject to approval by a majority of the voting interests, install hurricane shutters, impact glass, code-compliant windows, or other types of hurricane protection that comply with or exceed the applicable building code.<sup>39</sup> The association is responsible for the maintenance, repair, and replacement of hurricane protection for the property if the association is responsible for the maintenance of such property under the declaration of condominium.<sup>40</sup> The association may operate the hurricane shutters without the permission of the unit owners only if such operation is necessary to protect the association and condominium property.

Section 718.115(1)(e), F.S., provides that the installation, replacement, operation, repair, and maintenance of hurricane shutters and other hurricane protections are a common expense, unless otherwise specified in the declaration of condominium. Unit owners who previously installed their own hurricane protection are entitled to a credit equal to the pro rata portion of the assessed installation cost assigned to each unit and for the pro rate share of expenses for hurricane protection installed on common elements and association property.

### **Condominium – Sanctioning Unit Owners**

Section 718.303(3), F.S., provides for the assessment of fines for failure to comply with any provision of the declaration, the association's bylaws, or reasonable rules of the association by a unit owner, or a unit owner's tenant, guest, or invitee. A fine may not exceed \$100 per violation, but may be levied on each day of a continuing violation. A fine does not become a lien on the

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<sup>36</sup> Section 718.111(8), F.S.

<sup>37</sup> Section 718.110(1)(a), F.S.

<sup>38</sup> Section 718.114, F.S.

<sup>39</sup> Section 718.113(5)(a), F.S.

<sup>40</sup> Section 718.113(5)(b), F.S.

property. Before a fine may be imposed, notice and an opportunity for a hearing must be provided.<sup>41</sup> A fine against a unit owner may not in the aggregate exceed \$1,000.<sup>42</sup>

Section 718.303(3)(a), F.S., provides that the association may suspend, for a reasonable period of time, the use rights of a unit owner, or a unit owner's tenant, guest, or invitee for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

If a unit owner is more than 90 days delinquent in paying a monetary obligation due to the association, s. 718.303(4), F.S., authorizes condominium associations to suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligation is paid in full. The association may not suspend the right to use limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

Section 718.303(5), F.S., authorizes condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. A suspension ends upon full payment of all obligation currently due or overdue to the association. The voting interest or consent right of a suspended unit owner may not be counted toward the total number of voting interests for any purpose, including, but are not limited to, the number of voting interests necessary to constitute a quorum, conduct an election, or approve an action.<sup>43</sup> Section 718.303, F.S., also provides that the notice and hearing requirement for fines in s. 718.303(3), F.S., do not apply to suspensions under this subsection.<sup>44</sup>

The suspension provisions in s. 718.303, F.S., are substantially similar to the suspension provisions for cooperatives in s. 719.303, F.S., and for homeowners' associations in s. 720.305, F.S.

### **Phase Condominiums**

Section 718.403, F.S., permits developers to develop condominiums in phases if the anticipated phases are described in detail in the original declaration of condominium or an amendment to the declaration which has been approved by all the unit owners and unit mortgagees. The time for completion of all the phases may not exceed 7 years from the date of the recording of the declaration of condominium.<sup>45</sup>

### **Condominium Ombudsman**

Section 718.5011, F.S., provides for the appointment of a condominium ombudsman by the Governor. The ombudsman acts as a liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties.<sup>46</sup> The ombudsman develops policies and procedures to assist parties in the understanding of their rights

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<sup>41</sup> Section 718.303(3)(b), F.S.

<sup>42</sup> Section 718.303(3), F.S.

<sup>43</sup> Section 718.303(5), F.S.

<sup>44</sup> *Id.*

<sup>45</sup> Section 718.403(1), F.S.

<sup>46</sup> Section 718.5012(4), F.S.

and responsibilities set forth in ch. 718, F.S., and the condominium documents governing their respective association.<sup>47</sup> The ombudsman also monitors and reviews procedures and disputes concerning condominium elections or meetings, and may recommend to the division whether to pursue enforcement action where there is reasonable cause to believe that election misconduct has occurred.<sup>48</sup> The ombudsman may also make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.<sup>49</sup> The ombudsman may also assist in the resolution of disputes.<sup>50</sup>

Section 718.5011(2), F.S., prohibits any officer or full-time employee of the ombudsman's office from actively engaging in any other business or profession.

### **Cooperatives – Sanctioning Unit Owners**

Section 719.303(3), F.S., permits cooperative associations to levy reasonable fines against unit owners for failure to comply with the cooperative documents or rules of the association. Fines may not exceed \$100 per violation and may not become a lien against the unit. The fine may be levied on the basis of each day of a continuing violation. A fine may not exceed \$1,000 in the aggregate.

### **Homeowners' Associations**

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.<sup>51</sup>

A "homeowners' association" is defined as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."<sup>52</sup> Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.<sup>53</sup>

Homeowners' associations are administered by a board of directors whose members are elected.<sup>54</sup> The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted

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<sup>47</sup> *Id.*

<sup>48</sup> Section 718.5012(5), F.S.

<sup>49</sup> Section 718.5012(6), F.S.

<sup>50</sup> Section 718.5012(9), F.S.

<sup>51</sup> *See s. 720.302(1), F.S.*

<sup>52</sup> Section 720.301(9), F.S.

<sup>53</sup> Section 720.302(5), F.S.

<sup>54</sup> *See ss. 720.303 and 720.307, F.S.*

amendments to these documents.<sup>55</sup> The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>56</sup>

### **Financial Reporting for Condominium and Homeowners' Associations**

Section 720.303(7), F.S., sets forth the financial reporting responsibilities of homeowners' associations. Homeowners' associations have 90 days after the end of the fiscal year to prepare and complete a financial report for the preceding fiscal year. The type of financial statements or information that must be provided is based on the association's total annual revenues. Section 720.303(7)(a), F.S., provides, in part, that if the association has a total annual revenue of \$100,000 or more, but less than \$200,000, the association must prepare compiled financial statements. If the association has a total annual revenue of at least \$200,000 and not less than \$400,000, the association must prepare reviewed financial statements. If the total annual revenue is \$400,000 or more, the association must prepare audited financial statements. If the total annual revenue is less than \$100,000, then a report of cash receipts must be prepared.<sup>57</sup> An association with less than 50 parcels, regardless of annual revenue, may prepare a report of cash receipt and expenditures instead of financial statements, unless the governing documents provide otherwise.<sup>58</sup> The amounts of total annual revenue and the type of financial statement requires are identical to the financial reporting requirements for condominium associations in s. 718.111(13), F.S.

## **III. Effect of Proposed Changes:**

### **Elevators**

The bill amends s. 399.02(9), F.S., to extend the enforcement exemption by deleting the July 1, 2015, end date for the Phase II Firefighters' Service exemption. The bill maintains the requirement that elevators must comply with Phase II Firefighters' Service when they are replaced or the elevator requires major modification.

### **Swimming Pools**

The bill amends s. 514.0115(2), F.S., to include swimming pools in homeowners' association in the exemption from supervision by the DOH. Homeowners' associations with no more than 32 parcels would be exempt from all DOH supervision with the exception of water quality supervision. Homeowners' associations with more than 32 parcels would remain subject to annual inspections.

### **Condominium – Purchase of Leases**

The bill amends s. 718.111(8), F.S., to provide that the vote required for the purchase of a lease is the same as required for the acquisition of a leasehold under s. 718.114, F.S., which is a majority of the total voting interests or as authorized by the declaration. The bill deletes the provision that requires the vote to be the same as the vote required to amend the declaration, which is a vote of not less than two-thirds of the units.<sup>59</sup>

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<sup>55</sup> See ss. 720.301 and 720.303, F.S.

<sup>56</sup> Section 720.303(1), F.S.

<sup>57</sup> Section 720.303(7)(b)1., F.S.

<sup>58</sup> Section 720.303(7)(b)2., F.S.

<sup>59</sup> Section 718.110(1)(a), F.S.

**Condominium Insurance**

The bill amends ss. 718.111(11)(g), F.S., to provide that the unit owner is responsible for the cost of reconstruction for portions of the condominium property for which it is the unit owner's responsibility under s. 718.111(11)(j), F.S. This relates to the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if the damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees. The bill also clarifies that the costs owed by the unit owner may be collected in the same manner as an assessment under s. 718.116, F.S. Current law only provides that the cost is chargeable to the unit owner and enforceable as an assessment.

**Condominium – Official Records**

The bill amends s. 718.111(12)(c), F.S., to provide an association member the right to use his or her smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, without charge to the member.

The bill provides a comparable provision in s. 719.104(2)(b), F.S., for cooperative associations, and s. 720.303(5), F.S., for homeowners' associations.

**Condominium – Financial Reporting**

The bill amends s. 718.111(13), F.S., to revise the annual total revenue amounts to determine the type of financial report that the association is required to prepare.

An association with total annual revenues of \$200,000 or more, but less than \$300,000 must prepare compiled financial statements. Current law provides for total revenues of \$100,000 or more, but less than \$200,000.

An association with total annual revenues of at least \$300,000, but less than \$500,000 must prepare reviewed financial statements. Current law provides for total revenues of \$200,000 or more, but less than \$400,000.

An association with total revenues of \$500,000 or more must prepare audited financial statements. Current law provides for total revenues of \$400,000 or more.

The bill provides a comparable provision in s. 720.303(7), F.S., for homeowners' associations.

**Condominium – Meetings of Unit Owners**

The bill amends s. 718.112(2)(d)2., F.S., to include the articles of incorporation, in addition to the condominium association's bylaws, as the governing document which may provide for two-year terms for association board members. It also deletes the additional requirement that the majority of the voting interests would also have to approve the staggered terms by a majority of the total voting interests.

The bill also amends s. 718.112(2)(d)2., F.S., to provide that a person who is delinquent in the payment of a monetary obligation to the association is not eligible to be a candidate for board membership and may not be listed on the ballot. The bill replaces the term "fee, fine, or special or regular assessment" with the term "monetary obligation."

The bill amends s. 718.112(2)(d)3., F.S., to clarify that a meeting notice that is broadcast on a closed-circuit television system may be made in lieu of a notice posted physically on the condominium property. A meeting notice that is broadcasted and not physically posted must be broadcasted at least four times every hour of each day that the notice is required.

### **Condominiums-Elections**

The bill amends s. 718.112(2)(d)4., F.S., to exempt associations that govern timeshare condominiums from the prohibition against the use of proxies to elect members of the board.

The bill amends s. 718.112(2)(d)4.b., F.S., relating to the post-election certification of condominium board members, to clarify that the board must maintain a copy of the written certification for inspection by members for 5 years or the duration of the board member's tenure, whichever is longer. The bill provides a comparable requirement for cooperative associations in s. 719.106(1)(d)1.b., F.S., and homeowners' associations in s. 720.306(9)(d), F.S.

The bill creates s. 718.112(2)(d)4.c., F.S., to require that any challenge to the election process be commenced within 60 days after the election results are announced. The bill provides a comparable amendment to s. 719.106(1)(d)1.b., F.S. relating to challenges to the election's process for cooperative associations.

The bill creates s. 718.112(2)(j)5., F.S., which relates to the recall of board members, to provide that, if the board fails to notice and hold the required meeting to certify the recall or fails to file the required recall petition, the unit owner representative<sup>60</sup> may file a petition pursuant to s. 718.1255, F.S., challenging the board's failure to act. The bill requires that the petition be filed within 60 days after the expiration of the applicable 5-full-business-day period.<sup>61</sup> The division's review of a petition would be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates s. 718.112(2)(j)7. and 8., F.S., to revise the procedure for recall elections. Section 718.112(2)(j)7., F.S., provides that a board member who has been recalled may file a petition pursuant to s. 718.1255, F.S., to challenge the validity of a recall. The petition must be filed within 60 days after the recall is deemed certified<sup>62</sup> and the association and the unit owner representative must be named as the respondents.

Section 718.112(2)(j)8., F.S., provides that the division may not accept a recall petition for filing when there are 60 or fewer days until the next scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

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<sup>60</sup> Rule 61B-23.0027(3)(b)1., F.A.C., requires that a unit owner representative must be elected or appointed by the presiding officer at a recall meeting of the board "to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling unit owners in the event the board disputes the recall."

<sup>61</sup> The board has 5 business days to certify the recall or file a petition challenging the recall. If the board fails to act within the 5 days, the recall is deemed effective.

<sup>62</sup> *Id.*

The amendment to s. 718.112(2)(j), F.S., is comparable to bill's board member recall limitations provided in s. 719.106(1)(f), F.S., for cooperatives and in s. 720.303(10)(g), F.S., for homeowners' associations.

### **Condominiums - Hurricane Protection**

The bill amends s. 718.113(5), F.S., to include impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection in reference to hurricane protection.

The bill amends s. 718.115(1)(e), F.S., relating to the common expenses for hurricane protection, to include impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection.

The bill also amends s. 718.115(1)(e), F.S., to clarify that a unit owner will receive credit when the shutters are installed. It provides that unit owners, who previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code, are entitled to receive a credit when that hurricane protection is installed. It provides that unit owners who have installed other types of code-compliant hurricane protection that comply with the current applicable building code are entitled to receive a credit when the same type of other code-compliant hurricane protection is installed.

The bill deletes the reference to laminated glass architecturally designed to function as hurricane protection.

### **Condominiums-Sanctioning Owners and Occupants**

The bill amends s. 718.303(3), F.S., to provide that unit owner suspension of rights does not apply to limited common elements that are intended to be used only by that unit, common elements needed to access the unit, utility services to the unit, parking spaces, or elevators.

The bill provides similar provisions for the suspension of rights in ss. 719.303(3), F.S., for cooperative associations and s. 720.305(2)(a), F.S., for homeowners' associations.

### **Phase Condominiums**

The bill amends s. 718.403(1), F.S., to permit condominiums to extend the 7-year period for completion of all phases of a phase condominium. The extension must be by an amendment to the declaration approved by the unit owners. An amendment to extend the 7-year period may be submitted for approval only during the last 3 years of the initial 7-year period. The amendment must describe the time period in which all phases will be completed, but such period may not exceed 10 years from the date of the recording of the original declaration of condominium submitting the initial phase to condominium ownership. An amendment to extend the 7-year period is not subject to the limitations in s. 718.110(4), F.S.<sup>63</sup>

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<sup>63</sup> In pertinent part, s. 718.110(4), F.S., prohibits amendments that materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which unit owners share the common expenses, own the common surplus, and which provides that the acquisition of property by the association and material alterations or substantial additions to such property or the common elements do not constitute a material alteration or modification of the appurtenances to the units. In current law, s. 718.110(4), F.S., also provides that a declaration recorded after April 1, 1992, may not require the approval of less than a majority of total voting interests of the condominium for amendments under this subsection, unless otherwise required by a governmental entity.

**Secondary Condominiums**

The bill creates s. 718.406, F.S., to provide for the creation of condominiums within a condominium parcel. This provision addresses the relationship between the primary condominium and the secondary condominium units. According to The Florida Bar Real Property, Probate, and Trust Law Section, an example of a primary and secondary condominium is a high-rise building that is divided into two units. The first few floors would compose one unit in the primary condominium and would be dedicated to commercial space. The upper floors of the building would constitute another unit in the primary condominium and would be dedicated to residential space. A secondary condominium would be created within each of the primary condominium units, e.g., a secondary condominium association consisting of commercial units in the lower floors and residential units in the upper floors. Also according to The Florida Bar, the bill would provide a framework, including common terminology, for this type of condominium association.

Section 718.406(2), F.S., provides that the secondary condominium association is responsible for operating the secondary association. It also provides that the secondary association must designate who would cast the vote of the subdivided parcel in the primary association. If the secondary association does not designate a person, the president of the secondary association or his or her designee is authorized to cast that vote.

Section 718.406(3), F.S., provides that, unless the declaration of the primary condominium provides for the creation of secondary condominium on a condominium parcel, a secondary condominium may not be created unless the record owners of a majority of the condominium parcels execute an amendment to the primary declaration.

Section 718.406(4), F.S., provides that, where the consent of the primary condominium association is required to create a secondary condominium, only the approval of a majority of the board of directors of the primary condominium association shall be required unless the primary condominium declaration provides otherwise. It provides that only the lienholders of the subdivided parcel upon which the secondary condominium will be created, the owner of that parcel, and the board of the primary condominium shall have the right to approve the creation of the secondary condominium and the contents of the secondary condominium declaration. It also provides that the recording of the secondary condominium declaration is only effective if it evidences the approval of the lienholders of the subdivided parcel, the owner of that parcel, and the board of the primary condominium.

Section 718.406(5), F.S., provides that a unit owner in a secondary condominium is governed by both the declaration of condominium for the primary condominium and the declaration of the second condominium.

Section 718.406(6), F.S., provides that the primary condominium may be responsible for the insurance of both the primary and secondary condominium if the primary condominium declaration permits. Section 718.406(7), F.S., provides that the board of directors of the primary condominium association may adopt hurricane shutter specifications for both the primary and secondary condominium.

Section 718.406(8), F.S., provides that an owner or mortgagee of a unit in a secondary condominium must register with the primary condominium to receive notice of a foreclosure action against the secondary condominium. If registered, the primary condominium association must give at least 30 days notice to the secondary condominium owner or mortgagee before instituting a foreclosure action against a subdivided parcel for nonpayment of amounts due the association. The bill provides for the payment by the registered owner of the unit of their proportional share of the amount of delinquent assessments attributable to the unit. Upon payment of delinquent assessments, the primary association must promptly modify or release the record of lien on the primary condominium so that the lien no longer encumbers the secondary condominium unit. Alternatively, the registered owner may pay all delinquent assessments and seek reimbursement of the amounts paid from the secondary association. The foreclosure is not effective without written notice.

Section 718.406(9), F.S., provides that the primary declaration controls any conflict between the primary and secondary condominium declarations. Section 718.406(10), F.S., provides that common expenses due to the primary condominium from the secondary condominium are a common expense of the secondary condominium.

#### **Condominium Ombudsman**

The bill amends s. 718.5011(2), F.S., to permit officers or full-time employees of the ombudsman's office to engage in another profession or any other business that is not directly or indirectly related to, or does not conflict with, his or her work in the ombudsman's office.

#### **Cooperative-Official Records**

The bill amends s. 719.104(2)(b), F.S., to provide a member the right to use his or her smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, without charge to the member. The bill provides a comparable provision in s. 718.111(12)(c), F.S., for condominium associations, and s. 720.303(5), F.S., for homeowners' associations.

The bill amends s. 719.104(2)(c), F.S., relating to the official records of the cooperative association to add the following information to the list of items that are not accessible to members of the association:

- Records protected by the lawyer-client privilege as provided in s. 90.502, F.S. and work product privilege.
- Personnel records of association employees, such as disciplinary, payroll, health, and insurance records. However, the unit owners would have access to written employment agreements with an association employee or budgetary or financial records that indicate the compensation paid to an association employee.
- Social security numbers, driver license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, and any addresses of a unit owner which are not provided to fulfill the association's notice requirements, and other identifying personal information except for the person's name, unit designation, mailing address, and property address.
- Electronic security measures used to safeguard data, including passwords.

- Software and operating systems used by the association which allow manipulation of data.

### **Amendment of Cooperative Documents**

The bill creates s. 719.1055(7), F.S., to provide the legislative findings that the procurement of consent or joinder to amendments that do not materially affect the rights or interests of mortgagees is unreasonable and a substantial burden on cooperative unit owners and associations. The bill provides that there is a compelling state interest in enabling cooperative association members to approve amendments. This provision will facilitate attempts by cooperative shareholders to amend their documents without the approval of all mortgagees when a change to the association documents does not adversely affect the mortgagee's rights or interests.

The bill limits the enforceability of any mortgage or any provision in declarations, articles of incorporation, or bylaws of a condominium association recorded on or after July 1, 2013, or amendments thereto, that require the consent or joinder of some or all mortgagees of units or any other portion of the cooperative property for those mortgages. Any such provisions or amendments recorded prior to July 1, 2013, will remain enforceable. As to provisions or amendments created after July 1, 2013, the bill provides that provisions requiring consent or joinder are enforceable only as to provisions that adversely affect the priority of the mortgagee's lien or the mortgagee's right to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

The bill provides a process for obtaining addresses of mortgagees and contacting them to obtain their consent or joinder. The association may rely upon the public records to identify the holders of mortgages or outstanding mortgages. It may also rely on the address in the original recorded mortgage document unless there is a different address in the in a recorded assignment or modification of the mortgage.

Failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 60 days after the date that a request is sent to the mortgagee is deemed to have consented to the amendment.

For any amendments that require mortgage consent after July 1, 2013, the consent must be evidenced by an affidavit of the association recorded in the public records of the county in which the declaration is recorded.

An amendment may be voidable by any mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to a 5 year statute of limitations from the date of discovery or the date of recordation. This provision applies to all mortgages, regardless of the date of recordation of the mortgage.

There is a comparable provision for the amendment of condominium documents in s. 718.110(11), F.S. The bill provides a similar provision for homeowners' associations in s. 720.306(1)(d), F.S.

### **Cooperatives-Meetings**

The bill amends s. 719.106(1)(c), F.S., to provide that the requirement of open meetings of the board or committee does not apply to meetings held for the purpose of discussing personnel matters.

### **Cooperatives-Elections**

The bill amends s. 719.106(1)(d)1., F.S., to require that any challenge to the election process must be commenced within 60 days after the election results are announced. This provision is similar to the bill's amendment to s. 718.112(2)(d)4.c., F.S., relating to challenges to the election's process for condominium associations and s. 720.306(9)(a), F.S., for homeowners' associations.

The bill creates s. 719.106(1)(d)1.b., F.S., provide a post-election certification requirement for newly elected board members of cooperative associations. This requirement is substantively identical to the post-election certification requirement for newly elected members of a condominium association board that is provided in s. 718.112(2)(d)4.b., F.S., as amended in this bill.

### **Cooperatives-Recall Elections**

The bill creates s. 719.106(1)(f)5., F.S., which relates to the recall of board members, to provide that, if the board fails to notice and hold the required meeting to certify the recall or fails to file the required recall petition, the unit owner representative may file a petition pursuant to s. 719.1255, F.S., challenging the board's failure to act. The bill requires that the petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The division's review of a petition would be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates s. 719.106(1)(f)7. and 8., F.S., to revise the procedure for recall disputes. Section 719.106(1)(f)7., F.S., is amended to provide that a board member who has been recalled may file a petition pursuant to s. 719.1255, F.S., to challenge the validity of a recall. The petition must be filed within 60 days after the recall is deemed certified and the association and the unit owner representative must be named as the respondents.

Section 719.106(1)(f)8., F.S., provides that the division may not accept a recall petition for filing when there are 60 or fewer days until the next scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

These provisions are similar to the bill's board member recall limitations provided in s. 718.112(2)(j), F.S., for condominiums, and in s. 720.303(10)(g), F.S., for homeowners' associations.

### **Cooperative-Sanctioning Owners and Occupants**

The bill amends s. 719.303(3), F.S., to provide that unit owner suspension of rights does not apply to limited common elements that are intended to be used only by that unit, common elements needed to access the unit, utility services to the unit, parking spaces, or elevators. The bill provides similar provisions for the suspension of rights in s. 718.303(3), F.S., for condominium associations and s. 720.305(2)(a), F.S., for homeowners' associations.

**Cooperatives – Training and Education**

The bill amends s. 719.501, F.S., to authorize the division, in its discretion, to provide training and educational programs, including web-based electronic media, and live training and seminars, in various locations throughout the state. The bill authorizes the division to review and approve education and training programs for board members and unit owners offered by providers. The bill requires the division to maintain a current list of approved programs and providers and make that list available to board members and unit owners in a reasonable and cost-effective manner.

**Homeowners' Associations-Official Records**

The bill amends s. 720.303(5), F.S., to provide an association member the right to use his or her smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, without charge to the member. The bill provides a comparable provision in 718.111(12)(c), F.S., for condominium associations and in s. 719.104(2)(b), F.S., for cooperative associations.

The bill amends s. 720.303(5)(c)3., F.S., to include the personnel records of the management company among the records that are not accessible to the association's members. Current law only references the personnel records of the association.

**Homeowners' Associations – Financial Reporting**

The bill amends s. 720.303(7), F.S., to revise the annual total revenue amounts to determine the type of financial report that the association is required to prepare.

An association with total annual revenues of \$200,000 or more, but less than \$300,000 must prepare compiled financial statements. Current law provides for total revenues of \$100,000 or more, but less than \$200,000.

An association with total annual revenues of at least \$300,000, but less than \$500,000 must prepare reviewed financial statements. Current law provides for total revenues of \$200,000 or more, but less than \$400,000.

An association with total revenues of \$500,000 or more must prepare audited financial statements. Current law provides for total revenues of \$400,000 or more.

The bill provides a comparable provision in s. 718.111(13), F.S., for condominium associations.

**Homeowners' Associations-Recall Elections**

The bill creates s. 720.303(10)(g), F.S., to provide that, if the board fails to notice and hold the required meeting to certify the recall of board members or fails to file the required recall petition, the unit owner representative may file a petition pursuant to s. 718.1255, F.S., to challenge the board's failure to act. The bill requires that the petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The division's review of a petition would be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates ss. 720.303(10)(k) and (l), F.S., to revise the procedure for recall disputes. Section 720.303(10)(k), F.S., is amended to provide that a board member who has been recalled may file a petition pursuant to ss. 718.112(2)(j) and 718.1255, F.S., to challenge the validity of a recall. The petition must be filed within 60 days after the recall is deemed certified and the association and the unit owner representative must be named as the respondents.

Section 720.303(10)(l), F.S., provides that the division may not accept for filing a recall petition when there are 60 or fewer days until the next scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

These provision are similar to the bill's board member recall limitations provided in s. 718.112(2)(j), F.S., for condominiums, and in s. 719.106(1)(f), F.S., for cooperative associations.

### **Homeowners' Associations-Sanctioning Owners and Occupants**

The bill amends s. 720.305(2)(a), F.S., to provide that unit owner suspension of rights does not apply to common areas used to provide access or utility services to the parcel. The bill provides similar provisions for the suspension of rights in ss. 718.303(3), F.S., for condominium associations and ss. 719.303(3), F.S., for cooperative associations.

### **Amendment of Homeowner Association Documents**

The bill creates s. 720.306(1)(d), F.S., to provide the legislative findings that the procurement of consent or joinder to amendments that do not materially affect the rights or interests of mortgagees is unreasonable and a substantial burden on homeowners' and associations. The bill provides that there is a compelling state interest in enabling homeowners' association members to approve amendments. This provision would facilitate attempts by homeowners to amend their documents without the approval of all mortgagees when a change to the association documents does not adversely affect the mortgagee's rights or interests.

The bill limits the enforceability of any mortgage or any provision or amendment to declarations, articles of incorporation, or bylaws of a homeowners' association recorded on or after July 1, 2013, or amendments thereto, that require the consent or joinder of some or all mortgagees of units or any other portion of the association property for those mortgages. Any such provisions or amendments recorded prior to July 2013, would remain enforceable. As to provisions or amendments created after July 1, 2013, the bill provides that provisions requiring consent or joinder are enforceable only as to provisions that adversely affect the priority of the mortgagee's lien or the mortgagee's right to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

The bill provides a process for obtaining addresses of mortgagees and contacting them to obtain their consent or joinder. The association may rely upon the public records to identify the holders or outstanding mortgages. It may also rely on the address in the original recorded mortgage document unless there is a different address in a recorded assignment or modification of the mortgage.

Failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 60 days after the date that a request is sent to the mortgagee is deemed to have consented to the amendment.

For any amendments that require mortgage consent after July 1, 2013, the consent must be evidenced by an affidavit of the association recorded in the public records of the county in which the declaration is recorded.

An amendment may be voidable by any mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to a 5 year statute of limitations from the date of discovery or the date of recordation. This provision applies to all mortgages, regardless of the date of recordation of the mortgage.

There are comparable provisions for the amendment of condominium documents in s. 718.110(11), F.S. The bill provides a similar provision for cooperative associations in s. 720.306(1)(d), F.S.

#### **Homeowners' Associations-Right to Speak**

The bill amends s. 720.306(6), F.S., relating to the right of homeowners' association members and parcel owners to attend and speak at meetings, to delete the condition that the parcel owner must submit a written request to speak prior to the meeting.

#### **Homeowners' Associations-Elections Process Challenges**

The bill amends s. 720.306(9)(a), F.S., to require that any challenge to the election process must be commenced within 60 days after the election results are announced.

This provision is similar to the bill's amendment to s. 718.112(2)(d)4.c., F.S., relating to challenges to the election's process for condominium associations and s. 719.106(1)(d)1.b., F.S., for cooperative associations.

#### **Effective Date**

The bill provides an effective date of July 1, 2013.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries Committee on February 21, 2013:**

The committee substitute (CS):

- Amends s. 514.0115(2), F.S., to include swimming pools in homeowners' association in the exemption from supervision by the Florida Department of Health;
- Amends s. 718.111(8), F.S., to revise the vote required for the purchase of a lease by a condominium association;
- Amends ss. 718.111(11)(g), F.S., to provide that the unit owner is responsible for the cost of reconstruction for portions of the condominium property for which it is the unit owner's responsibility under s. 718.111(11)(j), F.S.;
- Amends ss. 718.111(12)(c), 719.104(2)(b), and 720.303(5), F.S., to provide community association members the right to use his or her smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, without charge to the member;
- Amends s. 718.111(13), F.S., to revise the total annual revenue amounts used to determine the type of financial report that the association is required to prepare;
- Amends s. 718.112(2)(d)2., F.S., to provide that a person who is delinquent in the payment of a monetary obligation to the association is not eligible to be a candidate for board membership and may not be listed on the ballot. The CS

replaces the term “fee, fine, or special or regular assessment” with the term “monetary obligation” in this provision;

- Does not amend ss. 718.303(5), 719.303(5) and 720.305(4), F.S., to delete the provisions that permit an association member’s voting rights that have been suspended due to nonpayment of monetary obligations to not be included in the number of voting interests needed to establish a quorum, conduct an election, or to obtain member approval is reduced by the number of suspended voting or consent rights;
- Creates s. 719.106(1)(d)1.b., F.S., to provide a post-election certification requirement for newly elected board members of cooperative associations.
- Amends s. 720.303(7), F.S., to revise the total annual revenue amounts used to determine the type of financial report that the association is required to prepare.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2013	.	
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The Committee on Regulated Industries (Legg) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Subsection (9) of section 399.02, Florida Statutes, is amended to read:

399.02 General requirements.—

(9) Updates to the Safety Code for Existing Elevators and Escalators, ASME A17.1 and A17.3, which require Phase II Firefighters' Service on elevators may not be enforced ~~until July 1, 2015, or~~ until the elevator is replaced or requires major modification, ~~whichever occurs first,~~ on elevators in



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13 condominiums or multifamily residential buildings, including  
14 those that are part of a continuing care facility licensed under  
15 chapter 651, or similar retirement community with apartments,  
16 having a certificate of occupancy by the local building  
17 authority that was issued before July 1, 2008. This exception  
18 does not prevent an elevator owner from requesting a variance  
19 from the applicable codes ~~before or after July 1, 2015~~. This  
20 subsection does not prohibit the division from granting  
21 variances pursuant to s. 120.542 and subsection (8). The  
22 division shall adopt rules to administer this subsection.

23 Section 2. Subsection (2) of section 514.0115, Florida  
24 Statutes, is amended to read:

25 514.0115 Exemptions from supervision or regulation;  
26 variances.-

27 (2) (a) Pools serving no more than 32 condominium units, ~~or~~  
28 cooperative units, or parcels in a homeowners' association as  
29 defined in s. 720.301, which are not operated as a transient  
30 public lodging establishment, are ~~shall be~~ exempt from  
31 supervision under this chapter, except for water quality.

32 (b) Pools serving more than 32 condominium units, ~~or~~  
33 cooperative units, or parcels in a homeowners' association as  
34 defined in s. 720.301, ~~associations of more than 32 units~~ and  
35 whose recorded documents prohibit the rental or sublease of the  
36 units or parcels for periods of less than 60 days are exempt  
37 from supervision under this chapter, except that the  
38 condominium, or cooperative, or parcel owner or association must  
39 file applications with the department and obtain construction  
40 plans approval and receive an initial operating permit. The  
41 department shall inspect the swimming pools at such places



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42 annually, at the fee set forth in s. 514.033(3), or upon request  
43 by a unit owner, to determine compliance with department rules  
44 relating to water quality and lifesaving equipment. The  
45 department may not require compliance with rules relating to  
46 swimming pool lifeguard standards.

47 Section 3. Subsection (8), paragraphs (g) and (j) of  
48 subsection (11), paragraph (c) of subsection (12), and  
49 paragraphs (a) and (b) of subsection (13) of section 718.111,  
50 Florida Statutes, are amended to read:

51 718.111 The association.—

52 (8) PURCHASE OF LEASES.—The association has the power to  
53 purchase any land or recreation lease, subject to the same  
54 manner of approval as in s. 718.114 for the acquisition of  
55 leaseholds ~~upon the approval of such voting interest as is~~  
56 ~~required by the declaration. If the declaration makes no~~  
57 ~~provision for acquisition of the land or recreation lease, the~~  
58 ~~vote required shall be that required to amend the declaration to~~  
59 ~~permit the acquisition.~~

60 (11) INSURANCE.—In order to protect the safety, health, and  
61 welfare of the people of the State of Florida and to ensure  
62 consistency in the provision of insurance coverage to  
63 condominiums and their unit owners, this subsection applies to  
64 every residential condominium in the state, regardless of the  
65 date of its declaration of condominium. It is the intent of the  
66 Legislature to encourage lower or stable insurance premiums for  
67 associations described in this subsection.

68 (g) A condominium unit owner's policy must conform to the  
69 requirements of s. 627.714.

70 1. All reconstruction work after a property loss must be



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71 undertaken by the association except as otherwise authorized in  
72 this section. A unit owner may undertake reconstruction work on  
73 portions of the unit with the prior written consent of the board  
74 of administration. However, such work may be conditioned upon  
75 the approval of the repair methods, the qualifications of the  
76 proposed contractor, or the contract that is used for that  
77 purpose. A unit owner must obtain all required governmental  
78 permits and approvals before commencing reconstruction.

79 2. Unit owners are responsible for the cost of  
80 reconstruction of any portions of the condominium property for  
81 which the unit owner is required to carry property insurance, or  
82 for which the unit owner is responsible under paragraph (j), and  
83 the cost of any such reconstruction work undertaken by the  
84 association is chargeable to the unit owner and enforceable as  
85 an assessment and may be collected in the manner provided for  
86 the collection of assessments pursuant to s. 718.116.

87 3. A multicondominium association may elect, by a majority  
88 vote of the collective members of the condominiums operated by  
89 the association, to operate the condominiums as a single  
90 condominium for purposes of insurance matters, including, but  
91 not limited to, the purchase of the property insurance required  
92 by this section and the apportionment of deductibles and damages  
93 in excess of coverage. The election to aggregate the treatment  
94 of insurance premiums, deductibles, and excess damages  
95 constitutes an amendment to the declaration of all condominiums  
96 operated by the association, and the costs of insurance must be  
97 stated in the association budget. The amendments must be  
98 recorded as required by s. 718.110.

99 (j) Any portion of the condominium property that must be



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100 insured by the association against property loss pursuant to  
101 paragraph (f) which is damaged by an insurable event shall be  
102 reconstructed, repaired, or replaced as necessary by the  
103 association as a common expense. All property insurance  
104 deductibles, uninsured losses, and other damages in excess of  
105 property insurance coverage under the property insurance  
106 policies maintained by the association are a common expense of  
107 the condominium, except that:

108       1. A unit owner is responsible for the costs of repair or  
109 replacement of any portion of the condominium property not paid  
110 by insurance proceeds if such damage is caused by intentional  
111 conduct, negligence, or failure to comply with the terms of the  
112 declaration or the rules of the association by a unit owner, the  
113 members of his or her family, unit occupants, tenants, guests,  
114 or invitees, without compromise of the subrogation rights of the  
115 insurer.

116       2. The provisions of subparagraph 1. regarding the  
117 financial responsibility of a unit owner for the costs of  
118 repairing or replacing other portions of the condominium  
119 property also apply to the costs of repair or replacement of  
120 personal property of other unit owners or the association, as  
121 well as other property, whether real or personal, which the unit  
122 owners are required to insure.

123       3. To the extent the cost of repair or reconstruction for  
124 which the unit owner is responsible under this paragraph is  
125 reimbursed to the association by insurance proceeds, and the  
126 association has collected the cost of such repair or  
127 reconstruction from the unit owner, the association shall  
128 reimburse the unit owner without the waiver of any rights of



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129 subrogation.

130 4. The association is not obligated to pay for  
131 reconstruction or repairs of property losses as a common expense  
132 if the property losses were known or should have been known to a  
133 unit owner and were not reported to the association until after  
134 the insurance claim of the association for that property was  
135 settled or resolved with finality, or denied because it was  
136 untimely filed.

137 (12) OFFICIAL RECORDS.—

138 (c) The official records of the association are open to  
139 inspection by any association member or the authorized  
140 representative of such member at all reasonable times. The right  
141 to inspect the records includes the right to make or obtain  
142 copies, at the reasonable expense, if any, of the member. The  
143 association may adopt reasonable rules regarding the frequency,  
144 time, location, notice, and manner of record inspections and  
145 copying. The failure of an association to provide the records  
146 within 10 working days after receipt of a written request  
147 creates a rebuttable presumption that the association willfully  
148 failed to comply with this paragraph. A unit owner who is denied  
149 access to official records is entitled to the actual damages or  
150 minimum damages for the association's willful failure to comply.  
151 Minimum damages are \$50 per calendar day for up to 10 days,  
152 beginning on the 11th working day after receipt of the written  
153 request. The failure to permit inspection entitles any person  
154 prevailing in an enforcement action to recover reasonable  
155 attorney ~~attorney's~~ fees from the person in control of the  
156 records who, directly or indirectly, knowingly denied access to  
157 the records. Any person who knowingly or intentionally defaces



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158 or destroys accounting records that are required by this chapter  
159 to be maintained during the period for which such records are  
160 required to be maintained, or who knowingly or intentionally  
161 fails to create or maintain accounting records that are required  
162 to be created or maintained, with the intent of causing harm to  
163 the association or one or more of its members, is personally  
164 subject to a civil penalty pursuant to s. 718.501(1)(d). The  
165 association shall maintain an adequate number of copies of the  
166 declaration, articles of incorporation, bylaws, and rules, and  
167 all amendments to each of the foregoing, as well as the question  
168 and answer sheet as described in s. 718.504 and year-end  
169 financial information required under this section, on the  
170 condominium property to ensure their availability to unit owners  
171 and prospective purchasers, and may charge its actual costs for  
172 preparing and furnishing these documents to those requesting the  
173 documents. An association shall allow a member or his or her  
174 authorized representative to use a portable device, including a  
175 smartphone, tablet, portable scanner, or any other technology  
176 capable of scanning or taking photographs, to make an electronic  
177 copy of the official records in lieu of the association's  
178 providing the member or his or her authorized representative  
179 with a copy of such records. The association may not charge a  
180 member or his or her authorized representative for the use of a  
181 portable device. Notwithstanding this paragraph, the following  
182 records are not accessible to unit owners:

183 1. Any record protected by the lawyer-client privilege as  
184 described in s. 90.502 and any record protected by the work-  
185 product privilege, including a record prepared by an association  
186 attorney or prepared at the attorney's express direction, which



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187 reflects a mental impression, conclusion, litigation strategy,  
188 or legal theory of the attorney or the association, and which  
189 was prepared exclusively for civil or criminal litigation or for  
190 adversarial administrative proceedings, or which was prepared in  
191 anticipation of such litigation or proceedings until the  
192 conclusion of the litigation or proceedings.

193 2. Information obtained by an association in connection  
194 with the approval of the lease, sale, or other transfer of a  
195 unit.

196 3. Personnel records of association or management company  
197 employees, including, but not limited to, disciplinary, payroll,  
198 health, and insurance records. For purposes of this  
199 subparagraph, the term "personnel records" does not include  
200 written employment agreements with an association employee or  
201 management company, or budgetary or financial records that  
202 indicate the compensation paid to an association employee.

203 4. Medical records of unit owners.

204 5. Social security numbers, driver ~~driver's~~ license  
205 numbers, credit card numbers, e-mail addresses, telephone  
206 numbers, facsimile numbers, emergency contact information,  
207 addresses of a unit owner other than as provided to fulfill the  
208 association's notice requirements, and other personal  
209 identifying information of any person, excluding the person's  
210 name, unit designation, mailing address, property address, and  
211 any address, e-mail address, or facsimile number provided to the  
212 association to fulfill the association's notice requirements.  
213 However, an owner may consent in writing to the disclosure of  
214 protected information described in this subparagraph. The  
215 association is not liable for the inadvertent disclosure of



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216 information that is protected under this subparagraph if the  
217 information is included in an official record of the association  
218 and is voluntarily provided by an owner and not requested by the  
219 association.

220 6. Electronic security measures that are used by the  
221 association to safeguard data, including passwords.

222 7. The software and operating system used by the  
223 association which allow the manipulation of data, even if the  
224 owner owns a copy of the same software used by the association.  
225 The data is part of the official records of the association.

226 (13) FINANCIAL REPORTING.—Within 90 days after the end of  
227 the fiscal year, or annually on a date provided in the bylaws,  
228 the association shall prepare and complete, or contract for the  
229 preparation and completion of, a financial report for the  
230 preceding fiscal year. Within 21 days after the final financial  
231 report is completed by the association or received from the  
232 third party, but not later than 120 days after the end of the  
233 fiscal year or other date as provided in the bylaws, the  
234 association shall mail to each unit owner at the address last  
235 furnished to the association by the unit owner, or hand deliver  
236 to each unit owner, a copy of the financial report or a notice  
237 that a copy of the financial report will be mailed or hand  
238 delivered to the unit owner, without charge, upon receipt of a  
239 written request from the unit owner. The division shall adopt  
240 rules setting forth uniform accounting principles and standards  
241 to be used by all associations and addressing the financial  
242 reporting requirements for multicondominium associations. The  
243 rules must include, but not be limited to, standards for  
244 presenting a summary of association reserves, including a good



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245 faith estimate disclosing the annual amount of reserve funds  
246 that would be necessary for the association to fully fund  
247 reserves for each reserve item based on the straight-line  
248 accounting method. This disclosure is not applicable to reserves  
249 funded via the pooling method. In adopting such rules, the  
250 division shall consider the number of members and annual  
251 revenues of an association. Financial reports shall be prepared  
252 as follows:

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

258 1. An association with total annual revenues of \$200,000  
259 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare  
260 compiled financial statements.

261 2. An association with total annual revenues of at least  
262 \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall  
263 prepare reviewed financial statements.

264 3. An association with total annual revenues of \$500,000  
265 ~~\$400,000~~ or more shall prepare audited financial statements.

266 (b)1. An association with total annual revenues of less  
267 than \$200,000 ~~\$100,000~~ shall prepare a report of cash receipts  
268 and expenditures.

269 2. An association that operates fewer than 75 units,  
270 regardless of the association's annual revenues, shall prepare a  
271 report of cash receipts and expenditures in lieu of financial  
272 statements required by paragraph (a).

273 3. A report of cash receipts and disbursements must



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274 disclose the amount of receipts by accounts and receipt  
275 classifications and the amount of expenses by accounts and  
276 expense classifications, including, but not limited to, the  
277 following, as applicable: costs for security, professional and  
278 management fees and expenses, taxes, costs for recreation  
279 facilities, expenses for refuse collection and utility services,  
280 expenses for lawn care, costs for building maintenance and  
281 repair, insurance costs, administration and salary expenses, and  
282 reserves accumulated and expended for capital expenditures,  
283 deferred maintenance, and any other category for which the  
284 association maintains reserves.

285 Section 4. Paragraphs (d) and (j) of subsection (2) of  
286 section 718.112, Florida Statutes, are amended to read:

287 718.112 Bylaws.—

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

291 (d) *Unit owner meetings.*—

292 1. An annual meeting of the unit owners shall be held at  
293 the location provided in the association bylaws and, if the  
294 bylaws are silent as to the location, the meeting shall be held  
295 within 45 miles of the condominium property. However, such  
296 distance requirement does not apply to an association governing  
297 a timeshare condominium.

298 2. Unless the bylaws provide otherwise, a vacancy on the  
299 board caused by the expiration of a director's term shall be  
300 filled by electing a new board member, and the election must be  
301 by secret ballot. An election is not required if the number of  
302 vacancies equals or exceeds the number of candidates. For



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303 purposes of this paragraph, the term "candidate" means an  
304 eligible person who has timely submitted the written notice, as  
305 described in sub-subparagraph 4.a., of his or her intention to  
306 become a candidate. Except in a timeshare condominium, or if the  
307 staggered term of a board member does not expire until a later  
308 annual meeting, or if all members' terms would otherwise expire  
309 but there are no candidates, the terms of all board members  
310 expire at the annual meeting, and such members may stand for  
311 reelection unless prohibited by the bylaws. If the bylaws or  
312 articles of incorporation permit ~~staggered~~ terms of no more than  
313 2 years ~~and upon approval of a majority of the total voting~~  
314 ~~interests~~, the association board members may serve 2-year  
315 ~~staggered~~ terms. If the number of board members whose terms  
316 expire at the annual meeting equals or exceeds the number of  
317 candidates, the candidates become members of the board effective  
318 upon the adjournment of the annual meeting. Unless the bylaws  
319 provide otherwise, any remaining vacancies shall be filled by  
320 the affirmative vote of the majority of the directors making up  
321 the newly constituted board even if the directors constitute  
322 less than a quorum or there is only one director. In a  
323 condominium association of more than 10 units or in a  
324 condominium association that does not include timeshare units or  
325 timeshare interests, coowners of a unit may not serve as members  
326 of the board of directors at the same time unless they own more  
327 than one unit or unless there are not enough eligible candidates  
328 to fill the vacancies on the board at the time of the vacancy.  
329 Any unit owner desiring to be a candidate for board membership  
330 must comply with sub-subparagraph 4.a. and must be eligible to  
331 be a candidate to serve on the board of directors at the time of



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332 the deadline for submitting a notice of intent to run in order  
333 to have his or her name listed as a proper candidate on the  
334 ballot or to serve on the board. A person who has been suspended  
335 or removed by the division under this chapter, or who is  
336 delinquent in the payment of any monetary obligation due to the  
337 association fee, fine, or special or regular assessment as  
338 provided in paragraph (n), is not eligible to be a candidate for  
339 board membership and may not be listed on the ballot. A person  
340 who has been convicted of any felony in this state or in a  
341 United States District or Territorial Court, or who has been  
342 convicted of any offense in another jurisdiction which would be  
343 considered a felony if committed in this state, is not eligible  
344 for board membership unless such felon's civil rights have been  
345 restored for at least 5 years as of the date such person seeks  
346 election to the board. The validity of an action by the board is  
347 not affected if it is later determined that a board member is  
348 ineligible for board membership due to having been convicted of  
349 a felony.

350 3. The bylaws must provide the method of calling meetings  
351 of unit owners, including annual meetings. Written notice must  
352 include an agenda, must be mailed, hand delivered, or  
353 electronically transmitted to each unit owner at least 14 days  
354 before the annual meeting, and must be posted in a conspicuous  
355 place on the condominium property at least 14 continuous days  
356 before the annual meeting. Upon notice to the unit owners, the  
357 board shall, by duly adopted rule, designate a specific location  
358 on the condominium property or association property where all  
359 notices of unit owner meetings shall be posted. This requirement  
360 does not apply if there is no condominium property or



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361 association property for posting notices. In lieu of, or in  
362 addition to, the physical posting of meeting notices, the  
363 association may, by reasonable rule, adopt a procedure for  
364 conspicuously posting and repeatedly broadcasting the notice and  
365 the agenda on a closed-circuit cable television system serving  
366 the condominium association. However, if broadcast notice is  
367 used in lieu of a notice posted physically on the condominium  
368 property, the notice and agenda must be broadcast at least four  
369 times every broadcast hour of each day that a posted notice is  
370 otherwise required under this section. If broadcast notice is  
371 provided, the notice and agenda must be broadcast in a manner  
372 and for a sufficient continuous length of time so as to allow an  
373 average reader to observe the notice and read and comprehend the  
374 entire content of the notice and the agenda. Unless a unit owner  
375 waives in writing the right to receive notice of the annual  
376 meeting, such notice must be hand delivered, mailed, or  
377 electronically transmitted to each unit owner. Notice for  
378 meetings and notice for all other purposes must be mailed to  
379 each unit owner at the address last furnished to the association  
380 by the unit owner, or hand delivered to each unit owner.  
381 However, if a unit is owned by more than one person, the  
382 association must provide notice to the address that the  
383 developer identifies for that purpose and thereafter as one or  
384 more of the owners of the unit advise the association in  
385 writing, or if no address is given or the owners of the unit do  
386 not agree, to the address provided on the deed of record. An  
387 officer of the association, or the manager or other person  
388 providing notice of the association meeting, must provide an  
389 affidavit or United States Postal Service certificate of



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390 mailing, to be included in the official records of the  
391 association affirming that the notice was mailed or hand  
392 delivered in accordance with this provision.

393 4. The members of the board shall be elected by written  
394 ballot or voting machine. Proxies may not be used in electing  
395 the board in general elections or elections to fill vacancies  
396 caused by recall, resignation, or otherwise, unless otherwise  
397 provided in this chapter. This subparagraph does not apply to an  
398 association governing a timeshare condominium.

399 a. At least 60 days before a scheduled election, the  
400 association shall mail, deliver, or electronically transmit, by  
401 separate association mailing or included in another association  
402 mailing, delivery, or transmission, including regularly  
403 published newsletters, to each unit owner entitled to a vote, a  
404 first notice of the date of the election. Any unit owner or  
405 other eligible person desiring to be a candidate for the board  
406 must give written notice of his or her intent to be a candidate  
407 to the association at least 40 days before a scheduled election.  
408 Together with the written notice and agenda as set forth in  
409 subparagraph 3., the association shall mail, deliver, or  
410 electronically transmit a second notice of the election to all  
411 unit owners entitled to vote, together with a ballot that lists  
412 all candidates. Upon request of a candidate, an information  
413 sheet, no larger than 8 1/2 inches by 11 inches, which must be  
414 furnished by the candidate at least 35 days before the election,  
415 must be included with the mailing, delivery, or transmission of  
416 the ballot, with the costs of mailing, delivery, or electronic  
417 transmission and copying to be borne by the association. The  
418 association is not liable for the contents of the information



419 sheets prepared by the candidates. In order to reduce costs, the  
420 association may print or duplicate the information sheets on  
421 both sides of the paper. The division shall by rule establish  
422 voting procedures consistent with this sub-subparagraph,  
423 including rules establishing procedures for giving notice by  
424 electronic transmission and rules providing for the secrecy of  
425 ballots. Elections shall be decided by a plurality of ballots  
426 cast. There is no quorum requirement; however, at least 20  
427 percent of the eligible voters must cast a ballot in order to  
428 have a valid election. A unit owner may not permit any other  
429 person to vote his or her ballot, and any ballots improperly  
430 cast are invalid. A unit owner who violates this provision may  
431 be fined by the association in accordance with s. 718.303. A  
432 unit owner who needs assistance in casting the ballot for the  
433 reasons stated in s. 101.051 may obtain such assistance. The  
434 regular election must occur on the date of the annual meeting.  
435 Notwithstanding this sub-subparagraph, an election is not  
436 required unless more candidates file notices of intent to run or  
437 are nominated than board vacancies exist.

438       b. Within 90 days after being elected or appointed to the  
439 board, each newly elected or appointed director shall certify in  
440 writing to the secretary of the association that he or she has  
441 read the association's declaration of condominium, articles of  
442 incorporation, bylaws, and current written policies; that he or  
443 she will work to uphold such documents and policies to the best  
444 of his or her ability; and that he or she will faithfully  
445 discharge his or her fiduciary responsibility to the  
446 association's members. In lieu of this written certification,  
447 within 90 days after being elected or appointed to the board,



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448 the newly elected or appointed director may submit a certificate  
449 of having satisfactorily completed the educational curriculum  
450 administered by a division-approved condominium education  
451 provider within 1 year before or 90 days after the date of  
452 election or appointment. The written certification or  
453 educational certificate is valid and does not have to be  
454 resubmitted as long as the director serves on the board without  
455 interruption. A director who fails to timely file the written  
456 certification or educational certificate is suspended from  
457 service on the board until he or she complies with this sub-  
458 subparagraph. The board may temporarily fill the vacancy during  
459 the period of suspension. The secretary shall cause the  
460 association to retain a director's written certification or  
461 educational certificate for inspection by the members for 5  
462 years after a director's election or the duration of the  
463 director's uninterrupted tenure, whichever is longer. Failure to  
464 have such written certification or educational certificate on  
465 file does not affect the validity of any board action.

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

468 5. Any approval by unit owners called for by this chapter  
469 or the applicable declaration or bylaws, including, but not  
470 limited to, the approval requirement in s. 718.111(8), must be  
471 made at a duly noticed meeting of unit owners and is subject to  
472 all requirements of this chapter or the applicable condominium  
473 documents relating to unit owner decisionmaking, except that  
474 unit owners may take action by written agreement, without  
475 meetings, on matters for which action by written agreement  
476 without meetings is expressly allowed by the applicable bylaws



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477 or declaration or any law that provides for such action.

478         6. Unit owners may waive notice of specific meetings if  
479 allowed by the applicable bylaws or declaration or any law. If  
480 authorized by the bylaws, notice of meetings of the board of  
481 administration, unit owner meetings, except unit owner meetings  
482 called to recall board members under paragraph (j), and  
483 committee meetings may be given by electronic transmission to  
484 unit owners who consent to receive notice by electronic  
485 transmission.

486         7. Unit owners have the right to participate in meetings of  
487 unit owners with reference to all designated agenda items.  
488 However, the association may adopt reasonable rules governing  
489 the frequency, duration, and manner of unit owner participation.

490         8. A unit owner may tape record or videotape a meeting of  
491 the unit owners subject to reasonable rules adopted by the  
492 division.

493         9. Unless otherwise provided in the bylaws, any vacancy  
494 occurring on the board before the expiration of a term may be  
495 filled by the affirmative vote of the majority of the remaining  
496 directors, even if the remaining directors constitute less than  
497 a quorum, or by the sole remaining director. In the alternative,  
498 a board may hold an election to fill the vacancy, in which case  
499 the election procedures must conform to sub-subparagraph 4.a.  
500 unless the association governs 10 units or fewer and has opted  
501 out of the statutory election process, in which case the bylaws  
502 of the association control. Unless otherwise provided in the  
503 bylaws, a board member appointed or elected under this section  
504 shall fill the vacancy for the unexpired term of the seat being  
505 filled. Filling vacancies created by recall is governed by



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506 paragraph (j) and rules adopted by the division.

507 10. This chapter does not limit the use of general or  
508 limited proxies, require the use of general or limited proxies,  
509 or require the use of a written ballot or voting machine for any  
510 agenda item or election at any meeting of a timeshare  
511 condominium association.

512  
513 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an  
514 association of 10 or fewer units may, by affirmative vote of a  
515 majority of the total voting interests, provide for different  
516 voting and election procedures in its bylaws, which may be by a  
517 proxy specifically delineating the different voting and election  
518 procedures. The different voting and election procedures may  
519 provide for elections to be conducted by limited or general  
520 proxy.

521 (j) *Recall of board members.*—Subject to ~~the provisions of~~  
522 s. 718.301, any member of the board of administration may be  
523 recalled and removed from office with or without cause by the  
524 vote or agreement in writing by a majority of all the voting  
525 interests. A special meeting of the unit owners to recall a  
526 member or members of the board of administration may be called  
527 by 10 percent of the voting interests giving notice of the  
528 meeting as required for a meeting of unit owners, and the notice  
529 shall state the purpose of the meeting. Electronic transmission  
530 may not be used as a method of giving notice of a meeting called  
531 in whole or in part for this purpose.

532 1. If the recall is approved by a majority of all voting  
533 interests by a vote at a meeting, the recall will be effective  
534 as provided in this paragraph ~~herein~~. The board shall duly



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535 notice and hold a board meeting within 5 full business days  
536 after ~~of~~ the adjournment of the unit owner meeting to recall one  
537 or more board members. At the meeting, the board shall either  
538 certify the recall, in which case such member or members shall  
539 be recalled effective immediately and shall turn over to the  
540 board within 5 full business days any and all records and  
541 property of the association in their possession, or shall  
542 proceed as set forth in subparagraph 3.

543         2. If the proposed recall is by an agreement in writing by  
544 a majority of all voting interests, the agreement in writing or  
545 a copy thereof shall be served on the association by certified  
546 mail or by personal service in the manner authorized by chapter  
547 48 and the Florida Rules of Civil Procedure. The board of  
548 administration shall duly notice and hold a meeting of the board  
549 within 5 full business days after receipt of the agreement in  
550 writing. At the meeting, the board shall either certify the  
551 written agreement to recall a member or members of the board, in  
552 which case such member or members shall be recalled effective  
553 immediately and shall turn over to the board within 5 full  
554 business days any and all records and property of the  
555 association in their possession, or proceed as described in  
556 subparagraph 3.

557         3. If the board determines not to certify the written  
558 agreement to recall a member or members of the board, or does  
559 not certify the recall by a vote at a meeting, the board shall,  
560 within 5 full business days after the meeting, file with the  
561 division a petition for arbitration pursuant to the procedures  
562 in s. 718.1255. For the purposes of this section, the unit  
563 owners who voted at the meeting or who executed the agreement in



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564 writing shall constitute one party under the petition for  
565 arbitration. If the arbitrator certifies the recall as to any  
566 member or members of the board, the recall will be effective  
567 upon mailing of the final order of arbitration to the  
568 association. If the association fails to comply with the order  
569 of the arbitrator, the division may take action pursuant to s.  
570 718.501. Any member or members so recalled shall deliver to the  
571 board any and all records of the association in their possession  
572 within 5 full business days after ~~of~~ the effective date of the  
573 recall.

574 4. If the board fails to duly notice and hold a board  
575 meeting within 5 full business days after ~~of~~ service of an  
576 agreement in writing or within 5 full business days after ~~of~~ the  
577 adjournment of the unit owner recall meeting, the recall shall  
578 be deemed effective and the board members so recalled shall  
579 immediately turn over to the board any and all records and  
580 property of the association.

581 5. If the board fails to duly notice and hold the required  
582 meeting or fails to file the required petition, the unit owner  
583 representative may file a petition pursuant to s. 718.1255  
584 challenging the board's failure to act. The petition must be  
585 filed within 60 days after the expiration of the applicable 5-  
586 full-business-day period. The review of a petition under this  
587 subparagraph is limited to the sufficiency of service on the  
588 board and the facial validity of the written agreement or  
589 ballots filed.

590 ~~6.5.~~ If a vacancy occurs on the board as a result of a  
591 recall or removal and less than a majority of the board members  
592 are removed, the vacancy may be filled by the affirmative vote



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593 of a majority of the remaining directors, notwithstanding any  
594 provision to the contrary contained in this subsection. If  
595 vacancies occur on the board as a result of a recall and a  
596 majority or more of the board members are removed, the vacancies  
597 shall be filled in accordance with procedural rules to be  
598 adopted by the division, which rules need not be consistent with  
599 this subsection. The rules must provide procedures governing the  
600 conduct of the recall election as well as the operation of the  
601 association during the period after a recall but before ~~prior to~~  
602 the recall election.

603 7. A board member who has been recalled may file a petition  
604 pursuant to s. 718.1255 challenging the validity of the recall.  
605 The petition must be filed within 60 days after the recall is  
606 deemed certified. The association and the unit owner  
607 representative shall be named as the respondents.

608 8. The division may not accept for filing a recall  
609 petition, whether filed pursuant to subparagraph 1.,  
610 subparagraph 2., subparagraph 5., or subparagraph 7. and  
611 regardless of whether the recall was certified, when there are  
612 60 or fewer days until the scheduled reelection of the board  
613 member sought to be recalled or when 60 or fewer days have  
614 elapsed since the election of the board member sought to be  
615 recalled.

616 Section 5. Subsection (5) of section 718.113, Florida  
617 Statutes, is amended to read:

618 718.113 Maintenance; limitation upon improvement; display  
619 of flag; hurricane shutters and protection; display of religious  
620 decorations.-

621 (5) Each board of administration shall adopt hurricane



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622 shutter specifications for each building within each condominium  
623 operated by the association which shall include color, style,  
624 and other factors deemed relevant by the board. All  
625 specifications adopted by the board must comply with the  
626 applicable building code.

627 (a) The board may, subject to ~~the provisions of s.~~  
628 718.3026~~7~~ and the approval of a majority of voting interests of  
629 the condominium, install hurricane shutters, impact glass, ~~or~~  
630 ~~other~~ code-compliant windows or doors, or other types of code-  
631 compliant hurricane protection that comply ~~complies~~ with or  
632 exceed ~~exceeds~~ the applicable building code. However, a vote of  
633 the owners is not required if the maintenance, repair, and  
634 replacement of hurricane shutters, impact glass, ~~or other~~ code-  
635 compliant windows or doors, or other types of code-compliant  
636 hurricane protection are the responsibility of the association  
637 pursuant to the declaration of condominium. If hurricane  
638 protection or laminated glass or window film architecturally  
639 designed to function as hurricane protection that ~~which~~ complies  
640 with or exceeds the current applicable building code has been  
641 previously installed, the board may not install hurricane  
642 shutters, ~~hurricane protection, or~~ impact glass, ~~or other~~ code-  
643 compliant windows or doors, or other types of code-compliant  
644 hurricane protection except upon approval by a majority vote of  
645 the voting interests.

646 (b) The association is responsible for the maintenance,  
647 repair, and replacement of the hurricane shutters, impact glass,  
648 code-compliant windows or doors, or other types of code-  
649 compliant hurricane protection authorized by this subsection if  
650 such property ~~hurricane shutters or other hurricane protection~~



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651 is the responsibility of the association pursuant to the  
652 declaration of condominium. If the hurricane shutters, impact  
653 glass, code-compliant windows or doors, or other types of code-  
654 compliant hurricane protection ~~authorized by this subsection~~ are  
655 the responsibility of the unit owners pursuant to the  
656 declaration of condominium, the maintenance, repair, and  
657 replacement of such items are the responsibility of the unit  
658 owner.

659 (c) The board may operate shutters, impact glass, code-  
660 compliant windows or doors, or other types of code-compliant  
661 hurricane protection installed pursuant to this subsection  
662 without permission of the unit owners only if such operation is  
663 necessary to preserve and protect the condominium property and  
664 association property. The installation, replacement, operation,  
665 repair, and maintenance of such shutters, impact glass, code-  
666 compliant windows or doors, or other types of code-compliant  
667 hurricane protection in accordance with the procedures set forth  
668 in this paragraph are not a material alteration to the common  
669 elements or association property within the meaning of this  
670 section.

671 (d) Notwithstanding any other provision in the condominium  
672 documents, if approval is required by the documents, a board may  
673 not refuse to approve the installation or replacement of  
674 hurricane shutters, impact glass, code-compliant windows or  
675 doors, or other types of code-compliant hurricane protection by  
676 a unit owner conforming to the specifications adopted by the  
677 board.

678 Section 6. Paragraph (e) of subsection (1) of section  
679 718.115, Florida Statutes, is amended to read:



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680 718.115 Common expenses and common surplus.-  
681 (1)  
682 (e) The expense of installation, replacement, operation,  
683 repair, and maintenance of hurricane shutters, impact glass,  
684 code-compliant windows or doors, or other types of code-  
685 compliant hurricane protection by the board pursuant to s.  
686 718.113(5) constitutes ~~shall constitute~~ a common expense ~~as~~  
687 ~~defined herein~~ and shall be collected as provided in this  
688 section if the association is responsible for the maintenance,  
689 repair, and replacement of the hurricane shutters, impact glass,  
690 code-compliant windows or doors, or other types of code-  
691 compliant hurricane protection pursuant to the declaration of  
692 condominium. However, if the maintenance, repair, and  
693 replacement of the hurricane shutters, impact glass, code-  
694 compliant windows or doors, or other types of code-compliant  
695 hurricane protection are ~~is~~ the responsibility of the unit  
696 owners pursuant to the declaration of condominium, the cost of  
697 the installation of the hurricane shutters, impact glass, code-  
698 compliant windows or doors, or other types of code-compliant  
699 hurricane protection is ~~shall~~ not be a common expense ~~and, but~~  
700 shall be charged individually to the unit owners based on the  
701 cost of installation of the hurricane shutters, impact glass,  
702 code-compliant windows or doors, or other types of code-  
703 compliant hurricane protection appurtenant to the unit.  
704 Notwithstanding ~~the provisions of~~ s. 718.116(9), and regardless  
705 of whether or not the declaration requires the association or  
706 unit owners to maintain, repair, or replace hurricane shutters,  
707 impact glass, code-compliant windows or doors, or other types of  
708 code-compliant hurricane protection, a unit owner who has



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709 previously installed hurricane shutters in accordance with s.  
710 718.113(5) that comply with the current applicable building code  
711 shall receive a credit when the shutters are installed; a unit  
712 owner who has previously installed impact glass or code-  
713 compliant windows or doors that comply with the current  
714 applicable building code shall receive a credit when the impact  
715 glass or code-compliant windows or doors are installed; and a  
716 unit owner who has installed, other types of code-compliant  
717 hurricane protection that comply with the current applicable  
718 building code shall receive a credit when the same type of other  
719 code-compliant hurricane protection is installed, and the ~~or~~  
720 ~~laminated glass architecturally designed to function as~~  
721 ~~hurricane protection, which hurricane shutters or other~~  
722 ~~hurricane protection or laminated glass comply with the current~~  
723 ~~applicable building code, shall receive a credit shall be equal~~  
724 to the pro rata portion of the assessed installation cost  
725 assigned to each unit. However, such unit owner remains ~~shall~~  
726 ~~remain~~ responsible for the pro rata share of expenses for  
727 hurricane shutters, impact glass, code-compliant windows or  
728 doors, or other types of code-compliant hurricane protection  
729 installed on common elements and association property by the  
730 board pursuant to s. 718.113(5), ~~and~~ remains ~~shall remain~~  
731 responsible for a pro rata share of the expense of the  
732 replacement, operation, repair, and maintenance of such  
733 shutters, impact glass, code-compliant windows or doors, or  
734 other types of code-compliant hurricane protection.

735 Section 7. Paragraph (a) of subsection (3) of section  
736 718.303, Florida Statutes, is amended to read:

737 718.303 Obligations of owners and occupants; remedies.-



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738 (3) The association may levy reasonable fines for the  
739 failure of the owner of the unit or its occupant, licensee, or  
740 invitee to comply with any provision of the declaration, the  
741 association bylaws, or reasonable rules of the association. A  
742 fine may not become a lien against a unit. A fine may be levied  
743 on the basis of each day of a continuing violation, with a  
744 single notice and opportunity for hearing. However, the fine may  
745 not exceed \$100 per violation, or \$1,000 in the aggregate.

746 (a) An association may suspend, for a reasonable period of  
747 time, the right of a unit owner, or a unit owner's tenant,  
748 guest, or invitee, to use the common elements, common  
749 facilities, or any other association property for failure to  
750 comply with any provision of the declaration, the association  
751 bylaws, or reasonable rules of the association. This paragraph  
752 does not apply to limited common elements intended to be used  
753 only by that unit, common elements needed to access the unit,  
754 utility services provided to the unit, parking spaces, or  
755 elevators.

756 Section 8. Subsection (1) of section 718.403, Florida  
757 Statutes, is amended to read:

758 718.403 Phase condominiums.—

759 (1) Notwithstanding ~~the provisions of~~ s. 718.110, a  
760 developer may develop a condominium in phases, if the original  
761 declaration of condominium submitting the initial phase to  
762 condominium ownership or an amendment to the declaration which  
763 has been approved by all of the unit owners and unit mortgagees  
764 provides for and describes in detail all anticipated phases; the  
765 impact, if any, which the completion of subsequent phases would  
766 have upon the initial phase; and the time period ~~(which may not~~



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767 ~~exceed 7 years from the date of recording the declaration of~~  
768 ~~condominium)~~ within which all phases must be added to the  
769 condominium and comply with the requirements of this section and  
770 at the end of which the right to add additional phases expires.

771 (a) All phases must be added to the condominium within 7  
772 years after the date of recording the original declaration of  
773 condominium submitting the initial phase to condominium  
774 ownership unless an amendment extending the 7-year period is  
775 approved by the unit owners.

776 (b) An amendment to extend the 7-year period requires the  
777 approval of the owners necessary to amend the declaration of  
778 condominium consistent with s. 718.110(1)(a). An extension of  
779 the 7-year period may be submitted for approval only during the  
780 last 3 years of the 7-year period.

781 (c) An amendment must describe the period within which all  
782 phases must be added to the condominium and such period may not  
783 exceed 10 years after the date of recording the original  
784 declaration of condominium submitting the initial phase to  
785 condominium ownership.

786 (d) Notwithstanding s. 718.110, an amendment extending the  
787 7-year period is not an amendment subject to s. 718.110(4).

788 Section 9. Section 718.406, Florida Statutes, is created to  
789 read:

790 718.406 Condominiums created within condominium parcels.-

791 (1) Unless otherwise expressed in the declaration of  
792 condominium, if a condominium is created within a condominium  
793 parcel, the term:

794 (a) "Primary condominium" means any condominium that is not  
795 a secondary condominium and contains one or more subdivided



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796 parcels.

797 (b) "Primary condominium association" means any entity that  
798 operates a primary condominium.

799 (c) "Primary condominium declaration" means the instrument  
800 or instruments by which a primary condominium is created, as  
801 they are from time to time amended.

802 (d) "Secondary condominium" means one or more condominium  
803 parcels that have been submitted to condominium ownership  
804 pursuant to a secondary condominium declaration.

805 (e) "Secondary condominium association" means any entity  
806 responsible for the operation of a secondary condominium.

807 (f) "Secondary condominium declaration" means the  
808 instrument or instruments by which a secondary condominium is  
809 created, as they are from time to time amended.

810 (g) "Secondary unit" means a unit that is part of a  
811 secondary condominium.

812 (h) "Subdivided parcel" means a condominium parcel in a  
813 primary condominium that has been submitted to condominium  
814 ownership pursuant to a secondary condominium declaration.

815 (2) Unless otherwise provided in the primary condominium  
816 declaration, if a condominium parcel is a subdivided parcel, the  
817 secondary condominium association responsible for operating the  
818 secondary condominium upon the subdivided parcel shall act on  
819 behalf of all of the unit owners of secondary units in the  
820 secondary condominium and shall exercise all rights of the  
821 secondary unit owners in the primary condominium association,  
822 other than the right of possession of the secondary unit. The  
823 secondary condominium association shall designate a  
824 representative who shall cast the vote of the subdivided parcel



825 in the primary condominium association and, if no person is  
826 designated by the secondary condominium association to cast such  
827 vote, the vote shall be cast by the president of the secondary  
828 condominium association or the designee of the president.

829 (3) Unless otherwise provided in the primary condominium  
830 declaration as originally recorded, no secondary condominium may  
831 be created upon any condominium parcel in the primary  
832 condominium, and no amendment to the primary condominium  
833 declaration may permit secondary condominiums to be created upon  
834 parcels in the primary condominium, unless the record owners of  
835 a majority of the condominium parcels join in the execution of  
836 the amendment.

837 (4) If the primary condominium declaration permits the  
838 creation of a secondary condominium and a condominium parcel in  
839 the primary condominium is being submitted for condominium  
840 ownership to create a secondary condominium upon the primary  
841 condominium parcel, the approval of the board of administration  
842 of the primary condominium association is required in order to  
843 create the secondary condominium on the primary condominium  
844 parcel. Unless otherwise provided in the primary condominium  
845 declaration, the owners of condominium parcels in the primary  
846 condominium that will not be part of the proposed secondary  
847 condominium and the holders of liens upon such primary  
848 condominium parcels shall not have approval rights regarding the  
849 creation of the secondary condominium or the contents of the  
850 secondary condominium declaration being submitted. Only the  
851 board of administration of the primary condominium association,  
852 the owner of the subdivided parcel, and the holders of liens  
853 upon the subdivided parcel shall have approval rights regarding



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854 the creation of the secondary condominium and the contents of  
855 the secondary condominium declaration. In order for the  
856 recording of the secondary condominium declaration to be  
857 effective to create the secondary condominium, the board of  
858 administration of the primary condominium association, the owner  
859 of the subdivided parcel, and all holders of liens on the  
860 subdivided parcel must execute the secondary condominium  
861 declaration for the purpose of evidencing their approval.

862 (5) An owner of a secondary unit is subject to both the  
863 primary condominium declaration and the secondary condominium  
864 declaration.

865 (6) The primary condominium association may provide  
866 insurance required by s. 718.111(11) for common elements and  
867 other improvements within the secondary condominium if the  
868 primary condominium declaration permits the primary condominium  
869 association to provide such insurance for the benefit of the  
870 condominium property included in the subdivided parcel, in lieu  
871 of such insurance being provided by the secondary condominium  
872 association.

873 (7) Unless otherwise provided in the primary condominium  
874 declaration, the board of administration of the primary  
875 condominium association may adopt hurricane shutter or hurricane  
876 protection specifications for each building within which  
877 subdivided parcels are located and govern any subdivided parcels  
878 in the primary condominium.

879 (8) Any unit owner of, or holder of a first mortgage on, a  
880 secondary unit may register such unit owner's or mortgagee's  
881 interest in the secondary unit with the primary condominium  
882 association by delivering written notice to the primary



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883 condominium association. Once registered, the primary  
884 condominium association must provide written notice to such  
885 secondary unit owner and his, her, or its first mortgagee at  
886 least 30 days before instituting any foreclosure action against  
887 the subdivided parcel in which the secondary unit owner and his,  
888 her, or its first mortgagee hold an interest for failure of the  
889 subdivided parcel owner to pay any assessments or other amounts  
890 due to the primary condominium association. A foreclosure action  
891 against a subdivided parcel is not effective without an  
892 affidavit indicating that written notice of the foreclosure was  
893 timely sent to the names and addresses of secondary unit owners  
894 and first mortgagees registered with the primary condominium  
895 association pursuant to this subsection. The registered  
896 secondary unit owner or mortgagee has a right to pay the  
897 proportionate amount of the delinquent assessment attributable  
898 to the secondary unit in which the registered unit owner or  
899 mortgagee holds an interest. Upon such payment, the primary  
900 condominium association is obligated to promptly modify or  
901 partially release the record of lien on the primary condominium  
902 association so that the lien no longer encumbers such secondary  
903 unit. Alternatively, a registered secondary unit owner or  
904 mortgagee may pay the amount of all delinquent assessments  
905 attributed to the subdivided parcel and seek reimbursement for  
906 all such amounts paid and all costs incurred from the secondary  
907 condominium association, including, without limitation, the  
908 costs of collection other than the share allocable to the  
909 secondary unit on behalf of which such payment was made.

910 (9) In the event of a conflict between the primary  
911 condominium declaration and the secondary condominium



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912 declaration, the primary condominium declaration controls.

913 (10) All common expenses due to the primary condominium  
914 association with respect to a subdivided parcel are a common  
915 expense of the secondary condominium association and shall be  
916 collected by the secondary condominium association from its  
917 members and paid to the primary condominium association.

918 Section 10. Subsection (2) of section 718.5011, Florida  
919 Statutes, is amended to read:

920 718.5011 Ombudsman; appointment; administration.—

921 (2) The Governor shall appoint the ombudsman. The ombudsman  
922 must be an attorney admitted to practice before the Florida  
923 Supreme Court and shall serve at the pleasure of the Governor. A  
924 vacancy in the office shall be filled in the same manner as the  
925 original appointment. An officer or full-time employee of the  
926 ombudsman's office may not actively engage in any other business  
927 or profession that directly or indirectly relates to or  
928 conflicts with his or her work in the ombudsman's office; serve  
929 as the representative of any political party, executive  
930 committee, or other governing body of a political party; serve  
931 as an executive, officer, or employee of a political party;  
932 receive remuneration for activities on behalf of any candidate  
933 for public office; or engage in soliciting votes or other  
934 activities on behalf of a candidate for public office. The  
935 ombudsman or any employee of his or her office may not become a  
936 candidate for election to public office unless he or she first  
937 resigns from his or her office or employment.

938 Section 11. Paragraphs (b) and (c) of subsection (2) of  
939 section 719.104, Florida Statutes, are amended to read:

940 719.104 Cooperatives; access to units; records; financial



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941 reports; assessments; purchase of leases.-

942 (2) OFFICIAL RECORDS.-

943 (b) The official records of the association shall be  
944 maintained within the state. The records of the association  
945 shall be made available to a unit owner within 5 working days  
946 after receipt of written request by the board or its designee.  
947 This paragraph may be complied with by having a copy of the  
948 official records available for inspection or copying on the  
949 cooperative property. An association shall allow a member or his  
950 or her authorized representative to use a portable device,  
951 including a smartphone, tablet, portable scanner, or any other  
952 technology capable of scanning or taking photographs, to make an  
953 electronic copy of the official records in lieu of the  
954 association's providing the member or his or her authorized  
955 representative with a copy of such records. The association may  
956 not charge a member or his or her authorized representative for  
957 the use of a portable device.

958 (c) The official records of the association shall be open  
959 to inspection by any association member or the authorized  
960 representative of such member at all reasonable times. Failure  
961 to permit inspection of the association records as provided in  
962 this subsection ~~herein~~ entitles any person prevailing in an  
963 enforcement action to recover reasonable attorney ~~attorney's~~  
964 fees from the person in control of the records who, directly or  
965 indirectly, knowingly denies access to the records for  
966 inspection. The right to inspect the records includes the right  
967 to make or obtain copies, at the reasonable expense, if any, of  
968 the association member. The association may adopt reasonable  
969 rules regarding the frequency, time, location, notice, and



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970 manner of record inspections and copying. The failure of an  
971 association to provide the records within 10 working days after  
972 receipt of a written request creates a rebuttable presumption  
973 that the association willfully failed to comply with this  
974 paragraph. A unit owner who is denied access to official records  
975 is entitled to the actual damages or minimum damages for the  
976 association's willful failure to comply with this paragraph. The  
977 minimum damages shall be \$50 per calendar day up to 10 days, the  
978 calculation to begin on the 11th day after receipt of the  
979 written request. The association shall maintain an adequate  
980 number of copies of the declaration, articles of incorporation,  
981 bylaws, and rules, and all amendments to each of the foregoing,  
982 as well as the question and answer sheet provided for in s.  
983 719.504, on the cooperative property to ensure their  
984 availability to unit owners and prospective purchasers, and may  
985 charge its actual costs for preparing and furnishing these  
986 documents to those requesting the same. Notwithstanding ~~the~~  
987 ~~provisions of~~ this paragraph, the following records shall not be  
988 accessible to unit owners:

989       1. Any record protected by the lawyer-client privilege as  
990 provided in s. 90.502; protected by the work-product privilege,  
991 including any record ~~A record that was~~ prepared by an  
992 association attorney or prepared at the attorney's express  
993 direction; reflecting that reflects a mental impression,  
994 conclusion, litigation strategy, or legal theory of the attorney  
995 or the association; or ~~that was~~ prepared exclusively for civil  
996 or criminal litigation or for adversarial administrative  
997 proceedings or in anticipation of imminent civil or criminal  
998 litigation or imminent adversarial administrative proceedings,



999 until the conclusion of the litigation or adversarial  
1000 administrative proceedings.

1001       2. Information obtained by an association in connection  
1002 with the approval of the lease, sale, or other transfer of a  
1003 unit.

1004       3. Medical records of unit owners.

1005       4. Personnel records of association employees, including,  
1006 but not limited to, disciplinary, payroll, health, and insurance  
1007 records. For purposes of this subparagraph, the term "personnel  
1008 records" does not include written employment agreements with an  
1009 association employee or budgetary or financial records that  
1010 indicate the compensation paid to an association employee.

1011       5. Social security numbers, driver license numbers, credit  
1012 card numbers, e-mail addresses, telephone numbers, emergency  
1013 contact information, any addresses of a unit owner other than  
1014 addresses provided to fulfill the association's notice  
1015 requirements, and other personal identifying information of any  
1016 person, excluding the person's name, unit designation, mailing  
1017 address, and property address.

1018       6. Any electronic security measures that are used by the  
1019 association to safeguard data, including passwords.

1020       7. The software and operating system used by the  
1021 association which allows manipulation of data, even if the owner  
1022 owns a copy of the same software used by the association. The  
1023 data is part of the official records of the association.

1024       Section 12. Subsection (7) is added to section 719.1055,  
1025 Florida Statutes, to read:

1026       719.1055 Amendment of cooperative documents; alteration and  
1027 acquisition of property.-



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1028           (7) The Legislature finds that the procurement of mortgagee  
1029 consent to amendments that do not affect the rights or interests  
1030 of mortgagees is an unreasonable and substantial logistical and  
1031 financial burden on the unit owners and that there is a  
1032 compelling state interest in enabling the members of an  
1033 association to approve amendments to the association's  
1034 cooperative documents through legal means. Accordingly, and  
1035 notwithstanding any provision of this subsection to the  
1036 contrary:

1037           (a) As to any mortgage recorded on or after July 1, 2013,  
1038 any provision in the association's cooperative documents that  
1039 requires the consent or joinder of some or all mortgagees of  
1040 units or any other portion of the association's common areas to  
1041 amend the association's cooperative documents or for any other  
1042 matter is enforceable only as to amendments to the association's  
1043 cooperative documents that adversely affect the priority of the  
1044 mortgagee's lien or the mortgagee's rights to foreclose its lien  
1045 or that otherwise materially affect the rights and interests of  
1046 the mortgagees.

1047           (b) As to mortgages recorded before July 1, 2013, any  
1048 existing provisions in the association's cooperative documents  
1049 requiring mortgagee consent are enforceable.

1050           (c) In securing consent or joinder, the association is  
1051 entitled to rely upon the public records to identify the holders  
1052 of outstanding mortgages. The association may use the address  
1053 provided in the original recorded mortgage document, unless  
1054 there is a different address for the holder of the mortgage in a  
1055 recorded assignment or modification of the mortgage, which  
1056 recorded assignment or modification must reference the official



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1057 records book and page on which the original mortgage was  
1058 recorded. Once the association has identified the recorded  
1059 mortgages of record, the association shall, in writing, request  
1060 of each unit owner whose unit is encumbered by a mortgage of  
1061 record any information that the owner has in his or her  
1062 possession regarding the name and address of the person to whom  
1063 mortgage payments are currently being made. Notice shall be sent  
1064 to such person if the address provided in the original recorded  
1065 mortgage document is different from the name and address of the  
1066 mortgagee or assignee of the mortgage as shown by the public  
1067 record. The association is deemed to have complied with this  
1068 requirement by making the written request of the unit owners  
1069 required under this paragraph. Any notices required to be sent  
1070 to the mortgagees under this paragraph shall be sent to all  
1071 available addresses provided to the association.

1072 (d) Any notice to the mortgagees required under paragraph  
1073 (c) may be sent by a method that establishes proof of delivery,  
1074 and any mortgagee who fails to respond within 60 days after the  
1075 date of mailing is deemed to have consented to the amendment.

1076 (e) For those amendments requiring mortgagee consent on or  
1077 after July 1, 2013, in the event mortgagee consent is provided  
1078 other than by properly recorded joinder, such consent shall be  
1079 evidenced by affidavit of the association recorded in the public  
1080 records of the county in which the declaration is recorded.

1081 (f) Any amendment adopted without the required consent of a  
1082 mortgagee is voidable only by a mortgagee who was entitled to  
1083 notice and an opportunity to consent. An action to void an  
1084 amendment is subject to the statute of limitations beginning 5  
1085 years after the date of discovery as to the amendments described



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1086 in paragraph (a) and 5 years after the date of recordation of  
1087 the certificate of amendment for all other amendments. This  
1088 paragraph applies to all mortgages, regardless of the date of  
1089 recordation of the mortgage.

1090 Section 13. Paragraphs (c), (d), and (f) of subsection (1)  
1091 of section 719.106, Florida Statutes, are amended to read:

1092 719.106 Bylaws; cooperative ownership.-

1093 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative  
1094 documents shall provide for the following, and if they do not,  
1095 they shall be deemed to include the following:

1096 (c) *Board of administration meetings.*—Meetings of the board  
1097 of administration at which a quorum of the members is present  
1098 shall be open to all unit owners. Any unit owner may tape record  
1099 or videotape meetings of the board of administration. The right  
1100 to attend such meetings includes the right to speak at such  
1101 meetings with reference to all designated agenda items. The  
1102 division shall adopt reasonable rules governing the tape  
1103 recording and videotaping of the meeting. The association may  
1104 adopt reasonable written rules governing the frequency,  
1105 duration, and manner of unit owner statements. Adequate notice  
1106 of all meetings shall be posted in a conspicuous place upon the  
1107 cooperative property at least 48 continuous hours preceding the  
1108 meeting, except in an emergency. Any item not included on the  
1109 notice may be taken up on an emergency basis by at least a  
1110 majority plus one of the members of the board. Such emergency  
1111 action shall be noticed and ratified at the next regular meeting  
1112 of the board. However, written notice of any meeting at which  
1113 nonemergency special assessments, or at which amendment to rules  
1114 regarding unit use, will be considered shall be mailed,



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1115 delivered, or electronically transmitted to the unit owners and  
1116 posted conspicuously on the cooperative property not less than  
1117 14 days before ~~prior to~~ the meeting. Evidence of compliance with  
1118 this 14-day notice shall be made by an affidavit executed by the  
1119 person providing the notice and filed among the official records  
1120 of the association. Upon notice to the unit owners, the board  
1121 shall by duly adopted rule designate a specific location on the  
1122 cooperative property upon which all notices of board meetings  
1123 shall be posted. In lieu of or in addition to the physical  
1124 posting of notice of any meeting of the board of administration  
1125 on the cooperative property, the association may, by reasonable  
1126 rule, adopt a procedure for conspicuously posting and repeatedly  
1127 broadcasting the notice and the agenda on a closed-circuit cable  
1128 television system serving the cooperative association. However,  
1129 if broadcast notice is used in lieu of a notice posted  
1130 physically on the cooperative property, the notice and agenda  
1131 must be broadcast at least four times every broadcast hour of  
1132 each day that a posted notice is otherwise required under this  
1133 section. When broadcast notice is provided, the notice and  
1134 agenda must be broadcast in a manner and for a sufficient  
1135 continuous length of time so as to allow an average reader to  
1136 observe the notice and read and comprehend the entire content of  
1137 the notice and the agenda. Notice of any meeting in which  
1138 regular assessments against unit owners are to be considered for  
1139 any reason shall specifically contain a statement that  
1140 assessments will be considered and the nature of any such  
1141 assessments. Meetings of a committee to take final action on  
1142 behalf of the board or to make recommendations to the board  
1143 regarding the association budget are subject to the provisions



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1144 of this paragraph. Meetings of a committee that does not take  
1145 final action on behalf of the board or make recommendations to  
1146 the board regarding the association budget are subject to the  
1147 provisions of this section, unless those meetings are exempted  
1148 from this section by the bylaws of the association.  
1149 Notwithstanding any other law to the contrary, the requirement  
1150 that board meetings and committee meetings be open to the unit  
1151 owners does not apply ~~is inapplicable~~ to board or committee  
1152 meetings held for the purpose of discussing personnel matters or  
1153 meetings between the board or a committee and the association's  
1154 attorney, with respect to proposed or pending litigation, if  
1155 ~~when~~ the meeting is held for the purpose of seeking or rendering  
1156 legal advice.

1157 (d) *Shareholder meetings.*—There shall be an annual meeting  
1158 of the shareholders. All members of the board of administration  
1159 shall be elected at the annual meeting unless the bylaws provide  
1160 for staggered election terms or for their election at another  
1161 meeting. Any unit owner desiring to be a candidate for board  
1162 membership must comply with subparagraph 1. The bylaws must  
1163 provide the method for calling meetings, including annual  
1164 meetings. Written notice, which must incorporate an  
1165 identification of agenda items, shall be given to each unit  
1166 owner at least 14 days before the annual meeting and posted in a  
1167 conspicuous place on the cooperative property at least 14  
1168 continuous days preceding the annual meeting. Upon notice to the  
1169 unit owners, the board must by duly adopted rule designate a  
1170 specific location on the cooperative property upon which all  
1171 notice of unit owner meetings are posted. In lieu of or in  
1172 addition to the physical posting of the meeting notice, the



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1173 association may, by reasonable rule, adopt a procedure for  
1174 conspicuously posting and repeatedly broadcasting the notice and  
1175 the agenda on a closed-circuit cable television system serving  
1176 the cooperative association. However, if broadcast notice is  
1177 used in lieu of a posted notice, the notice and agenda must be  
1178 broadcast at least four times every broadcast hour of each day  
1179 that a posted notice is otherwise required under this section.  
1180 If broadcast notice is provided, the notice and agenda must be  
1181 broadcast in a manner and for a sufficient continuous length of  
1182 time to allow an average reader to observe the notice and read  
1183 and comprehend the entire content of the notice and the agenda.  
1184 Unless a unit owner waives in writing the right to receive  
1185 notice of the annual meeting, the notice of the annual meeting  
1186 must be sent by mail, hand delivered, or electronically  
1187 transmitted to each unit owner. An officer of the association  
1188 must provide an affidavit or United States Postal Service  
1189 certificate of mailing, to be included in the official records  
1190 of the association, affirming that notices of the association  
1191 meeting were mailed, hand delivered, or electronically  
1192 transmitted, in accordance with this provision, to each unit  
1193 owner at the address last furnished to the association.

1194 1. The board of administration shall be elected by written  
1195 ballot or voting machine. A proxy may not be used in electing  
1196 the board of administration in general elections or elections to  
1197 fill vacancies caused by recall, resignation, or otherwise  
1198 unless otherwise provided in this chapter.

1199 a. At least 60 days before a scheduled election, the  
1200 association shall mail, deliver, or transmit, whether by  
1201 separate association mailing, delivery, or electronic



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1202 transmission or included in another association mailing,  
1203 delivery, or electronic transmission, including regularly  
1204 published newsletters, to each unit owner entitled to vote, a  
1205 first notice of the date of the election. Any unit owner or  
1206 other eligible person desiring to be a candidate for the board  
1207 of administration must give written notice to the association at  
1208 least 40 days before a scheduled election. Together with the  
1209 written notice and agenda as set forth in this section, the  
1210 association shall mail, deliver, or electronically transmit a  
1211 second notice of election to all unit owners entitled to vote,  
1212 together with a ballot that ~~which~~ lists all candidates. Upon  
1213 request of a candidate, the association shall include an  
1214 information sheet, no larger than 8 1/2 inches by 11 inches,  
1215 which must be furnished by the candidate at least 35 days before  
1216 the election, to be included with the mailing, delivery, or  
1217 electronic transmission of the ballot, with the costs of  
1218 mailing, delivery, or transmission and copying to be borne by  
1219 the association. The association is not liable for the contents  
1220 of the information sheets provided by the candidates. In order  
1221 to reduce costs, the association may print or duplicate the  
1222 information sheets on both sides of the paper. The division  
1223 shall by rule establish voting procedures consistent with this  
1224 subparagraph, including rules establishing procedures for giving  
1225 notice by electronic transmission and rules providing for the  
1226 secrecy of ballots. Elections shall be decided by a plurality of  
1227 those ballots cast. There is no quorum requirement. However, at  
1228 least 20 percent of the eligible voters must cast a ballot in  
1229 order to have a valid election. A unit owner may not permit any  
1230 other person to vote his or her ballot, and any such ballots



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1231 improperly cast are invalid. A unit owner who needs assistance  
1232 in casting the ballot for the reasons stated in s. 101.051 may  
1233 obtain assistance in casting the ballot. Any unit owner  
1234 violating this provision may be fined by the association in  
1235 accordance with s. 719.303. The regular election must occur on  
1236 the date of the annual meeting. This subparagraph does not apply  
1237 to timeshare cooperatives. Notwithstanding this subparagraph, an  
1238 election and balloting are not required unless more candidates  
1239 file a notice of intent to run or are nominated than vacancies  
1240 exist on the board. Any challenge to the election process must  
1241 be commenced within 60 days after the election results are  
1242 announced.

1243 b. Within 90 days after being elected or appointed to the  
1244 board, each new director shall certify in writing to the  
1245 secretary of the association that he or she has read the  
1246 association's bylaws, articles of incorporation, proprietary  
1247 lease, and current written policies; that he or she will work to  
1248 uphold such documents and policies to the best of his or her  
1249 ability; and that he or she will faithfully discharge his or her  
1250 fiduciary responsibility to the association's members. Within 90  
1251 days after being elected or appointed to the board, in lieu of  
1252 this written certification, the newly elected or appointed  
1253 director may submit a certificate of having satisfactorily  
1254 completed the educational curriculum administered by an  
1255 education provider as approved by the division pursuant to the  
1256 requirements established in chapter 718 within 1 year before or  
1257 90 days after the date of election or appointment. The  
1258 educational certificate is valid and does not have to be  
1259 resubmitted as long as the director serves on the board without



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1260 interruption. A director who fails to timely file the written  
1261 certification or educational certificate is suspended from  
1262 service on the board until he or she complies with this sub-  
1263 subparagraph. The board may temporarily fill the vacancy during  
1264 the period of suspension. The secretary of the association shall  
1265 cause the association to retain a director's written  
1266 certification or educational certificate for inspection by the  
1267 members for 5 years after a director's election or the duration  
1268 of the director's uninterrupted tenure, whichever is longer.  
1269 Failure to have such written certification or educational  
1270 certificate on file does not affect the validity of any board  
1271 action.

1272       2. Any approval by unit owners called for by this chapter,  
1273 or the applicable cooperative documents, must be made at a duly  
1274 noticed meeting of unit owners and is subject to this chapter or  
1275 the applicable cooperative documents relating to unit owner  
1276 decisionmaking, except that unit owners may take action by  
1277 written agreement, without meetings, on matters for which action  
1278 by written agreement without meetings is expressly allowed by  
1279 the applicable cooperative documents or law which provides for  
1280 the unit owner action.

1281       3. Unit owners may waive notice of specific meetings if  
1282 allowed by the applicable cooperative documents or law. If  
1283 authorized by the bylaws, notice of meetings of the board of  
1284 administration, shareholder meetings, except shareholder  
1285 meetings called to recall board members under paragraph (f), and  
1286 committee meetings may be given by electronic transmission to  
1287 unit owners who consent to receive notice by electronic  
1288 transmission.



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1289           4. Unit owners have the right to participate in meetings of  
1290 unit owners with reference to all designated agenda items.  
1291 However, the association may adopt reasonable rules governing  
1292 the frequency, duration, and manner of unit owner participation.

1293           5. Any unit owner may tape record or videotape meetings of  
1294 the unit owners subject to reasonable rules adopted by the  
1295 division.

1296           6. Unless otherwise provided in the bylaws, a vacancy  
1297 occurring on the board before the expiration of a term may be  
1298 filled by the affirmative vote of the majority of the remaining  
1299 directors, even if the remaining directors constitute less than  
1300 a quorum, or by the sole remaining director. In the alternative,  
1301 a board may hold an election to fill the vacancy, in which case  
1302 the election procedures must conform to the requirements of  
1303 subparagraph 1. unless the association has opted out of the  
1304 statutory election process, in which case the bylaws of the  
1305 association control. Unless otherwise provided in the bylaws, a  
1306 board member appointed or elected under this subparagraph shall  
1307 fill the vacancy for the unexpired term of the seat being  
1308 filled. Filling vacancies created by recall is governed by  
1309 paragraph (f) and rules adopted by the division.

1310  
1311 Notwithstanding subparagraphs (b)2. and (d)1., an association  
1312 may, by the affirmative vote of a majority of the total voting  
1313 interests, provide for a different voting and election procedure  
1314 in its bylaws, which vote may be by a proxy specifically  
1315 delineating the different voting and election procedures. The  
1316 different voting and election procedures may provide for  
1317 elections to be conducted by limited or general proxy.



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1318           (f) *Recall of board members.*—Subject to ~~the provisions of~~  
1319 s. 719.301, any member of the board of administration may be  
1320 recalled and removed from office with or without cause by the  
1321 vote or agreement in writing by a majority of all the voting  
1322 interests. A special meeting of the voting interests to recall  
1323 any member of the board of administration may be called by 10  
1324 percent of the unit owners giving notice of the meeting as  
1325 required for a meeting of unit owners, and the notice shall  
1326 state the purpose of the meeting. Electronic transmission may  
1327 not be used as a method of giving notice of a meeting called in  
1328 whole or in part for this purpose.

1329           1. If the recall is approved by a majority of all voting  
1330 interests by a vote at a meeting, the recall shall be effective  
1331 as provided in this paragraph herein. The board shall duly  
1332 notice and hold a board meeting within 5 full business days  
1333 after ~~of~~ the adjournment of the unit owner meeting to recall one  
1334 or more board members. At the meeting, the board shall either  
1335 certify the recall, in which case such member or members shall  
1336 be recalled effective immediately and shall turn over to the  
1337 board within 5 full business days any and all records and  
1338 property of the association in their possession, or shall  
1339 proceed as set forth in subparagraph 3.

1340           2. If the proposed recall is by an agreement in writing by  
1341 a majority of all voting interests, the agreement in writing or  
1342 a copy thereof shall be served on the association by certified  
1343 mail or by personal service in the manner authorized by chapter  
1344 48 and the Florida Rules of Civil Procedure. The board of  
1345 administration shall duly notice and hold a meeting of the board  
1346 within 5 full business days after receipt of the agreement in



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1347 writing. At the meeting, the board shall either certify the  
1348 written agreement to recall members of the board, in which case  
1349 such members shall be recalled effective immediately and shall  
1350 turn over to the board, within 5 full business days, any and all  
1351 records and property of the association in their possession, or  
1352 proceed as described in subparagraph 3.

1353 3. If the board determines not to certify the written  
1354 agreement to recall members of the board, or does not certify  
1355 the recall by a vote at a meeting, the board shall, within 5  
1356 full business days after the board meeting, file with the  
1357 division a petition for binding arbitration pursuant to the  
1358 procedures of s. 719.1255. For purposes of this paragraph, the  
1359 unit owners who voted at the meeting or who executed the  
1360 agreement in writing shall constitute one party under the  
1361 petition for arbitration. If the arbitrator certifies the recall  
1362 as to any member of the board, the recall shall be effective  
1363 upon mailing of the final order of arbitration to the  
1364 association. If the association fails to comply with the order  
1365 of the arbitrator, the division may take action pursuant to s.  
1366 719.501. Any member so recalled shall deliver to the board any  
1367 and all records and property of the association in the member's  
1368 possession within 5 full business days after ~~of~~ the effective  
1369 date of the recall.

1370 4. If the board fails to duly notice and hold a board  
1371 meeting within 5 full business days after ~~of~~ service of an  
1372 agreement in writing or within 5 full business days after ~~of~~ the  
1373 adjournment of the unit owner recall meeting, the recall shall  
1374 be deemed effective and the board members so recalled shall  
1375 immediately turn over to the board any and all records and



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1376 property of the association.

1377 5. If the board fails to duly notice and hold the required  
1378 meeting or fails to file the required petition, the unit owner  
1379 representative may file a petition pursuant to s. 719.1255  
1380 challenging the board's failure to act. The petition must be  
1381 filed within 60 days after the expiration of the applicable 5-  
1382 full-business-day period. The review of a petition under this  
1383 subparagraph is limited to the sufficiency of service on the  
1384 board and the facial validity of the written agreement or  
1385 ballots filed.

1386 6.5- If a vacancy occurs on the board as a result of a  
1387 recall and less than a majority of the board members are  
1388 removed, the vacancy may be filled by the affirmative vote of a  
1389 majority of the remaining directors, notwithstanding any  
1390 provision to the contrary contained in this chapter. If  
1391 vacancies occur on the board as a result of a recall and a  
1392 majority or more of the board members are removed, the vacancies  
1393 shall be filled in accordance with procedural rules to be  
1394 adopted by the division, which rules need not be consistent with  
1395 this chapter. The rules must provide procedures governing the  
1396 conduct of the recall election as well as the operation of the  
1397 association during the period after a recall but before ~~prior to~~  
1398 the recall election.

1399 7. A board member who has been recalled may file a petition  
1400 pursuant to s. 719.1255 challenging the validity of the recall.  
1401 The petition must be filed within 60 days after the recall is  
1402 deemed certified. The association and the unit owner  
1403 representative shall be named as the respondents.

1404 8. The division may not accept for filing a recall



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1405 petition, whether filed pursuant to subparagraph 1.,  
1406 subparagraph 2., subparagraph 5., or subparagraph 7. and  
1407 regardless of whether the recall was certified, when there are  
1408 60 or fewer days until the scheduled reelection of the board  
1409 member sought to be recalled or when 60 or fewer days have not  
1410 elapsed since the election of the board member sought to be  
1411 recalled.

1412 Section 14. Paragraph (a) of subsection (3) of section  
1413 719.303, Florida Statutes, is amended to read:

1414 719.303 Obligations of owners.—

1415 (3) The association may levy reasonable fines for failure  
1416 of the unit owner or the unit's occupant, licensee, or invitee  
1417 to comply with any provision of the cooperative documents or  
1418 reasonable rules of the association. A fine may not become a  
1419 lien against a unit. A fine may be levied on the basis of each  
1420 day of a continuing violation, with a single notice and  
1421 opportunity for hearing. However, the fine may not exceed \$100  
1422 per violation, or \$1,000 in the aggregate.

1423 (a) An association may suspend, for a reasonable period of  
1424 time, the right of a unit owner, or a unit owner's tenant,  
1425 guest, or invitee, to use the common elements, common  
1426 facilities, or any other association property for failure to  
1427 comply with any provision of the cooperative documents or  
1428 reasonable rules of the association. This paragraph does not  
1429 apply to limited common elements intended to be used only by  
1430 that unit, common elements needed to access the unit, utility  
1431 services provided to the unit, parking spaces, or elevators.

1432 Section 15. Paragraph (k) of subsection (1) of section  
1433 719.501, Florida Statutes, is amended to read:



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1434           719.501 Powers and duties of Division of Florida  
1435 Condominiums, Timeshares, and Mobile Homes.—

1436           (1) The Division of Florida Condominiums, Timeshares, and  
1437 Mobile Homes of the Department of Business and Professional  
1438 Regulation, referred to as the "division" in this part, in  
1439 addition to other powers and duties prescribed by chapter 718,  
1440 has the power to enforce and ensure compliance with this chapter  
1441 and adopted rules relating to the development, construction,  
1442 sale, lease, ownership, operation, and management of residential  
1443 cooperative units. In performing its duties, the division shall  
1444 have the following powers and duties:

1445           (k) The division shall provide training and educational  
1446 programs for cooperative association board members and unit  
1447 owners. The training may, in the division's discretion, include  
1448 web-based electronic media, and live training and seminars in  
1449 various locations throughout the state. The division may review  
1450 and approve education and training programs for board members  
1451 and unit owners offered by providers and shall maintain a  
1452 current list of approved programs and providers and make such  
1453 list available to board members and unit owners in a reasonable  
1454 and cost-effective manner.

1455           Section 16. Subsection (5), paragraphs (a) and (b) of  
1456 subsection (7), and subsection (10) of section 720.303, Florida  
1457 Statutes, are amended to read:

1458           720.303 Association powers and duties; meetings of board;  
1459 official records; budgets; financial reporting; association  
1460 funds; recalls.—

1461           (5) INSPECTION AND COPYING OF RECORDS.—The official records  
1462 shall be maintained within the state and must be open to



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1463 inspection and available for photocopying by members or their  
1464 authorized agents at reasonable times and places within 10  
1465 business days after receipt of a written request for access.  
1466 This subsection may be complied with by having a copy of the  
1467 official records available for inspection or copying in the  
1468 community. If the association has a photocopy machine available  
1469 where the records are maintained, it must provide parcel owners  
1470 with copies on request during the inspection if the entire  
1471 request is limited to no more than 25 pages. An association  
1472 shall allow a member or his or her authorized representative to  
1473 use a portable device, including a smartphone, tablet, portable  
1474 scanner, or any other technology capable of scanning or taking  
1475 photographs, to make an electronic copy of the official records  
1476 in lieu of the association's providing the member or his or her  
1477 authorized representative with a copy of such records. The  
1478 association may not charge a member or his or her authorized  
1479 representative for the use of a portable device.

1480 (a) The failure of an association to provide access to the  
1481 records within 10 business days after receipt of a written  
1482 request submitted by certified mail, return receipt requested,  
1483 creates a rebuttable presumption that the association willfully  
1484 failed to comply with this subsection.

1485 (b) A member who is denied access to official records is  
1486 entitled to the actual damages or minimum damages for the  
1487 association's willful failure to comply with this subsection.  
1488 The minimum damages are to be \$50 per calendar day up to 10  
1489 days, the calculation to begin on the 11th business day after  
1490 receipt of the written request.

1491 (c) The association may adopt reasonable written rules



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1492 governing the frequency, time, location, notice, records to be  
1493 inspected, and manner of inspections, but may not require a  
1494 parcel owner to demonstrate any proper purpose for the  
1495 inspection, state any reason for the inspection, or limit a  
1496 parcel owner's right to inspect records to less than one 8-hour  
1497 business day per month. The association may impose fees to cover  
1498 the costs of providing copies of the official records,  
1499 including, without limitation, the costs of copying. The  
1500 association may charge up to 50 cents per page for copies made  
1501 on the association's photocopier. If the association does not  
1502 have a photocopy machine available where the records are kept,  
1503 or if the records requested to be copied exceed 25 pages in  
1504 length, the association may have copies made by an outside  
1505 vendor or association management company personnel and may  
1506 charge the actual cost of copying, including any reasonable  
1507 costs involving personnel fees and charges at an hourly rate for  
1508 vendor or employee time to cover administrative costs to the  
1509 vendor or association. The association shall maintain an  
1510 adequate number of copies of the recorded governing documents,  
1511 to ensure their availability to members and prospective members.  
1512 Notwithstanding this paragraph, the following records are not  
1513 accessible to members or parcel owners:

1514       1. Any record protected by the lawyer-client privilege as  
1515 described in s. 90.502 and any record protected by the work-  
1516 product privilege, including, but not limited to, a record  
1517 prepared by an association attorney or prepared at the  
1518 attorney's express direction which reflects a mental impression,  
1519 conclusion, litigation strategy, or legal theory of the attorney  
1520 or the association and which was prepared exclusively for civil



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1521 or criminal litigation or for adversarial administrative  
1522 proceedings or which was prepared in anticipation of such  
1523 litigation or proceedings until the conclusion of the litigation  
1524 or proceedings.

1525 2. Information obtained by an association in connection  
1526 with the approval of the lease, sale, or other transfer of a  
1527 parcel.

1528 3. Personnel records of association or management company  
1529 ~~the association's~~ employees, including, but not limited to,  
1530 disciplinary, payroll, health, and insurance records. For  
1531 purposes of this subparagraph, the term "personnel records" does  
1532 not include written employment agreements with an association or  
1533 management company employee or budgetary or financial records  
1534 that indicate the compensation paid to an association or  
1535 management company employee.

1536 4. Medical records of parcel owners or community residents.

1537 5. Social security numbers, driver ~~driver's~~ license  
1538 numbers, credit card numbers, electronic mailing addresses,  
1539 telephone numbers, facsimile numbers, emergency contact  
1540 information, any addresses for a parcel owner other than as  
1541 provided for association notice requirements, and other personal  
1542 identifying information of any person, excluding the person's  
1543 name, parcel designation, mailing address, and property address.  
1544 However, an owner may consent in writing to the disclosure of  
1545 protected information described in this subparagraph. The  
1546 association is not liable for the disclosure of information that  
1547 is protected under this subparagraph if the information is  
1548 included in an official record of the association and is  
1549 voluntarily provided by an owner and not requested by the



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1550 association.

1551 6. Any electronic security measure that is used by the  
1552 association to safeguard data, including passwords.

1553 7. The software and operating system used by the  
1554 association which allows the manipulation of data, even if the  
1555 owner owns a copy of the same software used by the association.  
1556 The data is part of the official records of the association.

1557 (d) The association or its authorized agent is not required  
1558 to provide a prospective purchaser or lienholder with  
1559 information about the residential subdivision or the association  
1560 other than information or documents required by this chapter to  
1561 be made available or disclosed. The association or its  
1562 authorized agent may charge a reasonable fee to the prospective  
1563 purchaser or lienholder or the current parcel owner or member  
1564 for providing good faith responses to requests for information  
1565 by or on behalf of a prospective purchaser or lienholder, other  
1566 than that required by law, if the fee does not exceed \$150 plus  
1567 the reasonable cost of photocopying and any attorney ~~attorney's~~  
1568 fees incurred by the association in connection with the  
1569 response.

1570 (7) FINANCIAL REPORTING.—Within 90 days after the end of  
1571 the fiscal year, or annually on the date provided in the bylaws,  
1572 the association shall prepare and complete, or contract with a  
1573 third party for the preparation and completion of, a financial  
1574 report for the preceding fiscal year. Within 21 days after the  
1575 final financial report is completed by the association or  
1576 received from the third party, but not later than 120 days after  
1577 the end of the fiscal year or other date as provided in the  
1578 bylaws, the association shall, within the time limits set forth



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1579 in subsection (5), provide each member with a copy of the annual  
1580 financial report or a written notice that a copy of the  
1581 financial report is available upon request at no charge to the  
1582 member. Financial reports shall be prepared as follows:

1583 (a) An association that meets the criteria of this  
1584 paragraph shall prepare or cause to be prepared a complete set  
1585 of financial statements in accordance with generally accepted  
1586 accounting principles as adopted by the Board of Accountancy.  
1587 The financial statements shall be based upon the association's  
1588 total annual revenues, as follows:

1589 1. An association with total annual revenues of \$200,000  
1590 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare  
1591 compiled financial statements.

1592 2. An association with total annual revenues of at least  
1593 \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall  
1594 prepare reviewed financial statements.

1595 3. An association with total annual revenues of \$500,000  
1596 ~~\$400,000~~ or more shall prepare audited financial statements.

1597 (b)1. An association with total annual revenues of less  
1598 than \$200,000 ~~\$100,000~~ shall prepare a report of cash receipts  
1599 and expenditures.

1600 2. An association in a community of fewer than 50 parcels,  
1601 regardless of the association's annual revenues, may prepare a  
1602 report of cash receipts and expenditures in lieu of financial  
1603 statements required by paragraph (a) unless the governing  
1604 documents provide otherwise.

1605 3. A report of cash receipts and disbursement must disclose  
1606 the amount of receipts by accounts and receipt classifications  
1607 and the amount of expenses by accounts and expense



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1608 classifications, including, but not limited to, the following,  
1609 as applicable: costs for security, professional, and management  
1610 fees and expenses; taxes; costs for recreation facilities;  
1611 expenses for refuse collection and utility services; expenses  
1612 for lawn care; costs for building maintenance and repair;  
1613 insurance costs; administration and salary expenses; and  
1614 reserves if maintained by the association.

1615 (10) RECALL OF DIRECTORS.—

1616 (a)1. Regardless of any provision to the contrary contained  
1617 in the governing documents, subject to the provisions of s.  
1618 720.307 regarding transition of association control, any member  
1619 of the board of directors may be recalled and removed from  
1620 office with or without cause by a majority of the total voting  
1621 interests.

1622 2. When the governing documents, including the declaration,  
1623 articles of incorporation, or bylaws, provide that only a  
1624 specific class of members is entitled to elect a board director  
1625 or directors, only that class of members may vote to recall  
1626 those board directors so elected.

1627 (b)1. Board directors may be recalled by an agreement in  
1628 writing or by written ballot without a membership meeting. The  
1629 agreement in writing or the written ballots, or a copy thereof,  
1630 shall be served on the association by certified mail or by  
1631 personal service in the manner authorized by chapter 48 and the  
1632 Florida Rules of Civil Procedure.

1633 2. The board shall duly notice and hold a meeting of the  
1634 board within 5 full business days after receipt of the agreement  
1635 in writing or written ballots. At the meeting, the board shall  
1636 either certify the written ballots or written agreement to



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1637 recall a director or directors of the board, in which case such  
1638 director or directors shall be recalled effective immediately  
1639 and shall turn over to the board within 5 full business days any  
1640 and all records and property of the association in their  
1641 possession, or proceed as described in paragraph (d).

1642 3. When it is determined by the department pursuant to  
1643 binding arbitration proceedings that an initial recall effort  
1644 was defective, written recall agreements or written ballots used  
1645 in the first recall effort and not found to be defective may be  
1646 reused in one subsequent recall effort. However, in no event is  
1647 a written agreement or written ballot valid for more than 120  
1648 days after it has been signed by the member.

1649 4. Any rescission or revocation of a member's written  
1650 recall ballot or agreement must be in writing and, in order to  
1651 be effective, must be delivered to the association before the  
1652 association is served with the written recall agreements or  
1653 ballots.

1654 5. The agreement in writing or ballot shall list at least  
1655 as many possible replacement directors as there are directors  
1656 subject to the recall, when at least a majority of the board is  
1657 sought to be recalled; the person executing the recall  
1658 instrument may vote for as many replacement candidates as there  
1659 are directors subject to the recall.

1660 (c)1. If the declaration, articles of incorporation, or  
1661 bylaws specifically provide, the members may also recall and  
1662 remove a board director or directors by a vote taken at a  
1663 meeting. If so provided in the governing documents, a special  
1664 meeting of the members to recall a director or directors of the  
1665 board of administration may be called by 10 percent of the



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1666 voting interests giving notice of the meeting as required for a  
1667 meeting of members, and the notice shall state the purpose of  
1668 the meeting. Electronic transmission may not be used as a method  
1669 of giving notice of a meeting called in whole or in part for  
1670 this purpose.

1671 2. The board shall duly notice and hold a board meeting  
1672 within 5 full business days after the adjournment of the member  
1673 meeting to recall one or more directors. At the meeting, the  
1674 board shall certify the recall, in which case such member or  
1675 members shall be recalled effective immediately and shall turn  
1676 over to the board within 5 full business days any and all  
1677 records and property of the association in their possession, or  
1678 shall proceed as set forth in paragraph ~~subparagraph~~ (d).

1679 (d) If the board determines not to certify the written  
1680 agreement or written ballots to recall a director or directors  
1681 of the board or does not certify the recall by a vote at a  
1682 meeting, the board shall, within 5 full business days after the  
1683 meeting, file with the department a petition for binding  
1684 arbitration pursuant to the applicable procedures in ss.  
1685 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For  
1686 the purposes of this section, the members who voted at the  
1687 meeting or who executed the agreement in writing shall  
1688 constitute one party under the petition for arbitration. If the  
1689 arbitrator certifies the recall as to any director or directors  
1690 of the board, the recall will be effective upon mailing of the  
1691 final order of arbitration to the association. The director or  
1692 directors so recalled shall deliver to the board any and all  
1693 records of the association in their possession within 5 full  
1694 business days after the effective date of the recall.



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1695 (e) If a vacancy occurs on the board as a result of a  
1696 recall and less than a majority of the board directors are  
1697 removed, the vacancy may be filled by the affirmative vote of a  
1698 majority of the remaining directors, notwithstanding any  
1699 provision to the contrary contained in this subsection or in the  
1700 association documents. If vacancies occur on the board as a  
1701 result of a recall and a majority or more of the board directors  
1702 are removed, the vacancies shall be filled by members voting in  
1703 favor of the recall; if removal is at a meeting, any vacancies  
1704 shall be filled by the members at the meeting. If the recall  
1705 occurred by agreement in writing or by written ballot, members  
1706 may vote for replacement directors in the same instrument in  
1707 accordance with procedural rules adopted by the division, which  
1708 rules need not be consistent with this subsection.

1709 (f) If the board fails to duly notice and hold a board  
1710 meeting within 5 full business days after service of an  
1711 agreement in writing or within 5 full business days after the  
1712 adjournment of the member recall meeting, the recall shall be  
1713 deemed effective and the board directors so recalled shall  
1714 immediately turn over to the board all records and property of  
1715 the association.

1716 (g) If the board fails to duly notice and hold the required  
1717 meeting or fails to file the required petition, the unit owner  
1718 representative may file a petition pursuant to s. 718.1255  
1719 challenging the board's failure to act. The petition must be  
1720 filed within 60 days after the expiration of the applicable 5-  
1721 full-business-day period. The review of a petition under this  
1722 paragraph is limited to the sufficiency of service on the board  
1723 and the facial validity of the written agreement or ballots



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1724 filed.

1725 (h)~~(g)~~ If a director who is removed fails to relinquish his  
1726 or her office or turn over records as required under this  
1727 section, the circuit court in the county where the association  
1728 maintains its principal office may, upon the petition of the  
1729 association, summarily order the director to relinquish his or  
1730 her office and turn over all association records upon  
1731 application of the association.

1732 (i)~~(h)~~ The minutes of the board meeting at which the board  
1733 decides whether to certify the recall are an official  
1734 association record. The minutes must record the date and time of  
1735 the meeting, the decision of the board, and the vote count taken  
1736 on each board member subject to the recall. In addition, when  
1737 the board decides not to certify the recall, as to each vote  
1738 rejected, the minutes must identify the parcel number and the  
1739 specific reason for each such rejection.

1740 (j)~~(i)~~ When the recall of more than one board director is  
1741 sought, the written agreement, ballot, or vote at a meeting  
1742 shall provide for a separate vote for each board director sought  
1743 to be recalled.

1744 (k) A board member who has been recalled may file a  
1745 petition pursuant to ss. 718.112(2)(j) and 718.1255 and the  
1746 rules adopted challenging the validity of the recall. The  
1747 petition must be filed within 60 days after the recall is deemed  
1748 certified. The association and the unit owner representative  
1749 shall be named as respondents.

1750 (l) The division may not accept for filing a recall  
1751 petition, whether filed pursuant to paragraph (b), paragraph  
1752 (c), paragraph (g), or paragraph (k) and regardless of whether



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1753 the recall was certified, when there are 60 or fewer days until  
1754 the scheduled reelection of the board member sought to be  
1755 recalled or when 60 or fewer days have not elapsed since the  
1756 election of the board member sought to be recalled.

1757 Section 17. Subsection (2) of section 720.305, Florida  
1758 Statutes, is amended to read:

1759 720.305 Obligations of members; remedies at law or in  
1760 equity; levy of fines and suspension of use rights.—

1761 (2) The association may levy reasonable fines of up to \$100  
1762 per violation against any member or any member's tenant, guest,  
1763 or invitee for the failure of the owner of the parcel or its  
1764 occupant, licensee, or invitee to comply with any provision of  
1765 the declaration, the association bylaws, or reasonable rules of  
1766 the association. A fine may be levied for each day of a  
1767 continuing violation, with a single notice and opportunity for  
1768 hearing, except that the fine may not exceed \$1,000 in the  
1769 aggregate unless otherwise provided in the governing documents.  
1770 A fine of less than \$1,000 may not become a lien against a  
1771 parcel. In any action to recover a fine, the prevailing party is  
1772 entitled to reasonable attorney ~~attorney's~~ fees and costs from  
1773 the nonprevailing party as determined by the court.

1774 (a) An association may suspend, for a reasonable period of  
1775 time, the right of a member, or a member's tenant, guest, or  
1776 invitee, to use common areas and facilities for the failure of  
1777 the owner of the parcel or its occupant, licensee, or invitee to  
1778 comply with any provision of the declaration, the association  
1779 bylaws, or reasonable rules of the association. This paragraph  
1780 does not apply to that portion of common areas used to provide  
1781 access or utility services to the parcel. A suspension may not



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1782 impair the right of an owner or tenant of a parcel to have  
1783 vehicular and pedestrian ingress to and egress from the parcel,  
1784 including, but not limited to, the right to park.

1785 (b) A fine or suspension may not be imposed without at  
1786 least 14 days' notice to the person sought to be fined or  
1787 suspended and an opportunity for a hearing before a committee of  
1788 at least three members appointed by the board who are not  
1789 officers, directors, or employees of the association, or the  
1790 spouse, parent, child, brother, or sister of an officer,  
1791 director, or employee. If the committee, by majority vote, does  
1792 not approve a proposed fine or suspension, it may not be  
1793 imposed. If the association imposes a fine or suspension, the  
1794 association must provide written notice of such fine or  
1795 suspension by mail or hand delivery to the parcel owner and, if  
1796 applicable, to any tenant, licensee, or invitee of the parcel  
1797 owner.

1798 Section 18. Paragraph (d) is added to subsection (1) of  
1799 section 720.306, Florida Statutes, and subsection (6) and  
1800 paragraph (a) of subsection (9) of that section are amended, to  
1801 read:

1802 720.306 Meetings of members; voting and election  
1803 procedures; amendments.—

1804 (1) QUORUM; AMENDMENTS.—

1805 (d) The Legislature finds that the procurement of mortgagee  
1806 consent to amendments that do not affect the rights or interests  
1807 of mortgagees is an unreasonable and substantial logistical and  
1808 financial burden on the parcel owners and that there is a  
1809 compelling state interest in enabling the members of an  
1810 association to approve amendments to the association's governing



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1811 documents through legal means. Accordingly, and notwithstanding  
1812 any provision of this paragraph to the contrary:

1813 1. As to any mortgage recorded on or after July 1, 2013,  
1814 any provision in the association's governing documents that  
1815 requires the consent or joinder of some or all mortgagees of  
1816 parcels or any other portion of the association's common areas  
1817 to amend the association's governing documents or for any other  
1818 matter is enforceable only as to amendments to the association's  
1819 governing documents that adversely affect the priority of the  
1820 mortgagee's lien or the mortgagee's rights to foreclose its lien  
1821 or that otherwise materially affect the rights and interests of  
1822 the mortgagees.

1823 2. As to mortgages recorded before July 1, 2013, any  
1824 existing provisions in the association's governing documents  
1825 requiring mortgagee consent are enforceable.

1826 3. In securing consent or joinder, the association is  
1827 entitled to rely upon the public records to identify the holders  
1828 of outstanding mortgages. The association may use the address  
1829 provided in the original recorded mortgage document, unless  
1830 there is a different address for the holder of the mortgage in a  
1831 recorded assignment or modification of the mortgage, which  
1832 recorded assignment or modification must reference the official  
1833 records book and page on which the original mortgage was  
1834 recorded. Once the association has identified the recorded  
1835 mortgages of record, the association shall, in writing, request  
1836 of each parcel owner whose parcel is encumbered by a mortgage of  
1837 record any information that the owner has in his or her  
1838 possession regarding the name and address of the person to whom  
1839 mortgage payments are currently being made. Notice shall be sent



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1840 to such person if the address provided in the original recorded  
1841 mortgage document is different from the name and address of the  
1842 mortgagee or assignee of the mortgage as shown by the public  
1843 record. The association is deemed to have complied with this  
1844 requirement by making the written request of the parcel owners  
1845 required under this subparagraph. Any notices required to be  
1846 sent to the mortgagees under this subparagraph shall be sent to  
1847 all available addresses provided to the association.

1848 4. Any notice to the mortgagees required under subparagraph  
1849 3. may be sent by a method that establishes proof of delivery,  
1850 and any mortgagee who fails to respond within 60 days after the  
1851 date of mailing is deemed to have consented to the amendment.

1852 5. For those amendments requiring mortgagee consent on or  
1853 after July 1, 2013, in the event mortgagee consent is provided  
1854 other than by properly recorded joinder, such consent shall be  
1855 evidenced by affidavit of the association recorded in the public  
1856 records of the county in which the declaration is recorded.

1857 6. Any amendment adopted without the required consent of a  
1858 mortgagee is voidable only by a mortgagee who was entitled to  
1859 notice and an opportunity to consent. An action to void an  
1860 amendment is subject to the statute of limitations beginning 5  
1861 years after the date of discovery as to the amendments described  
1862 in subparagraph 1. and 5 years after the date of recordation of  
1863 the certificate of amendment for all other amendments. This  
1864 subparagraph applies to all mortgages, regardless of the date of  
1865 recordation of the mortgage.

1866 (6) RIGHT TO SPEAK.—Members and parcel owners have the  
1867 right to attend all membership meetings and to speak at any  
1868 meeting with reference to all items opened for discussion or



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1869 included on the agenda. Notwithstanding any provision to the  
1870 contrary in the governing documents or any rules adopted by the  
1871 board or by the membership, a member and a parcel owner have the  
1872 right to speak for at least 3 minutes on any item, ~~provided that~~  
1873 ~~the member or parcel owner submits a written request to speak~~  
1874 ~~prior to the meeting.~~ The association may adopt written  
1875 reasonable rules governing the frequency, duration, and other  
1876 manner of member and parcel owner statements, which rules must  
1877 be consistent with this subsection.

1878 (9) ~~(a)~~ ELECTIONS AND BOARD VACANCIES.—

1879 (a) Elections of directors must be conducted in accordance  
1880 with the procedures set forth in the governing documents of the  
1881 association. All members of the association are eligible to  
1882 serve on the board of directors, and a member may nominate  
1883 himself or herself as a candidate for the board at a meeting  
1884 where the election is to be held or, if the election process  
1885 allows voting by absentee ballot, in advance of the balloting.  
1886 Except as otherwise provided in the governing documents, boards  
1887 of directors must be elected by a plurality of the votes cast by  
1888 eligible voters. Any challenge to the election process must be  
1889 commenced within 60 days after the election results are  
1890 announced.

1891 Section 19. This act shall take effect July 1, 2013.

1892  
1893 ===== T I T L E A M E N D M E N T =====

1894 And the title is amended as follows:

1895 Delete everything before the enacting clause  
1896 and insert:

1897 A bill to be entitled



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1898 An act relating to residential properties; amending s.  
1899 399.02, F.S.; exempting certain elevators from  
1900 specific code update requirements; amending s.  
1901 514.0115, F.S.; revising specified supervision and  
1902 regulation exemptions for homeowners' association  
1903 swimming pools; amending s. 718.111, F.S.; revising  
1904 requirements for an association's approval of land  
1905 purchases and recreational leases; revising  
1906 reconstruction costs for which unit owners are  
1907 responsible and authorizing the costs to be collected  
1908 in a specified manner; requiring an association to  
1909 repair or replace as a common expense certain  
1910 condominium property damaged by an insurable event;  
1911 requiring an association to allow a member or the  
1912 member's representative to use certain portable  
1913 devices to make electronic copies of association  
1914 records; prohibiting the association from charging the  
1915 member or representative for using the portable  
1916 device; revising requirements for the preparation of  
1917 an association's annual financial statement; amending  
1918 s. 718.112, F.S.; revising terms of members of an  
1919 association's board of administrators and revising  
1920 eligibility criteria for candidates; revising  
1921 condominium unit owner meeting notice requirements;  
1922 providing for nonapplicability to associations  
1923 governing timeshare condominiums of certain provisions  
1924 relating to elections of board members; revising  
1925 recordkeeping requirements of a condominium  
1926 association board; requiring commencement of



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1927 challenges to an election within a specified period;  
1928 providing requirements for challenging the failure of  
1929 a board to duly notice and hold the required board  
1930 meeting or to file the required petition for a recall;  
1931 providing requirements for recalled board members to  
1932 challenge the recall; prohibiting the Division of  
1933 Florida Condominiums, Timeshares, and Mobile Homes of  
1934 the Department of Business and Professional Regulation  
1935 from accepting recall petitions for filing under  
1936 certain circumstances; amending s. 718.113, F.S.;  
1937 providing requirements for a condominium association  
1938 board relating to the installation of hurricane  
1939 shutters, impact glass, code-compliant windows or  
1940 doors, and other types of code-compliant hurricane  
1941 protection under certain circumstances; amending s.  
1942 718.115, F.S.; conforming provisions to changes made  
1943 by the act; amending s. 718.303, F.S.; revising  
1944 provisions relating to imposing remedies against a  
1945 noncompliant or delinquent condominium unit owner or  
1946 member; amending s. 718.403, F.S.; providing  
1947 requirements for the completion of phase condominiums;  
1948 creating s. 718.406, F.S.; providing definitions;  
1949 providing requirements for condominiums created within  
1950 condominium parcels; providing for the establishment  
1951 of primary condominium and secondary condominium  
1952 units; providing requirements for association  
1953 declarations; authorizing a primary condominium  
1954 association to provide insurance and adopt hurricane  
1955 shutter or hurricane protection specifications under



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1956 certain conditions; providing requirements relating to  
1957 assessments; providing for resolution of conflicts  
1958 between primary condominium declarations and secondary  
1959 condominium declarations; providing requirements  
1960 relating to common expenses due the primary  
1961 condominium association; amending s. 718.5011, F.S.;  
1962 revising the restriction on officers and full-time  
1963 employees of the ombudsman from engaging in other  
1964 businesses or professions; amending s. 719.104, F.S.;  
1965 requiring an association to allow a member or the  
1966 member's representative to use certain portable  
1967 devices to make electronic copies of association  
1968 records; prohibiting the association from charging the  
1969 member or representative for using the portable  
1970 device; specifying additional records that are not  
1971 accessible to unit owners; amending s. 719.1055, F.S.;  
1972 revising provisions relating to the amendment of  
1973 cooperative documents; providing legislative findings  
1974 and a finding of compelling state interest; providing  
1975 criteria for consent or joinder to an amendment;  
1976 requiring notice regarding proposed amendments to  
1977 mortgagees; providing criteria for notification;  
1978 providing for voiding certain amendments; amending s.  
1979 719.106, F.S.; revising applicability of certain board  
1980 of administration meeting requirements; requiring  
1981 commencement of challenges to an election within a  
1982 specified period; specifying certification or  
1983 educational requirements for a newly elected or  
1984 appointed cooperative board director; providing



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1985 requirements for challenging the failure of a board to  
1986 duly notice and hold the required board meeting or to  
1987 file the required petition for a recall; providing  
1988 requirements for recalled board members to challenge  
1989 the recall; prohibiting the division from accepting  
1990 recall petitions for filing under certain  
1991 circumstances; providing education requirements for  
1992 board members; amending s. 719.303, F.S.; revising  
1993 provisions relating to imposing remedies against a  
1994 noncompliant or delinquent cooperative unit owner or  
1995 member; amending s. 719.501, F.S.; authorizing the  
1996 division to provide training and educational programs  
1997 for cooperative association board members and unit  
1998 owners; amending s. 720.303, F.S.; requiring an  
1999 association to allow a member or the member's  
2000 representative to use certain portable devices to make  
2001 electronic copies of association records; prohibiting  
2002 the association from charging the member or  
2003 representative for using the portable device; revising  
2004 requirements for the preparation of an association's  
2005 annual financial statement; revising the types of  
2006 records that are not accessible to homeowners'  
2007 association members and parcel owners; providing  
2008 requirements for challenging the failure of a board to  
2009 duly notice and hold the required board meeting or to  
2010 file the required petition for a recall; providing  
2011 requirements for recalled board members to challenge  
2012 the recall; prohibiting the division from accepting  
2013 recall petitions for filing under certain



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2014 circumstances; amending s. 720.305, F.S.; revising  
2015 provisions relating to imposing remedies against a  
2016 noncompliant or delinquent homeowners' association  
2017 member and parcel owner; amending s. 720.306, F.S.;  
2018 revising provisions relating to the amendment of  
2019 homeowners' association declarations; providing  
2020 legislative findings and a finding of compelling state  
2021 interest; providing criteria for consent or joinder to  
2022 an amendment; requiring notice to mortgagees regarding  
2023 proposed amendments; providing criteria for  
2024 notification; providing for voiding certain  
2025 amendments; revising provisions relating to right to  
2026 speak at a homeowners' association meeting; requiring  
2027 commencement of challenges to an election within a  
2028 specified period; providing an effective date.

By Senator Altman

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1                           A bill to be entitled  
 2     An act relating to residential properties; amending s.  
 3     399.02, F.S.; exempting certain elevators from  
 4     specific code update requirements; amending s.  
 5     718.112, F.S.; revising provisions relating to the  
 6     terms of condominium board of administration members;  
 7     revising condominium unit owner meeting notice  
 8     requirements; providing for nonapplicability to  
 9     associations governing timeshare condominiums of  
 10    certain provisions relating to elections of board  
 11    members; revising recordkeeping requirements of a  
 12    condominium association board; requiring commencement  
 13    of challenges to an election within a specified  
 14    period; providing requirements for challenging the  
 15    failure of a board to duly notice and hold the  
 16    required board meeting or to file the required  
 17    petition for a recall; providing requirements for  
 18    recalled board members to challenge the recall;  
 19    prohibiting the Division of Florida Condominiums,  
 20    Timeshares, and Mobile Homes of the Department of  
 21    Business and Professional Regulation from accepting  
 22    recall petitions for filing under certain  
 23    circumstances; amending s. 718.113, F.S.; providing  
 24    requirements for a condominium association board  
 25    relating to the installation of hurricane shutters,  
 26    impact glass, code-compliant windows or doors, and  
 27    other types of code-compliant hurricane protection  
 28    under certain circumstances; amending s. 718.115,  
 29    F.S.; conforming provisions to changes made by the

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30     act; amending s. 718.303, F.S.; revising provisions  
 31     relating to imposing remedies against a noncompliant  
 32     or delinquent condominium unit owner or member;  
 33     revising voting requirements under certain conditions;  
 34     amending s. 718.403, F.S.; providing requirements for  
 35     the completion of phase condominiums; creating s.  
 36     718.406, F.S.; providing definitions; providing  
 37     requirements for condominiums created within  
 38     condominium parcels; providing for the establishment  
 39     of primary condominium and secondary condominium  
 40     units; providing requirements for association  
 41     declarations; authorizing a primary condominium  
 42     association to provide insurance and adopt hurricane  
 43     shutter or hurricane protection specifications under  
 44     certain conditions; providing requirements relating to  
 45     assessments; providing for resolution of conflicts  
 46     between primary condominium declarations and secondary  
 47     condominium declarations; providing requirements  
 48     relating to common expenses due the primary  
 49     condominium association; amending s. 718.5011, F.S.;  
 50     revising the restriction on officers and full-time  
 51     employees of the ombudsman from engaging in other  
 52     businesses or professions; amending s. 719.104, F.S.;  
 53     specifying additional records that are not accessible  
 54     to unit owners; amending s. 719.1055, F.S.; revising  
 55     provisions relating to the amendment of cooperative  
 56     documents; providing legislative findings and a  
 57     finding of compelling state interest; providing  
 58     criteria for consent or joinder to an amendment;

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59 requiring notice regarding proposed amendments to  
 60 mortgagees; providing criteria for notification;  
 61 providing for voiding certain amendments; amending s.  
 62 719.106, F.S.; revising applicability of certain board  
 63 of administration meeting requirements; requiring  
 64 commencement of challenges to an election within a  
 65 specified period; providing requirements for  
 66 challenging the failure of a board to duly notice and  
 67 hold the required board meeting or to file the  
 68 required petition for a recall; providing requirements  
 69 for recalled board members to challenge the recall;  
 70 prohibiting the division from accepting recall  
 71 petitions for filing under certain circumstances;  
 72 amending s. 719.303, F.S.; revising provisions  
 73 relating to imposing remedies against a noncompliant  
 74 or delinquent cooperative unit owner or member;  
 75 revising voting requirements under certain conditions;  
 76 amending s. 720.303, F.S.; revising the types of  
 77 records that are not accessible to homeowners'  
 78 association members and parcel owners; providing  
 79 requirements for challenging the failure of a board to  
 80 duly notice and hold the required board meeting or to  
 81 file the required petition for a recall; providing  
 82 requirements for recalled board members to challenge  
 83 the recall; prohibiting the division from accepting  
 84 recall petitions for filing under certain  
 85 circumstances; amending s. 720.305, F.S.; revising  
 86 provisions relating to imposing remedies against a  
 87 noncompliant or delinquent homeowners' association

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88 member and parcel owner; revising voting requirements  
 89 under certain conditions; amending s. 720.306, F.S.;  
 90 revising provisions relating to the amendment of  
 91 homeowners' association declarations; providing  
 92 legislative findings and a finding of compelling state  
 93 interest; providing criteria for consent or joinder to  
 94 an amendment; requiring notice to mortgagees regarding  
 95 proposed amendments; providing criteria for  
 96 notification; providing for voiding certain  
 97 amendments; revising provisions relating to right to  
 98 speak at a homeowners' association meeting; requiring  
 99 commencement of challenges to an election within a  
 100 specified period; providing an effective date.  
 101  
 102 Be It Enacted by the Legislature of the State of Florida:  
 103  
 104 Section 1. Subsection (9) of section 399.02, Florida  
 105 Statutes, is amended to read:  
 106 399.02 General requirements.-  
 107 (9) Updates to the Safety Code for Existing Elevators and  
 108 Escalators, ASME A17.1 and A17.3, which require Phase II  
 109 Firefighters' Service on elevators may not be enforced ~~until~~  
 110 ~~July 1, 2015, or~~ until the elevator is replaced or requires  
 111 major modification, ~~whichever occurs first~~, on elevators in  
 112 condominiums or multifamily residential buildings, including  
 113 those that are part of a continuing care facility licensed under  
 114 chapter 651, or similar retirement community with apartments,  
 115 having a certificate of occupancy by the local building  
 116 authority that was issued before July 1, 2008. This exception

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117 does not prevent an elevator owner from requesting a variance  
 118 from the applicable codes ~~before or after July 1, 2015~~. This  
 119 subsection does not prohibit the division from granting  
 120 variances pursuant to s. 120.542 and subsection (8). The  
 121 division shall adopt rules to administer this subsection.

122 Section 2. Paragraphs (d) and (j) of subsection (2) of  
 123 section 718.112, Florida Statutes, are amended to read:

124 718.112 Bylaws.—

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

128 (d) *Unit owner meetings*.—

129 1. An annual meeting of the unit owners shall be held at  
 130 the location provided in the association bylaws and, if the  
 131 bylaws are silent as to the location, the meeting shall be held  
 132 within 45 miles of the condominium property. However, such  
 133 distance requirement does not apply to an association governing  
 134 a timeshare condominium.

135 2. Unless the bylaws provide otherwise, a vacancy on the  
 136 board caused by the expiration of a director's term shall be  
 137 filled by electing a new board member, and the election must be  
 138 by secret ballot. An election is not required if the number of  
 139 vacancies equals or exceeds the number of candidates. For  
 140 purposes of this paragraph, the term "candidate" means an  
 141 eligible person who has timely submitted the written notice, as  
 142 described in sub-subparagraph 4.a., of his or her intention to  
 143 become a candidate. Except in a timeshare condominium, or if the  
 144 staggered term of a board member does not expire until a later  
 145 annual meeting, or if all members' terms would otherwise expire

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146 but there are no candidates, the terms of all board members  
 147 expire at the annual meeting, and such members may stand for  
 148 reelection unless prohibited by the bylaws. If the bylaws or  
 149 articles of incorporation permit ~~staggered~~ terms of no more than  
 150 2 years ~~and upon approval of a majority of the total voting~~  
 151 ~~interests~~, the association board members may serve 2-year  
 152 ~~staggered~~ terms. If the number of board members whose terms  
 153 expire at the annual meeting equals or exceeds the number of  
 154 candidates, the candidates become members of the board effective  
 155 upon the adjournment of the annual meeting. Unless the bylaws  
 156 provide otherwise, any remaining vacancies shall be filled by  
 157 the affirmative vote of the majority of the directors making up  
 158 the newly constituted board even if the directors constitute  
 159 less than a quorum or there is only one director. In a  
 160 condominium association of more than 10 units or in a  
 161 condominium association that does not include timeshare units or  
 162 timeshare interests, coowners of a unit may not serve as members  
 163 of the board of directors at the same time unless they own more  
 164 than one unit or unless there are not enough eligible candidates  
 165 to fill the vacancies on the board at the time of the vacancy.  
 166 Any unit owner desiring to be a candidate for board membership  
 167 must comply with sub-subparagraph 4.a. and must be eligible to  
 168 serve on the board of directors at the time of the deadline for  
 169 submitting a notice of intent to run in order to have his or her  
 170 name listed as a proper candidate on the ballot or to serve on  
 171 the board. A person who has been suspended or removed by the  
 172 division under this chapter, or who is delinquent in the payment  
 173 of any fee, fine, or special or regular assessment as provided  
 174 in paragraph (n), is not eligible for board membership. A person

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175 who has been convicted of any felony in this state or in a  
 176 United States District or Territorial Court, or who has been  
 177 convicted of any offense in another jurisdiction which would be  
 178 considered a felony if committed in this state, is not eligible  
 179 for board membership unless such felon's civil rights have been  
 180 restored for at least 5 years as of the date such person seeks  
 181 election to the board. The validity of an action by the board is  
 182 not affected if it is later determined that a board member is  
 183 ineligible for board membership due to having been convicted of  
 184 a felony.

185 3. The bylaws must provide the method of calling meetings  
 186 of unit owners, including annual meetings. Written notice must  
 187 include an agenda, must be mailed, hand delivered, or  
 188 electronically transmitted to each unit owner at least 14 days  
 189 before the annual meeting, and must be posted in a conspicuous  
 190 place on the condominium property at least 14 continuous days  
 191 before the annual meeting. Upon notice to the unit owners, the  
 192 board shall, by duly adopted rule, designate a specific location  
 193 on the condominium property or association property where all  
 194 notices of unit owner meetings shall be posted. This requirement  
 195 does not apply if there is no condominium property or  
 196 association property for posting notices. In lieu of, or in  
 197 addition to, the physical posting of meeting notices, the  
 198 association may, by reasonable rule, adopt a procedure for  
 199 conspicuously posting and repeatedly broadcasting the notice and  
 200 the agenda on a closed-circuit cable television system serving  
 201 the condominium association. However, if broadcast notice is  
 202 used in lieu of a notice posted physically on the condominium  
 203 property, the notice and agenda must be broadcast at least four

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204 times every broadcast hour of each day that a posted notice is  
 205 otherwise required under this section. If broadcast notice is  
 206 provided, the notice and agenda must be broadcast in a manner  
 207 and for a sufficient continuous length of time so as to allow an  
 208 average reader to observe the notice and read and comprehend the  
 209 entire content of the notice and the agenda. Unless a unit owner  
 210 waives in writing the right to receive notice of the annual  
 211 meeting, such notice must be hand delivered, mailed, or  
 212 electronically transmitted to each unit owner. Notice for  
 213 meetings and notice for all other purposes must be mailed to  
 214 each unit owner at the address last furnished to the association  
 215 by the unit owner, or hand delivered to each unit owner.  
 216 However, if a unit is owned by more than one person, the  
 217 association must provide notice to the address that the  
 218 developer identifies for that purpose and thereafter as one or  
 219 more of the owners of the unit advise the association in  
 220 writing, or if no address is given or the owners of the unit do  
 221 not agree, to the address provided on the deed of record. An  
 222 officer of the association, or the manager or other person  
 223 providing notice of the association meeting, must provide an  
 224 affidavit or United States Postal Service certificate of  
 225 mailing, to be included in the official records of the  
 226 association affirming that the notice was mailed or hand  
 227 delivered in accordance with this provision.

228 4. The members of the board shall be elected by written  
 229 ballot or voting machine. Proxies may not be used in electing  
 230 the board in general elections or elections to fill vacancies  
 231 caused by recall, resignation, or otherwise, unless otherwise  
 232 provided in this chapter. This subparagraph does not apply to an

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233 association governing a timeshare condominium.

234 a. At least 60 days before a scheduled election, the  
 235 association shall mail, deliver, or electronically transmit, by  
 236 separate association mailing or included in another association  
 237 mailing, delivery, or transmission, including regularly  
 238 published newsletters, to each unit owner entitled to a vote, a  
 239 first notice of the date of the election. Any unit owner or  
 240 other eligible person desiring to be a candidate for the board  
 241 must give written notice of his or her intent to be a candidate  
 242 to the association at least 40 days before a scheduled election.  
 243 Together with the written notice and agenda as set forth in  
 244 subparagraph 3., the association shall mail, deliver, or  
 245 electronically transmit a second notice of the election to all  
 246 unit owners entitled to vote, together with a ballot that lists  
 247 all candidates. Upon request of a candidate, an information  
 248 sheet, no larger than 8 1/2 inches by 11 inches, which must be  
 249 furnished by the candidate at least 35 days before the election,  
 250 must be included with the mailing, delivery, or transmission of  
 251 the ballot, with the costs of mailing, delivery, or electronic  
 252 transmission and copying to be borne by the association. The  
 253 association is not liable for the contents of the information  
 254 sheets prepared by the candidates. In order to reduce costs, the  
 255 association may print or duplicate the information sheets on  
 256 both sides of the paper. The division shall by rule establish  
 257 voting procedures consistent with this sub-subparagraph,  
 258 including rules establishing procedures for giving notice by  
 259 electronic transmission and rules providing for the secrecy of  
 260 ballots. Elections shall be decided by a plurality of ballots  
 261 cast. There is no quorum requirement; however, at least 20

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262 percent of the eligible voters must cast a ballot in order to  
 263 have a valid election. A unit owner may not permit any other  
 264 person to vote his or her ballot, and any ballots improperly  
 265 cast are invalid. A unit owner who violates this provision may  
 266 be fined by the association in accordance with s. 718.303. A  
 267 unit owner who needs assistance in casting the ballot for the  
 268 reasons stated in s. 101.051 may obtain such assistance. The  
 269 regular election must occur on the date of the annual meeting.  
 270 Notwithstanding this sub-subparagraph, an election is not  
 271 required unless more candidates file notices of intent to run or  
 272 are nominated than board vacancies exist.

273 b. Within 90 days after being elected or appointed to the  
 274 board, each newly elected or appointed director shall certify in  
 275 writing to the secretary of the association that he or she has  
 276 read the association's declaration of condominium, articles of  
 277 incorporation, bylaws, and current written policies; that he or  
 278 she will work to uphold such documents and policies to the best  
 279 of his or her ability; and that he or she will faithfully  
 280 discharge his or her fiduciary responsibility to the  
 281 association's members. In lieu of this written certification,  
 282 within 90 days after being elected or appointed to the board,  
 283 the newly elected or appointed director may submit a certificate  
 284 of having satisfactorily completed the educational curriculum  
 285 administered by a division-approved condominium education  
 286 provider within 1 year before or 90 days after the date of  
 287 election or appointment. The written certification or  
 288 educational certificate is valid and does not have to be  
 289 resubmitted as long as the director serves on the board without  
 290 interruption. A director who fails to timely file the written

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 291 certification or educational certificate is suspended from  
 292 service on the board until he or she complies with this sub-  
 293 subparagraph. The board may temporarily fill the vacancy during  
 294 the period of suspension. The secretary shall cause the  
 295 association to retain a director's written certification or  
 296 educational certificate for inspection by the members for 5  
 297 years after a director's election or the duration of the  
 298 director's uninterrupted tenure, whichever is longer. Failure to  
 299 have such written certification or educational certificate on  
 300 file does not affect the validity of any board action.

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

303 5. Any approval by unit owners called for by this chapter  
 304 or the applicable declaration or bylaws, including, but not  
 305 limited to, the approval requirement in s. 718.111(8), must be  
 306 made at a duly noticed meeting of unit owners and is subject to  
 307 all requirements of this chapter or the applicable condominium  
 308 documents relating to unit owner decisionmaking, except that  
 309 unit owners may take action by written agreement, without  
 310 meetings, on matters for which action by written agreement  
 311 without meetings is expressly allowed by the applicable bylaws  
 312 or declaration or any law that provides for such action.

313 6. Unit owners may waive notice of specific meetings if  
 314 allowed by the applicable bylaws or declaration or any law. If  
 315 authorized by the bylaws, notice of meetings of the board of  
 316 administration, unit owner meetings, except unit owner meetings  
 317 called to recall board members under paragraph (j), and  
 318 committee meetings may be given by electronic transmission to  
 319 unit owners who consent to receive notice by electronic

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 320 transmission.

321 7. Unit owners have the right to participate in meetings of  
 322 unit owners with reference to all designated agenda items.  
 323 However, the association may adopt reasonable rules governing  
 324 the frequency, duration, and manner of unit owner participation.

325 8. A unit owner may tape record or videotape a meeting of  
 326 the unit owners subject to reasonable rules adopted by the  
 327 division.

328 9. Unless otherwise provided in the bylaws, any vacancy  
 329 occurring on the board before the expiration of a term may be  
 330 filled by the affirmative vote of the majority of the remaining  
 331 directors, even if the remaining directors constitute less than  
 332 a quorum, or by the sole remaining director. In the alternative,  
 333 a board may hold an election to fill the vacancy, in which case  
 334 the election procedures must conform to sub-subparagraph 4.a.  
 335 unless the association governs 10 units or fewer and has opted  
 336 out of the statutory election process, in which case the bylaws  
 337 of the association control. Unless otherwise provided in the  
 338 bylaws, a board member appointed or elected under this section  
 339 shall fill the vacancy for the unexpired term of the seat being  
 340 filled. Filling vacancies created by recall is governed by  
 341 paragraph (j) and rules adopted by the division.

342 10. This chapter does not limit the use of general or  
 343 limited proxies, require the use of general or limited proxies,  
 344 or require the use of a written ballot or voting machine for any  
 345 agenda item or election at any meeting of a timeshare  
 346 condominium association.

347  
 348 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an

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 349 association of 10 or fewer units may, by affirmative vote of a  
 350 majority of the total voting interests, provide for different  
 351 voting and election procedures in its bylaws, which may be by a  
 352 proxy specifically delineating the different voting and election  
 353 procedures. The different voting and election procedures may  
 354 provide for elections to be conducted by limited or general  
 355 proxy.

356 (j) *Recall of board members.*—Subject to ~~the provisions of~~  
 357 s. 718.301, any member of the board of administration may be  
 358 recalled and removed from office with or without cause by the  
 359 vote or agreement in writing by a majority of all the voting  
 360 interests. A special meeting of the unit owners to recall a  
 361 member or members of the board of administration may be called  
 362 by 10 percent of the voting interests giving notice of the  
 363 meeting as required for a meeting of unit owners, and the notice  
 364 shall state the purpose of the meeting. Electronic transmission  
 365 may not be used as a method of giving notice of a meeting called  
 366 in whole or in part for this purpose.

367 1. If the recall is approved by a majority of all voting  
 368 interests by a vote at a meeting, the recall will be effective  
 369 as provided in this paragraph herein. The board shall duly  
 370 notice and hold a board meeting within 5 full business days  
 371 after ~~of~~ the adjournment of the unit owner meeting to recall one  
 372 or more board members. At the meeting, the board shall either  
 373 certify the recall, in which case such member or members shall  
 374 be recalled effective immediately and shall turn over to the  
 375 board within 5 full business days any and all records and  
 376 property of the association in their possession, or shall  
 377 proceed as set forth in subparagraph 3.

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 378 2. If the proposed recall is by an agreement in writing by  
 379 a majority of all voting interests, the agreement in writing or  
 380 a copy thereof shall be served on the association by certified  
 381 mail or by personal service in the manner authorized by chapter  
 382 48 and the Florida Rules of Civil Procedure. The board of  
 383 administration shall duly notice and hold a meeting of the board  
 384 within 5 full business days after receipt of the agreement in  
 385 writing. At the meeting, the board shall either certify the  
 386 written agreement to recall a member or members of the board, in  
 387 which case such member or members shall be recalled effective  
 388 immediately and shall turn over to the board within 5 full  
 389 business days any and all records and property of the  
 390 association in their possession, or proceed as described in  
 391 subparagraph 3.

392 3. If the board determines not to certify the written  
 393 agreement to recall a member or members of the board, or does  
 394 not certify the recall by a vote at a meeting, the board shall,  
 395 within 5 full business days after the meeting, file with the  
 396 division a petition for arbitration pursuant to the procedures  
 397 in s. 718.1255. For the purposes of this section, the unit  
 398 owners who voted at the meeting or who executed the agreement in  
 399 writing shall constitute one party under the petition for  
 400 arbitration. If the arbitrator certifies the recall as to any  
 401 member or members of the board, the recall will be effective  
 402 upon mailing of the final order of arbitration to the  
 403 association. If the association fails to comply with the order  
 404 of the arbitrator, the division may take action pursuant to s.  
 405 718.501. Any member or members so recalled shall deliver to the  
 406 board any and all records of the association in their possession

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 407 within 5 full business days after ~~of~~ the effective date of the  
 408 recall.

409 4. If the board fails to duly notice and hold a board  
 410 meeting within 5 full business days after ~~of~~ service of an  
 411 agreement in writing or within 5 full business days after ~~of~~ the  
 412 adjournment of the unit owner recall meeting, the recall shall  
 413 be deemed effective and the board members so recalled shall  
 414 immediately turn over to the board any and all records and  
 415 property of the association.

416 5. If the board fails to duly notice and hold the required  
 417 meeting or fails to file the required petition, the unit owner  
 418 representative may file a petition pursuant to s. 718.1255  
 419 challenging the board's failure to act. The petition must be  
 420 filed within 60 days after the expiration of the applicable 5-  
 421 full-business-day period. The review of a petition under this  
 422 subparagraph is limited to the sufficiency of service on the  
 423 board and the facial validity of the written agreement or  
 424 ballots filed.

425 ~~6.5-~~ If a vacancy occurs on the board as a result of a  
 426 recall or removal and less than a majority of the board members  
 427 are removed, the vacancy may be filled by the affirmative vote  
 428 of a majority of the remaining directors, notwithstanding any  
 429 provision to the contrary contained in this subsection. If  
 430 vacancies occur on the board as a result of a recall and a  
 431 majority or more of the board members are removed, the vacancies  
 432 shall be filled in accordance with procedural rules to be  
 433 adopted by the division, which rules need not be consistent with  
 434 this subsection. The rules must provide procedures governing the  
 435 conduct of the recall election as well as the operation of the

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 436 association during the period after a recall but before ~~prior to~~  
 437 the recall election.

438 7. A board member who has been recalled may file a petition  
 439 pursuant to s. 718.1255 challenging the validity of the recall.  
 440 The petition must be filed within 60 days after the recall is  
 441 deemed certified. The association and the unit owner  
 442 representative shall be named as the respondents.

443 8. The division may not accept for filing a recall  
 444 petition, whether filed pursuant to subparagraph 1.,  
 445 subparagraph 2., subparagraph 5., or subparagraph 7. and  
 446 regardless of whether the recall was certified, when there are  
 447 60 or fewer days until the scheduled reelection of the board  
 448 member sought to be recalled or when 60 or fewer days have  
 449 elapsed since the election of the board member sought to be  
 450 recalled.

451 Section 3. Subsection (5) of section 718.113, Florida  
 452 Statutes, is amended to read:

453 718.113 Maintenance; limitation upon improvement; display  
 454 of flag; hurricane shutters and protection; display of religious  
 455 decorations.-

456 (5) Each board of administration shall adopt hurricane  
 457 shutter specifications for each building within each condominium  
 458 operated by the association which shall include color, style,  
 459 and other factors deemed relevant by the board. All  
 460 specifications adopted by the board must comply with the  
 461 applicable building code.

462 (a) The board may, subject to ~~the provisions of~~ s.  
 463 718.3026~~7~~, and the approval of a majority of voting interests of  
 464 the condominium, install hurricane shutters, impact glass, ~~or~~

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 465 ~~other~~ code-compliant windows or doors, or other types of code-  
 466 compliant hurricane protection that comply ~~complies~~ with or  
 467 ~~exceed exceeds~~ the applicable building code. However, a vote of  
 468 the owners is not required if the maintenance, repair, and  
 469 replacement of hurricane shutters, impact glass, ~~or other~~ code-  
 470 compliant windows or doors, or other types of code-compliant  
 471 hurricane protection are the responsibility of the association  
 472 pursuant to the declaration of condominium. If hurricane  
 473 protection or laminated glass or window film architecturally  
 474 designed to function as hurricane protection that which complies  
 475 with or exceeds the current applicable building code has been  
 476 previously installed, the board may not install hurricane  
 477 shutters, ~~hurricane protection, or~~ impact glass, ~~or other~~ code-  
 478 compliant windows or doors, or other types of code-compliant  
 479 hurricane protection except upon approval by a majority vote of  
 480 the voting interests.

481 (b) The association is responsible for the maintenance,  
 482 repair, and replacement of the hurricane shutters, impact glass,  
 483 code-compliant windows or doors, or other types of code-  
 484 compliant hurricane protection authorized by this subsection if  
 485 such ~~property hurricane shutters or other hurricane protection~~  
 486 is the responsibility of the association pursuant to the  
 487 declaration of condominium. If the hurricane shutters, impact  
 488 glass, code-compliant windows or doors, or other types of code-  
 489 compliant hurricane protection ~~authorized by this subsection~~ are  
 490 the responsibility of the unit owners pursuant to the  
 491 declaration of condominium, the maintenance, repair, and  
 492 replacement of such items are the responsibility of the unit  
 493 owner.

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 494 (c) The board may operate shutters, impact glass, code-  
 495 compliant windows or doors, or other types of code-compliant  
 496 hurricane protection installed pursuant to this subsection  
 497 without permission of the unit owners only if such operation is  
 498 necessary to preserve and protect the condominium property and  
 499 association property. The installation, replacement, operation,  
 500 repair, and maintenance of such shutters, impact glass, code-  
 501 compliant windows or doors, or other types of code-compliant  
 502 hurricane protection in accordance with the procedures set forth  
 503 in this paragraph are not a material alteration to the common  
 504 elements or association property within the meaning of this  
 505 section.

506 (d) Notwithstanding any other provision in the condominium  
 507 documents, if approval is required by the documents, a board may  
 508 not refuse to approve the installation or replacement of  
 509 hurricane shutters, impact glass, code-compliant windows or  
 510 doors, or other types of code-compliant hurricane protection by  
 511 a unit owner conforming to the specifications adopted by the  
 512 board.

513 Section 4. Paragraph (e) of subsection (1) of section  
 514 718.115, Florida Statutes, is amended to read:

515 718.115 Common expenses and common surplus.-

516 (1)

517 (e) The expense of installation, replacement, operation,  
 518 repair, and maintenance of hurricane shutters, impact glass,  
 519 code-compliant windows or doors, or other types of code-  
 520 compliant hurricane protection by the board pursuant to s.  
 521 718.113(5) ~~constitutes shall constitute~~ a common expense as  
 522 ~~defined herein~~ and shall be collected as provided in this

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523 section if the association is responsible for the maintenance,  
 524 repair, and replacement of the hurricane shutters, impact glass,  
 525 code-compliant windows or doors, or other types of code-  
 526 compliant hurricane protection pursuant to the declaration of  
 527 condominium. However, if the maintenance, repair, and  
 528 replacement of the hurricane shutters, impact glass, code-  
 529 compliant windows or doors, or other types of code-compliant  
 530 hurricane protection are ~~is~~ the responsibility of the unit  
 531 owners pursuant to the declaration of condominium, the cost of  
 532 the installation of the hurricane shutters, impact glass, code-  
 533 compliant windows or doors, or other types of code-compliant  
 534 hurricane protection is ~~shall~~ not be a common expense and, ~~but~~  
 535 shall be charged individually to the unit owners based on the  
 536 cost of installation of the hurricane shutters, impact glass,  
 537 code-compliant windows or doors, or other types of code-  
 538 compliant hurricane protection appurtenant to the unit.  
 539 Notwithstanding the ~~provisions of~~ s. 718.116(9), and regardless  
 540 of whether or not the declaration requires the association or  
 541 unit owners to maintain, repair, or replace hurricane shutters,  
 542 impact glass, code-compliant windows or doors, or other types of  
 543 code-compliant hurricane protection, a unit owner who has  
 544 previously installed hurricane shutters in accordance with s.  
 545 718.113(5) that comply with the current applicable building code  
 546 shall receive a credit when the shutters are installed; a unit  
 547 owner who has previously installed impact glass or code-  
 548 compliant windows or doors that comply with the current  
 549 applicable building code shall receive a credit when the impact  
 550 glass or code-compliant windows or doors are installed; and a  
 551 unit owner who has installed, other types of code-compliant

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552 hurricane protection that comply with the current applicable  
 553 building code shall receive a credit when the same type of other  
 554 code-compliant hurricane protection is installed, and the ~~or~~  
 555 ~~laminated glass architecturally designed to function as~~  
 556 ~~hurricane protection, which hurricane shutters or other~~  
 557 ~~hurricane protection or laminated glass comply with the current~~  
 558 ~~applicable building code, shall receive a credit shall be equal~~  
 559 to the pro rata portion of the assessed installation cost  
 560 assigned to each unit. However, such unit owner remains ~~shall~~  
 561 ~~remain~~ responsible for the pro rata share of expenses for  
 562 hurricane shutters, impact glass, code-compliant windows or  
 563 doors, or other types of code-compliant hurricane protection  
 564 installed on common elements and association property by the  
 565 board pursuant to s. 718.113(5), and remains ~~shall remain~~  
 566 responsible for a pro rata share of the expense of the  
 567 replacement, operation, repair, and maintenance of such  
 568 shutters, impact glass, code-compliant windows or doors, or  
 569 other types of code-compliant hurricane protection.  
 570 Section 5. Paragraph (a) of subsection (3) and subsection  
 571 (5) of section 718.303, Florida Statutes, are amended to read:  
 572 718.303 Obligations of owners and occupants; remedies.-  
 573 (3) The association may levy reasonable fines for the  
 574 failure of the owner of the unit or its occupant, licensee, or  
 575 invitee to comply with any provision of the declaration, the  
 576 association bylaws, or reasonable rules of the association. A  
 577 fine may not become a lien against a unit. A fine may be levied  
 578 on the basis of each day of a continuing violation, with a  
 579 single notice and opportunity for hearing. However, the fine may  
 580 not exceed \$100 per violation, or \$1,000 in the aggregate.

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581 (a) An association may suspend, for a reasonable period of  
 582 time, the right of a unit owner, or a unit owner's tenant,  
 583 guest, or invitee, to use the common elements, common  
 584 facilities, or any other association property for failure to  
 585 comply with any provision of the declaration, the association  
 586 bylaws, or reasonable rules of the association. This paragraph  
 587 does not apply to limited common elements intended to be used  
 588 only by that unit, common elements needed to access the unit,  
 589 utility services provided to the unit, parking spaces, or  
 590 elevators.

591 (5) An association may suspend the voting rights of a unit  
 592 or member due to nonpayment of any monetary obligation due ~~to~~  
 593 the association which is more than 90 days delinquent. ~~A voting~~  
 594 ~~interest or consent right allocated to a unit or member which~~  
 595 ~~has been suspended by the association may not be counted towards~~  
 596 ~~the total number of voting interests necessary to constitute a~~  
 597 ~~quorum, the number of voting interests required to conduct an~~  
 598 ~~election, or the number of voting interests required to approve~~  
 599 ~~an action under this chapter or pursuant to the declaration,~~  
 600 ~~articles of incorporation, or bylaws.~~ The suspension ends upon  
 601 full payment of all obligations currently due or overdue the  
 602 association. The notice and hearing requirements under  
 603 subsection (3) do not apply to a suspension imposed under this  
 604 subsection.

605 Section 6. Subsection (1) of section 718.403, Florida  
 606 Statutes, is amended to read:

607 718.403 Phase condominiums.—

608 (1) Notwithstanding ~~the provisions of~~ s. 718.110, a  
 609 developer may develop a condominium in phases, if the original

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610 declaration of condominium submitting the initial phase to  
 611 condominium ownership or an amendment to the declaration which  
 612 has been approved by all of the unit owners and unit mortgagees  
 613 provides for and describes in detail all anticipated phases; the  
 614 impact, if any, which the completion of subsequent phases would  
 615 have upon the initial phase; and the time period (which may not  
 616 exceed 7 years from the date of recording the declaration of  
 617 condominium, unless extended as provided in this subsection)  
 618 within which all phases must be added to the condominium and  
 619 comply with the requirements of this section and at the end of  
 620 which the right to add additional phases expires.

621 (a) All phases must be added to the condominium within 7  
 622 years after the date of recording the original declaration of  
 623 condominium submitting the initial phase to condominium  
 624 ownership unless an amendment extending the 7-year period is  
 625 approved by the unit owners.

626 (b) An amendment to extend the 7-year period requires the  
 627 approval of the owners necessary to amend the declaration of  
 628 condominium consistent with s. 718.110(1)(a). An extension of  
 629 the 7-year period may be submitted for approval only during the  
 630 last 3 years of the 7-year period.

631 (c) An amendment must describe the period within which all  
 632 phases must be added to the condominium and such period may not  
 633 exceed 10 years after the date of recording the original  
 634 declaration of condominium submitting the initial phase to  
 635 condominium ownership.

636 (d) Notwithstanding s. 718.110, an amendment extending the  
 637 7-year period is not an amendment subject to s. 718.110(4).

638 Section 7. Section 718.406, Florida Statutes, is created to

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639 read:

640 718.406 Condominiums created within condominium parcels.-

641 (1) Unless otherwise expressed in the declaration of  
 642 condominium, if a condominium is created within a condominium  
 643 parcel, the term:

644 (a) "Primary condominium" means any condominium that is not  
 645 a secondary condominium and contains one or more subdivided  
 646 parcels.

647 (b) "Primary condominium association" means any entity that  
 648 operates a primary condominium.

649 (c) "Primary condominium declaration" means the instrument  
 650 or instruments by which a primary condominium is created, as  
 651 they are from time to time amended.

652 (d) "Secondary condominium" means one or more condominium  
 653 parcels that have been submitted to condominium ownership  
 654 pursuant to a secondary condominium declaration.

655 (e) "Secondary condominium association" means any entity  
 656 responsible for the operation of a secondary condominium.

657 (f) "Secondary condominium declaration" means the  
 658 instrument or instruments by which a secondary condominium is  
 659 created, as they are from time to time amended.

660 (g) "Secondary unit" means a unit that is part of a  
 661 secondary condominium.

662 (h) "Subdivided parcel" means a condominium parcel in a  
 663 primary condominium that has been submitted to condominium  
 664 ownership pursuant to a secondary condominium declaration.

665 (2) Unless otherwise provided in the primary condominium  
 666 declaration, if a condominium parcel is a subdivided parcel, the  
 667 secondary condominium association responsible for operating the

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668 secondary condominium upon the subdivided parcel shall act on  
 669 behalf of all of the unit owners of secondary units in the  
 670 secondary condominium and shall exercise all rights of the  
 671 secondary unit owners in the primary condominium association,  
 672 other than the right of possession of the secondary unit. The  
 673 secondary condominium association shall designate a  
 674 representative who shall cast the vote of the subdivided parcel  
 675 in the primary condominium association and, if no person is  
 676 designated by the secondary condominium association to cast such  
 677 vote, the vote shall be cast by the president of the secondary  
 678 condominium association or the designee of the president.

679 (3) Unless otherwise provided in the primary condominium  
 680 declaration as originally recorded, no secondary condominium may  
 681 be created upon any condominium parcel in the primary  
 682 condominium, and no amendment to the primary condominium  
 683 declaration may permit secondary condominiums to be created upon  
 684 parcels in the primary condominium, unless the record owners of  
 685 a majority of the condominium parcels join in the execution of  
 686 the amendment.

687 (4) If the primary condominium declaration permits the  
 688 creation of a secondary condominium and a condominium parcel in  
 689 the primary condominium is being submitted for condominium  
 690 ownership to create a secondary condominium upon the primary  
 691 condominium parcel, the approval of the board of administration  
 692 of the primary condominium association is required in order to  
 693 create the secondary condominium on the primary condominium  
 694 parcel. Unless otherwise provided in the primary condominium  
 695 declaration, the owners of condominium parcels in the primary  
 696 condominium that will not be part of the proposed secondary

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 697 condominium and the holders of liens upon such primary  
 698 condominium parcels shall not have approval rights regarding the  
 699 creation of the secondary condominium or the contents of the  
 700 secondary condominium declaration being submitted. Only the  
 701 board of administration of the primary condominium association,  
 702 the owner of the subdivided parcel, and the holders of liens  
 703 upon the subdivided parcel shall have approval rights regarding  
 704 the creation of the secondary condominium and the contents of  
 705 the secondary condominium declaration. In order for the  
 706 recording of the secondary condominium declaration to be  
 707 effective to create the secondary condominium, the board of  
 708 administration of the primary condominium association, the owner  
 709 of the subdivided parcel, and all holders of liens on the  
 710 subdivided parcel must execute the secondary condominium  
 711 declaration for the purpose of evidencing their approval.

712 (5) An owner of a secondary unit is subject to both the  
 713 primary condominium declaration and the secondary condominium  
 714 declaration.

715 (6) The primary condominium association may provide  
 716 insurance required by s. 718.111(11) for common elements and  
 717 other improvements within the secondary condominium if the  
 718 primary condominium declaration permits the primary condominium  
 719 association to provide such insurance for the benefit of the  
 720 condominium property included in the subdivided parcel, in lieu  
 721 of such insurance being provided by the secondary condominium  
 722 association.

723 (7) Unless otherwise provided in the primary condominium  
 724 declaration, the board of administration of the primary  
 725 condominium association may adopt hurricane shutter or hurricane

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 726 protection specifications for each building within which  
 727 subdivided parcels are located and govern any subdivided parcels  
 728 in the primary condominium.

729 (8) Any unit owner of, or holder of a first mortgage on, a  
 730 secondary unit may register such unit owner's or mortgagee's  
 731 interest in the secondary unit with the primary condominium  
 732 association by delivering written notice to the primary  
 733 condominium association. Once registered, the primary  
 734 condominium association must provide written notice to such  
 735 secondary unit owner and his, her, or its first mortgagee at  
 736 least 30 days before instituting any foreclosure action against  
 737 the subdivided parcel in which the secondary unit owner and his,  
 738 her, or its first mortgagee hold an interest for failure of the  
 739 subdivided parcel owner to pay any assessments or other amounts  
 740 due to the primary condominium association. A foreclosure action  
 741 against a subdivided parcel is not effective without an  
 742 affidavit indicating that written notice of the foreclosure was  
 743 timely sent to the names and addresses of secondary unit owners  
 744 and first mortgagees registered with the primary condominium  
 745 association pursuant to this subsection. The registered  
 746 secondary unit owner or mortgagee has a right to pay the  
 747 proportionate amount of the delinquent assessment attributable  
 748 to the secondary unit in which the registered unit owner or  
 749 mortgagee holds an interest. Upon such payment, the primary  
 750 condominium association is obligated to promptly modify or  
 751 partially release the record of lien on the primary condominium  
 752 association so that the lien no longer encumbers such secondary  
 753 unit. Alternatively, a registered secondary unit owner or  
 754 mortgagee may pay the amount of all delinquent assessments

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 755 attributed to the subdivided parcel and seek reimbursement for  
 756 all such amounts paid and all costs incurred from the secondary  
 757 condominium association, including, without limitation, the  
 758 costs of collection other than the share allocable to the  
 759 secondary unit on behalf of which such payment was made.

760 (9) In the event of a conflict between the primary  
 761 condominium declaration and the secondary condominium  
 762 declaration, the primary condominium declaration controls.

763 (10) All common expenses due to the primary condominium  
 764 association with respect to a subdivided parcel are a common  
 765 expense of the secondary condominium association and shall be  
 766 collected by the secondary condominium association from its  
 767 members and paid to the primary condominium association.

768 Section 8. Subsection (2) of section 718.5011, Florida  
 769 Statutes, is amended to read:

770 718.5011 Ombudsman; appointment; administration.—

771 (2) The Governor shall appoint the ombudsman. The ombudsman  
 772 must be an attorney admitted to practice before the Florida  
 773 Supreme Court and shall serve at the pleasure of the Governor. A  
 774 vacancy in the office shall be filled in the same manner as the  
 775 original appointment. An officer or full-time employee of the  
 776 ombudsman's office may not actively engage in any other business  
 777 or profession that directly or indirectly relates to or  
 778 conflicts with his or her work in the ombudsman's office; serve  
 779 as the representative of any political party, executive  
 780 committee, or other governing body of a political party; serve  
 781 as an executive, officer, or employee of a political party;  
 782 receive remuneration for activities on behalf of any candidate  
 783 for public office; or engage in soliciting votes or other

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 784 activities on behalf of a candidate for public office. The  
 785 ombudsman or any employee of his or her office may not become a  
 786 candidate for election to public office unless he or she first  
 787 resigns from his or her office or employment.

788 Section 9. Paragraph (c) of subsection (2) of section  
 789 719.104, Florida Statutes, is amended to read:

790 719.104 Cooperatives; access to units; records; financial  
 791 reports; assessments; purchase of leases.—

792 (2) OFFICIAL RECORDS.—

793 (c) The official records of the association shall be open  
 794 to inspection by any association member or the authorized  
 795 representative of such member at all reasonable times. Failure  
 796 to permit inspection of the association records as provided in  
 797 this subsection ~~herein~~ entitles any person prevailing in an  
 798 enforcement action to recover reasonable attorney ~~attorney's~~  
 799 fees from the person in control of the records who, directly or  
 800 indirectly, knowingly denies access to the records for  
 801 inspection. The right to inspect the records includes the right  
 802 to make or obtain copies, at the reasonable expense, if any, of  
 803 the association member. The association may adopt reasonable  
 804 rules regarding the frequency, time, location, notice, and  
 805 manner of record inspections and copying. The failure of an  
 806 association to provide the records within 10 working days after  
 807 receipt of a written request creates a rebuttable presumption  
 808 that the association willfully failed to comply with this  
 809 paragraph. A unit owner who is denied access to official records  
 810 is entitled to the actual damages or minimum damages for the  
 811 association's willful failure to comply with this paragraph. The  
 812 minimum damages shall be \$50 per calendar day up to 10 days, the

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813 calculation to begin on the 11th day after receipt of the  
 814 written request. The association shall maintain an adequate  
 815 number of copies of the declaration, articles of incorporation,  
 816 bylaws, and rules, and all amendments to each of the foregoing,  
 817 as well as the question and answer sheet provided for in s.  
 818 719.504, on the cooperative property to ensure their  
 819 availability to unit owners and prospective purchasers, and may  
 820 charge its actual costs for preparing and furnishing these  
 821 documents to those requesting the same. Notwithstanding ~~the~~  
 822 ~~provisions of~~ this paragraph, the following records shall not be  
 823 accessible to unit owners:

824 1. Any record protected by the lawyer-client privilege as  
 825 provided in s. 90.502; protected by the work-product privilege,  
 826 including any record ~~A record that was~~ prepared by an  
 827 association attorney or prepared at the attorney's express  
 828 direction; reflecting that reflects a mental impression,  
 829 conclusion, litigation strategy, or legal theory of the attorney  
 830 or the association; or ~~that was~~ prepared exclusively for civil  
 831 or criminal litigation or for adversarial administrative  
 832 proceedings or in anticipation of imminent civil or criminal  
 833 litigation or imminent adversarial administrative proceedings,  
 834 until the conclusion of the litigation or adversarial  
 835 administrative proceedings.

836 2. Information obtained by an association in connection  
 837 with the approval of the lease, sale, or other transfer of a  
 838 unit.

839 3. Medical records of unit owners.

840 4. Personnel records of association employees, including,  
 841 but not limited to, disciplinary, payroll, health, and insurance

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842 records. For purposes of this subparagraph, the term "personnel  
 843 records" does not include written employment agreements with an  
 844 association employee or budgetary or financial records that  
 845 indicate the compensation paid to an association employee.

846 5. Social security numbers, driver license numbers, credit  
 847 card numbers, e-mail addresses, telephone numbers, emergency  
 848 contact information, any addresses of a unit owner other than  
 849 addresses provided to fulfill the association's notice  
 850 requirements, and other personal identifying information of any  
 851 person, excluding the person's name, unit designation, mailing  
 852 address, and property address.

853 6. Any electronic security measures that are used by the  
 854 association to safeguard data, including passwords.

855 7. The software and operating system used by the  
 856 association which allows manipulation of data, even if the owner  
 857 owns a copy of the same software used by the association. The  
 858 data is part of the official records of the association.

859 Section 10. Subsection (7) is added to section 719.1055,  
 860 Florida Statutes, to read:

861 719.1055 Amendment of cooperative documents; alteration and  
 862 acquisition of property.—

863 (7) The Legislature finds that the procurement of mortgagee  
 864 consent to amendments that do not affect the rights or interests  
 865 of mortgagees is an unreasonable and substantial logistical and  
 866 financial burden on the unit owners and that there is a  
 867 compelling state interest in enabling the members of an  
 868 association to approve amendments to the association's  
 869 cooperative documents through legal means. Accordingly, and  
 870 notwithstanding any provision of this subsection to the

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871 contrary:

872 (a) As to any mortgage recorded on or after July 1, 2013,  
 873 any provision in the association's cooperative documents that  
 874 requires the consent or joinder of some or all mortgagees of  
 875 units or any other portion of the association's common areas to  
 876 amend the association's cooperative documents or for any other  
 877 matter is enforceable only as to amendments to the association's  
 878 cooperative documents that adversely affect the priority of the  
 879 mortgagee's lien or the mortgagee's rights to foreclose its lien  
 880 or that otherwise materially affect the rights and interests of  
 881 the mortgagees.

882 (b) As to mortgages recorded before July 1, 2013, any  
 883 existing provisions in the association's cooperative documents  
 884 requiring mortgagee consent are enforceable.

885 (c) In securing consent or joinder, the association is  
 886 entitled to rely upon the public records to identify the holders  
 887 of outstanding mortgages. The association may use the address  
 888 provided in the original recorded mortgage document, unless  
 889 there is a different address for the holder of the mortgage in a  
 890 recorded assignment or modification of the mortgage, which  
 891 recorded assignment or modification must reference the official  
 892 records book and page on which the original mortgage was  
 893 recorded. Once the association has identified the recorded  
 894 mortgages of record, the association shall, in writing, request  
 895 of each unit owner whose unit is encumbered by a mortgage of  
 896 record any information that the owner has in his or her  
 897 possession regarding the name and address of the person to whom  
 898 mortgage payments are currently being made. Notice shall be sent  
 899 to such person if the address provided in the original recorded

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900 mortgage document is different from the name and address of the  
 901 mortgagee or assignee of the mortgage as shown by the public  
 902 record. The association is deemed to have complied with this  
 903 requirement by making the written request of the unit owners  
 904 required under this paragraph. Any notices required to be sent  
 905 to the mortgagees under this paragraph shall be sent to all  
 906 available addresses provided to the association.

907 (d) Any notice to the mortgagees required under paragraph  
 908 (c) may be sent by a method that establishes proof of delivery,  
 909 and any mortgagee who fails to respond within 60 days after the  
 910 date of mailing is deemed to have consented to the amendment.

911 (e) For those amendments requiring mortgagee consent on or  
 912 after July 1, 2013, in the event mortgagee consent is provided  
 913 other than by properly recorded joinder, such consent shall be  
 914 evidenced by affidavit of the association recorded in the public  
 915 records of the county in which the declaration is recorded.

916 (f) Any amendment adopted without the required consent of a  
 917 mortgagee is voidable only by a mortgagee who was entitled to  
 918 notice and an opportunity to consent. An action to void an  
 919 amendment is subject to the statute of limitations beginning 5  
 920 years after the date of discovery as to the amendments described  
 921 in paragraph (a) and 5 years after the date of recordation of  
 922 the certificate of amendment for all other amendments. This  
 923 paragraph applies to all mortgages, regardless of the date of  
 924 recordation of the mortgage.

925 Section 11. Paragraphs (c), (d), and (f) of subsection (1)  
 926 of section 719.106, Florida Statutes, are amended to read:

927 719.106 Bylaws; cooperative ownership.—

928 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative

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929 documents shall provide for the following, and if they do not,  
930 they shall be deemed to include the following:

931 (c) *Board of administration meetings.*—Meetings of the board  
932 of administration at which a quorum of the members is present  
933 shall be open to all unit owners. Any unit owner may tape record  
934 or videotape meetings of the board of administration. The right  
935 to attend such meetings includes the right to speak at such  
936 meetings with reference to all designated agenda items. The  
937 division shall adopt reasonable rules governing the tape  
938 recording and videotaping of the meeting. The association may  
939 adopt reasonable written rules governing the frequency,  
940 duration, and manner of unit owner statements. Adequate notice  
941 of all meetings shall be posted in a conspicuous place upon the  
942 cooperative property at least 48 continuous hours preceding the  
943 meeting, except in an emergency. Any item not included on the  
944 notice may be taken up on an emergency basis by at least a  
945 majority plus one of the members of the board. Such emergency  
946 action shall be noticed and ratified at the next regular meeting  
947 of the board. However, written notice of any meeting at which  
948 nonemergency special assessments, or at which amendment to rules  
949 regarding unit use, will be considered shall be mailed,  
950 delivered, or electronically transmitted to the unit owners and  
951 posted conspicuously on the cooperative property not less than  
952 14 days before ~~prior to~~ the meeting. Evidence of compliance with  
953 this 14-day notice shall be made by an affidavit executed by the  
954 person providing the notice and filed among the official records  
955 of the association. Upon notice to the unit owners, the board  
956 shall by duly adopted rule designate a specific location on the  
957 cooperative property upon which all notices of board meetings

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958 shall be posted. In lieu of or in addition to the physical  
959 posting of notice of any meeting of the board of administration  
960 on the cooperative property, the association may, by reasonable  
961 rule, adopt a procedure for conspicuously posting and repeatedly  
962 broadcasting the notice and the agenda on a closed-circuit cable  
963 television system serving the cooperative association. However,  
964 if broadcast notice is used in lieu of a notice posted  
965 physically on the cooperative property, the notice and agenda  
966 must be broadcast at least four times every broadcast hour of  
967 each day that a posted notice is otherwise required under this  
968 section. When broadcast notice is provided, the notice and  
969 agenda must be broadcast in a manner and for a sufficient  
970 continuous length of time so as to allow an average reader to  
971 observe the notice and read and comprehend the entire content of  
972 the notice and the agenda. Notice of any meeting in which  
973 regular assessments against unit owners are to be considered for  
974 any reason shall specifically contain a statement that  
975 assessments will be considered and the nature of any such  
976 assessments. Meetings of a committee to take final action on  
977 behalf of the board or to make recommendations to the board  
978 regarding the association budget are subject to ~~the provisions~~  
979 ~~of~~ this paragraph. Meetings of a committee that does not take  
980 final action on behalf of the board or make recommendations to  
981 the board regarding the association budget are subject to ~~the~~  
982 ~~provisions of~~ this section, unless those meetings are exempted  
983 from this section by the bylaws of the association.  
984 Notwithstanding any other law to the contrary, the requirement  
985 that board meetings and committee meetings be open to the unit  
986 owners does not apply is inapplicable to board or committee

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 987 meetings held for the purpose of discussing personnel matters or  
 988 meetings between the board or a committee and the association's  
 989 attorney, with respect to proposed or pending litigation, if  
 990 ~~when~~ the meeting is held for the purpose of seeking or rendering  
 991 legal advice.

992 (d) *Shareholder meetings.*—There shall be an annual meeting  
 993 of the shareholders. All members of the board of administration  
 994 shall be elected at the annual meeting unless the bylaws provide  
 995 for staggered election terms or for their election at another  
 996 meeting. Any unit owner desiring to be a candidate for board  
 997 membership must comply with subparagraph 1. The bylaws must  
 998 provide the method for calling meetings, including annual  
 999 meetings. Written notice, which must incorporate an  
 1000 identification of agenda items, shall be given to each unit  
 1001 owner at least 14 days before the annual meeting and posted in a  
 1002 conspicuous place on the cooperative property at least 14  
 1003 continuous days preceding the annual meeting. Upon notice to the  
 1004 unit owners, the board must by duly adopted rule designate a  
 1005 specific location on the cooperative property upon which all  
 1006 notice of unit owner meetings are posted. In lieu of or in  
 1007 addition to the physical posting of the meeting notice, the  
 1008 association may, by reasonable rule, adopt a procedure for  
 1009 conspicuously posting and repeatedly broadcasting the notice and  
 1010 the agenda on a closed-circuit cable television system serving  
 1011 the cooperative association. However, if broadcast notice is  
 1012 used in lieu of a posted notice, the notice and agenda must be  
 1013 broadcast at least four times every broadcast hour of each day  
 1014 that a posted notice is otherwise required under this section.  
 1015 If broadcast notice is provided, the notice and agenda must be

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 1016 broadcast in a manner and for a sufficient continuous length of  
 1017 time to allow an average reader to observe the notice and read  
 1018 and comprehend the entire content of the notice and the agenda.  
 1019 Unless a unit owner waives in writing the right to receive  
 1020 notice of the annual meeting, the notice of the annual meeting  
 1021 must be sent by mail, hand delivered, or electronically  
 1022 transmitted to each unit owner. An officer of the association  
 1023 must provide an affidavit or United States Postal Service  
 1024 certificate of mailing, to be included in the official records  
 1025 of the association, affirming that notices of the association  
 1026 meeting were mailed, hand delivered, or electronically  
 1027 transmitted, in accordance with this provision, to each unit  
 1028 owner at the address last furnished to the association.

1029 1. The board of administration shall be elected by written  
 1030 ballot or voting machine. A proxy may not be used in electing  
 1031 the board of administration in general elections or elections to  
 1032 fill vacancies caused by recall, resignation, or otherwise  
 1033 unless otherwise provided in this chapter. At least 60 days  
 1034 before a scheduled election, the association shall mail,  
 1035 deliver, or transmit, whether by separate association mailing,  
 1036 delivery, or electronic transmission or included in another  
 1037 association mailing, delivery, or electronic transmission,  
 1038 including regularly published newsletters, to each unit owner  
 1039 entitled to vote, a first notice of the date of the election.  
 1040 Any unit owner or other eligible person desiring to be a  
 1041 candidate for the board of administration must give written  
 1042 notice to the association at least 40 days before a scheduled  
 1043 election. Together with the written notice and agenda as set  
 1044 forth in this section, the association shall mail, deliver, or

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1045 electronically transmit a second notice of election to all unit  
 1046 owners entitled to vote, together with a ballot ~~that which~~ lists  
 1047 all candidates. Upon request of a candidate, the association  
 1048 shall include an information sheet, no larger than 8 1/2 inches  
 1049 by 11 inches, which must be furnished by the candidate at least  
 1050 35 days before the election, to be included with the mailing,  
 1051 delivery, or electronic transmission of the ballot, with the  
 1052 costs of mailing, delivery, or transmission and copying to be  
 1053 borne by the association. The association is not liable for the  
 1054 contents of the information sheets provided by the candidates.  
 1055 In order to reduce costs, the association may print or duplicate  
 1056 the information sheets on both sides of the paper. The division  
 1057 shall by rule establish voting procedures consistent with this  
 1058 subparagraph, including rules establishing procedures for giving  
 1059 notice by electronic transmission and rules providing for the  
 1060 secrecy of ballots. Elections shall be decided by a plurality of  
 1061 those ballots cast. There is no quorum requirement. However, at  
 1062 least 20 percent of the eligible voters must cast a ballot in  
 1063 order to have a valid election. A unit owner may not permit any  
 1064 other person to vote his or her ballot, and any such ballots  
 1065 improperly cast are invalid. A unit owner who needs assistance  
 1066 in casting the ballot for the reasons stated in s. 101.051 may  
 1067 obtain assistance in casting the ballot. Any unit owner  
 1068 violating this provision may be fined by the association in  
 1069 accordance with s. 719.303. The regular election must occur on  
 1070 the date of the annual meeting. This subparagraph does not apply  
 1071 to timeshare cooperatives. Notwithstanding this subparagraph, an  
 1072 election and balloting are not required unless more candidates  
 1073 file a notice of intent to run or are nominated than vacancies

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1074 exist on the board. Any challenge to the election process must  
 1075 be commenced within 60 days after the election results are  
 1076 announced.

1077 2. Any approval by unit owners called for by this chapter,  
 1078 or the applicable cooperative documents, must be made at a duly  
 1079 noticed meeting of unit owners and is subject to this chapter or  
 1080 the applicable cooperative documents relating to unit owner  
 1081 decisionmaking, except that unit owners may take action by  
 1082 written agreement, without meetings, on matters for which action  
 1083 by written agreement without meetings is expressly allowed by  
 1084 the applicable cooperative documents or law which provides for  
 1085 the unit owner action.

1086 3. Unit owners may waive notice of specific meetings if  
 1087 allowed by the applicable cooperative documents or law. If  
 1088 authorized by the bylaws, notice of meetings of the board of  
 1089 administration, shareholder meetings, except shareholder  
 1090 meetings called to recall board members under paragraph (f), and  
 1091 committee meetings may be given by electronic transmission to  
 1092 unit owners who consent to receive notice by electronic  
 1093 transmission.

1094 4. Unit owners have the right to participate in meetings of  
 1095 unit owners with reference to all designated agenda items.  
 1096 However, the association may adopt reasonable rules governing  
 1097 the frequency, duration, and manner of unit owner participation.

1098 5. Any unit owner may tape record or videotape meetings of  
 1099 the unit owners subject to reasonable rules adopted by the  
 1100 division.

1101 6. Unless otherwise provided in the bylaws, a vacancy  
 1102 occurring on the board before the expiration of a term may be

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1103 filled by the affirmative vote of the majority of the remaining  
 1104 directors, even if the remaining directors constitute less than  
 1105 a quorum, or by the sole remaining director. In the alternative,  
 1106 a board may hold an election to fill the vacancy, in which case  
 1107 the election procedures must conform to the requirements of  
 1108 subparagraph 1. unless the association has opted out of the  
 1109 statutory election process, in which case the bylaws of the  
 1110 association control. Unless otherwise provided in the bylaws, a  
 1111 board member appointed or elected under this subparagraph shall  
 1112 fill the vacancy for the unexpired term of the seat being  
 1113 filled. Filling vacancies created by recall is governed by  
 1114 paragraph (f) and rules adopted by the division.

1115 Notwithstanding subparagraphs (b)2. and (d)1., an association  
 1116 may, by the affirmative vote of a majority of the total voting  
 1117 interests, provide for a different voting and election procedure  
 1118 in its bylaws, which vote may be by a proxy specifically  
 1119 delineating the different voting and election procedures. The  
 1120 different voting and election procedures may provide for  
 1121 elections to be conducted by limited or general proxy.

1122 (f) *Recall of board members.*—Subject to ~~the provisions of~~  
 1123 s. 719.301, any member of the board of administration may be  
 1124 recalled and removed from office with or without cause by the  
 1125 vote or agreement in writing by a majority of all the voting  
 1126 interests. A special meeting of the voting interests to recall  
 1127 any member of the board of administration may be called by 10  
 1128 percent of the unit owners giving notice of the meeting as  
 1129 required for a meeting of unit owners, and the notice shall  
 1130 state the purpose of the meeting. Electronic transmission may  
 1131 not be used as a method of giving notice of a meeting called in

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1132 whole or in part for this purpose.

1133 1. If the recall is approved by a majority of all voting  
 1134 interests by a vote at a meeting, the recall shall be effective  
 1135 as provided in this paragraph herein. The board shall duly  
 1136 notice and hold a board meeting within 5 full business days  
 1137 after ~~of~~ the adjournment of the unit owner meeting to recall one  
 1138 or more board members. At the meeting, the board shall either  
 1139 certify the recall, in which case such member or members shall  
 1140 be recalled effective immediately and shall turn over to the  
 1141 board within 5 full business days any and all records and  
 1142 property of the association in their possession, or shall  
 1143 proceed as set forth in subparagraph 3.

1144 2. If the proposed recall is by an agreement in writing by  
 1145 a majority of all voting interests, the agreement in writing or  
 1146 a copy thereof shall be served on the association by certified  
 1147 mail or by personal service in the manner authorized by chapter  
 1148 48 and the Florida Rules of Civil Procedure. The board of  
 1149 administration shall duly notice and hold a meeting of the board  
 1150 within 5 full business days after receipt of the agreement in  
 1151 writing. At the meeting, the board shall either certify the  
 1152 written agreement to recall members of the board, in which case  
 1153 such members shall be recalled effective immediately and shall  
 1154 turn over to the board, within 5 full business days, any and all  
 1155 records and property of the association in their possession, or  
 1156 proceed as described in subparagraph 3.

1157 3. If the board determines not to certify the written  
 1158 agreement to recall members of the board, or does not certify  
 1159 the recall by a vote at a meeting, the board shall, within 5  
 1160 full business days after the board meeting, file with the

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 1161 division a petition for binding arbitration pursuant to the  
 1162 procedures of s. 719.1255. For purposes of this paragraph, the  
 1163 unit owners who voted at the meeting or who executed the  
 1164 agreement in writing shall constitute one party under the  
 1165 petition for arbitration. If the arbitrator certifies the recall  
 1166 as to any member of the board, the recall shall be effective  
 1167 upon mailing of the final order of arbitration to the  
 1168 association. If the association fails to comply with the order  
 1169 of the arbitrator, the division may take action pursuant to s.  
 1170 719.501. Any member so recalled shall deliver to the board any  
 1171 and all records and property of the association in the member's  
 1172 possession within 5 full business days after ~~of~~ the effective  
 1173 date of the recall.

1174 4. If the board fails to duly notice and hold a board  
 1175 meeting within 5 full business days after ~~of~~ service of an  
 1176 agreement in writing or within 5 full business days after ~~of~~ the  
 1177 adjournment of the unit owner recall meeting, the recall shall  
 1178 be deemed effective and the board members so recalled shall  
 1179 immediately turn over to the board any and all records and  
 1180 property of the association.

1181 5. If the board fails to duly notice and hold the required  
 1182 meeting or fails to file the required petition, the unit owner  
 1183 representative may file a petition pursuant to s. 719.1255  
 1184 challenging the board's failure to act. The petition must be  
 1185 filed within 60 days after the expiration of the applicable 5-  
 1186 full-business-day period. The review of a petition under this  
 1187 subparagraph is limited to the sufficiency of service on the  
 1188 board and the facial validity of the written agreement or  
 1189 ballots filed.

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 1190 ~~6.5-~~ If a vacancy occurs on the board as a result of a  
 1191 recall and less than a majority of the board members are  
 1192 removed, the vacancy may be filled by the affirmative vote of a  
 1193 majority of the remaining directors, notwithstanding any  
 1194 provision to the contrary contained in this chapter. If  
 1195 vacancies occur on the board as a result of a recall and a  
 1196 majority or more of the board members are removed, the vacancies  
 1197 shall be filled in accordance with procedural rules to be  
 1198 adopted by the division, which rules need not be consistent with  
 1199 this chapter. The rules must provide procedures governing the  
 1200 conduct of the recall election as well as the operation of the  
 1201 association during the period after a recall but before ~~prior to~~  
 1202 the recall election.

1203 7. A board member who has been recalled may file a petition  
 1204 pursuant to s. 719.1255 challenging the validity of the recall.  
 1205 The petition must be filed within 60 days after the recall is  
 1206 deemed certified. The association and the unit owner  
 1207 representative shall be named as the respondents.

1208 8. The division may not accept for filing a recall  
 1209 petition, whether filed pursuant to subparagraph 1.,  
 1210 subparagraph 2., subparagraph 5., or subparagraph 7. and  
 1211 regardless of whether the recall was certified, when there are  
 1212 60 or fewer days until the scheduled reelection of the board  
 1213 member sought to be recalled or when 60 or fewer days have not  
 1214 elapsed since the election of the board member sought to be  
 1215 recalled.

1216 Section 12. Paragraph (a) of subsection (3) and subsection  
 1217 (5) of section 719.303, Florida Statutes, are amended to read:  
 1218 719.303 Obligations of owners.—

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1219 (3) The association may levy reasonable fines for failure  
 1220 of the unit owner or the unit's occupant, licensee, or invitee  
 1221 to comply with any provision of the cooperative documents or  
 1222 reasonable rules of the association. A fine may not become a  
 1223 lien against a unit. A fine may be levied on the basis of each  
 1224 day of a continuing violation, with a single notice and  
 1225 opportunity for hearing. However, the fine may not exceed \$100  
 1226 per violation, or \$1,000 in the aggregate.

1227 (a) An association may suspend, for a reasonable period of  
 1228 time, the right of a unit owner, or a unit owner's tenant,  
 1229 guest, or invitee, to use the common elements, common  
 1230 facilities, or any other association property for failure to  
 1231 comply with any provision of the cooperative documents or  
 1232 reasonable rules of the association. This paragraph does not  
 1233 apply to limited common elements intended to be used only by  
 1234 that unit, common elements needed to access the unit, utility  
 1235 services provided to the unit, parking spaces, or elevators.

1236 (5) An association may suspend the voting rights of a unit  
 1237 or member due to nonpayment of any monetary obligation due to  
 1238 the association which is more than 90 days delinquent. ~~A voting~~  
 1239 ~~interest or consent right allocated to a unit or member which~~  
 1240 ~~has been suspended by the association may not be counted towards~~  
 1241 ~~the total number of voting interests for any purpose, including,~~  
 1242 ~~but not limited to, the number of voting interests necessary to~~  
 1243 ~~constitute a quorum, the number of voting interests required to~~  
 1244 ~~conduct an election, or the number of voting interests required~~  
 1245 ~~to approve an action under this chapter or pursuant to the~~  
 1246 ~~cooperative documents, articles of incorporation, or bylaws. The~~  
 1247 suspension ends upon full payment of all obligations currently

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1248 due or overdue the association. The notice and hearing  
 1249 requirements under subsection (3) do not apply to a suspension  
 1250 imposed under this subsection.

1251 Section 13. Paragraph (c) of subsection (5) and subsection  
 1252 (10) of section 720.303, Florida Statutes, are amended to read:

1253 720.303 Association powers and duties; meetings of board;  
 1254 official records; budgets; financial reporting; association  
 1255 funds; recalls.—

1256 (5) INSPECTION AND COPYING OF RECORDS.—The official records  
 1257 shall be maintained within the state and must be open to  
 1258 inspection and available for photocopying by members or their  
 1259 authorized agents at reasonable times and places within 10  
 1260 business days after receipt of a written request for access.  
 1261 This subsection may be complied with by having a copy of the  
 1262 official records available for inspection or copying in the  
 1263 community. If the association has a photocopy machine available  
 1264 where the records are maintained, it must provide parcel owners  
 1265 with copies on request during the inspection if the entire  
 1266 request is limited to no more than 25 pages.

1267 (c) The association may adopt reasonable written rules  
 1268 governing the frequency, time, location, notice, records to be  
 1269 inspected, and manner of inspections, but may not require a  
 1270 parcel owner to demonstrate any proper purpose for the  
 1271 inspection, state any reason for the inspection, or limit a  
 1272 parcel owner's right to inspect records to less than one 8-hour  
 1273 business day per month. The association may impose fees to cover  
 1274 the costs of providing copies of the official records,  
 1275 including, without limitation, the costs of copying. The  
 1276 association may charge up to 50 cents per page for copies made

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 1277 on the association's photocopier. If the association does not  
 1278 have a photocopy machine available where the records are kept,  
 1279 or if the records requested to be copied exceed 25 pages in  
 1280 length, the association may have copies made by an outside  
 1281 vendor or association management company personnel and may  
 1282 charge the actual cost of copying, including any reasonable  
 1283 costs involving personnel fees and charges at an hourly rate for  
 1284 vendor or employee time to cover administrative costs to the  
 1285 vendor or association. The association shall maintain an  
 1286 adequate number of copies of the recorded governing documents,  
 1287 to ensure their availability to members and prospective members.  
 1288 Notwithstanding this paragraph, the following records are not  
 1289 accessible to members or parcel owners:

1290 1. Any record protected by the lawyer-client privilege as  
 1291 described in s. 90.502 and any record protected by the work-  
 1292 product privilege, including, but not limited to, a record  
 1293 prepared by an association attorney or prepared at the  
 1294 attorney's express direction which reflects a mental impression,  
 1295 conclusion, litigation strategy, or legal theory of the attorney  
 1296 or the association and which was prepared exclusively for civil  
 1297 or criminal litigation or for adversarial administrative  
 1298 proceedings or which was prepared in anticipation of such  
 1299 litigation or proceedings until the conclusion of the litigation  
 1300 or proceedings.

1301 2. Information obtained by an association in connection  
 1302 with the approval of the lease, sale, or other transfer of a  
 1303 parcel.

1304 3. Personnel records of association or management company  
 1305 ~~the association's~~ employees, including, but not limited to,

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 1306 disciplinary, payroll, health, and insurance records. For  
 1307 purposes of this subparagraph, the term "personnel records" does  
 1308 not include written employment agreements with an association or  
 1309 management company employee or budgetary or financial records  
 1310 that indicate the compensation paid to an association or  
 1311 management company employee.

1312 4. Medical records of parcel owners or community residents.

1313 5. Social security numbers, driver ~~driver's~~ license  
 1314 numbers, credit card numbers, electronic mailing addresses,  
 1315 telephone numbers, facsimile numbers, emergency contact  
 1316 information, any addresses for a parcel owner other than as  
 1317 provided for association notice requirements, and other personal  
 1318 identifying information of any person, excluding the person's  
 1319 name, parcel designation, mailing address, and property address.  
 1320 However, an owner may consent in writing to the disclosure of  
 1321 protected information described in this subparagraph. The  
 1322 association is not liable for the disclosure of information that  
 1323 is protected under this subparagraph if the information is  
 1324 included in an official record of the association and is  
 1325 voluntarily provided by an owner and not requested by the  
 1326 association.

1327 6. Any electronic security measure that is used by the  
 1328 association to safeguard data, including passwords.

1329 7. The software and operating system used by the  
 1330 association which allows the manipulation of data, even if the  
 1331 owner owns a copy of the same software used by the association.  
 1332 The data is part of the official records of the association.

1333 (10) RECALL OF DIRECTORS.-

1334 (a)1. Regardless of any provision to the contrary contained

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 1335 in the governing documents, subject to ~~the provisions of~~ s.  
 1336 720.307 regarding transition of association control, any member  
 1337 of the board of directors may be recalled and removed from  
 1338 office with or without cause by a majority of the total voting  
 1339 interests.

2. When the governing documents, including the declaration,  
 1341 articles of incorporation, or bylaws, provide that only a  
 1342 specific class of members is entitled to elect a board director  
 1343 or directors, only that class of members may vote to recall  
 1344 those board directors so elected.

(b)1. Board directors may be recalled by an agreement in  
 1346 writing or by written ballot without a membership meeting. The  
 1347 agreement in writing or the written ballots, or a copy thereof,  
 1348 shall be served on the association by certified mail or by  
 1349 personal service in the manner authorized by chapter 48 and the  
 1350 Florida Rules of Civil Procedure.

2. The board shall duly notice and hold a meeting of the  
 1352 board within 5 full business days after receipt of the agreement  
 1353 in writing or written ballots. At the meeting, the board shall  
 1354 either certify the written ballots or written agreement to  
 1355 recall a director or directors of the board, in which case such  
 1356 director or directors shall be recalled effective immediately  
 1357 and shall turn over to the board within 5 full business days any  
 1358 and all records and property of the association in their  
 1359 possession, or proceed as described in paragraph (d).

3. When it is determined by the department pursuant to  
 1361 binding arbitration proceedings that an initial recall effort  
 1362 was defective, written recall agreements or written ballots used  
 1363 in the first recall effort and not found to be defective may be

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 1364 reused in one subsequent recall effort. However, in no event is  
 1365 a written agreement or written ballot valid for more than 120  
 1366 days after it has been signed by the member.

4. Any rescission or revocation of a member's written  
 1368 recall ballot or agreement must be in writing and, in order to  
 1369 be effective, must be delivered to the association before the  
 1370 association is served with the written recall agreements or  
 1371 ballots.

5. The agreement in writing or ballot shall list at least  
 1373 as many possible replacement directors as there are directors  
 1374 subject to the recall, when at least a majority of the board is  
 1375 sought to be recalled; the person executing the recall  
 1376 instrument may vote for as many replacement candidates as there  
 1377 are directors subject to the recall.

(c)1. If the declaration, articles of incorporation, or  
 1379 bylaws specifically provide, the members may also recall and  
 1380 remove a board director or directors by a vote taken at a  
 1381 meeting. If so provided in the governing documents, a special  
 1382 meeting of the members to recall a director or directors of the  
 1383 board of administration may be called by 10 percent of the  
 1384 voting interests giving notice of the meeting as required for a  
 1385 meeting of members, and the notice shall state the purpose of  
 1386 the meeting. Electronic transmission may not be used as a method  
 1387 of giving notice of a meeting called in whole or in part for  
 1388 this purpose.

2. The board shall duly notice and hold a board meeting  
 1390 within 5 full business days after the adjournment of the member  
 1391 meeting to recall one or more directors. At the meeting, the  
 1392 board shall certify the recall, in which case such member or

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 1393 members shall be recalled effective immediately and shall turn  
 1394 over to the board within 5 full business days any and all  
 1395 records and property of the association in their possession, or  
 1396 shall proceed as set forth in subparagraph (d).

1397 (d) If the board determines not to certify the written  
 1398 agreement or written ballots to recall a director or directors  
 1399 of the board or does not certify the recall by a vote at a  
 1400 meeting, the board shall, within 5 full business days after the  
 1401 meeting, file with the department a petition for binding  
 1402 arbitration pursuant to the applicable procedures in ss.  
 1403 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For  
 1404 the purposes of this section, the members who voted at the  
 1405 meeting or who executed the agreement in writing shall  
 1406 constitute one party under the petition for arbitration. If the  
 1407 arbitrator certifies the recall as to any director or directors  
 1408 of the board, the recall will be effective upon mailing of the  
 1409 final order of arbitration to the association. The director or  
 1410 directors so recalled shall deliver to the board any and all  
 1411 records of the association in their possession within 5 full  
 1412 business days after the effective date of the recall.

1413 (e) If a vacancy occurs on the board as a result of a  
 1414 recall and less than a majority of the board directors are  
 1415 removed, the vacancy may be filled by the affirmative vote of a  
 1416 majority of the remaining directors, notwithstanding any  
 1417 provision to the contrary contained in this subsection or in the  
 1418 association documents. If vacancies occur on the board as a  
 1419 result of a recall and a majority or more of the board directors  
 1420 are removed, the vacancies shall be filled by members voting in  
 1421 favor of the recall; if removal is at a meeting, any vacancies

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 1422 shall be filled by the members at the meeting. If the recall  
 1423 occurred by agreement in writing or by written ballot, members  
 1424 may vote for replacement directors in the same instrument in  
 1425 accordance with procedural rules adopted by the division, which  
 1426 rules need not be consistent with this subsection.

1427 (f) If the board fails to duly notice and hold a board  
 1428 meeting within 5 full business days after service of an  
 1429 agreement in writing or within 5 full business days after the  
 1430 adjournment of the member recall meeting, the recall shall be  
 1431 deemed effective and the board directors so recalled shall  
 1432 immediately turn over to the board all records and property of  
 1433 the association.

1434 (g) If the board fails to duly notice and hold the required  
 1435 meeting or fails to file the required petition, the unit owner  
 1436 representative may file a petition pursuant to s. 718.1255  
 1437 challenging the board's failure to act. The petition must be  
 1438 filed within 60 days after the expiration of the applicable 5-  
 1439 full-business-day period. The review of a petition under this  
 1440 paragraph is limited to the sufficiency of service on the board  
 1441 and the facial validity of the written agreement or ballots  
 1442 filed.

1443 ~~(h)-(g)~~ If a director who is removed fails to relinquish his  
 1444 or her office or turn over records as required under this  
 1445 section, the circuit court in the county where the association  
 1446 maintains its principal office may, upon the petition of the  
 1447 association, summarily order the director to relinquish his or  
 1448 her office and turn over all association records upon  
 1449 application of the association.

1450 ~~(i)-(h)~~ The minutes of the board meeting at which the board

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 1451 decides whether to certify the recall are an official  
 1452 association record. The minutes must record the date and time of  
 1453 the meeting, the decision of the board, and the vote count taken  
 1454 on each board member subject to the recall. In addition, when  
 1455 the board decides not to certify the recall, as to each vote  
 1456 rejected, the minutes must identify the parcel number and the  
 1457 specific reason for each such rejection.

1458 ~~(j)(i)~~ When the recall of more than one board director is  
 1459 sought, the written agreement, ballot, or vote at a meeting  
 1460 shall provide for a separate vote for each board director sought  
 1461 to be recalled.

1462 (k) A board member who has been recalled may file a  
 1463 petition pursuant to ss. 718.112(2)(j) and 718.1255 and the  
 1464 rules adopted challenging the validity of the recall. The  
 1465 petition must be filed within 60 days after the recall is deemed  
 1466 certified. The association and the unit owner representative  
 1467 shall be named as respondents.

1468 (l) The division may not accept for filing a recall  
 1469 petition, whether filed pursuant to paragraph (b), paragraph  
 1470 (c), paragraph (g), or paragraph (k) and regardless of whether  
 1471 the recall was certified, when there are 60 or fewer days until  
 1472 the scheduled reelection of the board member sought to be  
 1473 recalled or when 60 or fewer days have not elapsed since the  
 1474 election of the board member sought to be recalled.

1475 Section 14. Subsections (2) and (4) of section 720.305,  
 1476 Florida Statutes, are amended to read:

1477 720.305 Obligations of members; remedies at law or in  
 1478 equity; levy of fines and suspension of use rights.—

1479 (2) The association may levy reasonable fines of up to \$100

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 1480 per violation against any member or any member's tenant, guest,  
 1481 or invitee for the failure of the owner of the parcel or its  
 1482 occupant, licensee, or invitee to comply with any provision of  
 1483 the declaration, the association bylaws, or reasonable rules of  
 1484 the association. A fine may be levied for each day of a  
 1485 continuing violation, with a single notice and opportunity for  
 1486 hearing, except that the fine may not exceed \$1,000 in the  
 1487 aggregate unless otherwise provided in the governing documents.  
 1488 A fine of less than \$1,000 may not become a lien against a  
 1489 parcel. In any action to recover a fine, the prevailing party is  
 1490 entitled to reasonable ~~attorney~~ attorney's fees and costs from  
 1491 the nonprevailing party as determined by the court.

1492 (a) An association may suspend, for a reasonable period of  
 1493 time, the right of a member, or a member's tenant, guest, or  
 1494 invitee, to use common areas and facilities for the failure of  
 1495 the owner of the parcel or its occupant, licensee, or invitee to  
 1496 comply with any provision of the declaration, the association  
 1497 bylaws, or reasonable rules of the association. This paragraph  
 1498 does not apply to that portion of common areas used to provide  
 1499 access or utility services to the parcel. A suspension may not  
 1500 impair the right of an owner or tenant of a parcel to have  
 1501 vehicular and pedestrian ingress to and egress from the parcel,  
 1502 including, but not limited to, the right to park.

1503 (b) A fine or suspension may not be imposed without at  
 1504 least 14 days' notice to the person sought to be fined or  
 1505 suspended and an opportunity for a hearing before a committee of  
 1506 at least three members appointed by the board who are not  
 1507 officers, directors, or employees of the association, or the  
 1508 spouse, parent, child, brother, or sister of an officer,

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 1509 director, or employee. If the committee, by majority vote, does  
 1510 not approve a proposed fine or suspension, it may not be  
 1511 imposed. If the association imposes a fine or suspension, the  
 1512 association must provide written notice of such fine or  
 1513 suspension by mail or hand delivery to the parcel owner and, if  
 1514 applicable, to any tenant, licensee, or invitee of the parcel  
 1515 owner.

1516 (4) An association may suspend the voting rights of a  
 1517 parcel or member for the nonpayment of any monetary obligation  
 1518 due to the association that is more than 90 days delinquent. ~~A~~  
 1519 ~~voting interest or consent right allocated to a parcel or member~~  
 1520 ~~which has been suspended by the association may not be counted~~  
 1521 ~~towards the total number of voting interests for any purpose,~~  
 1522 ~~including, but not limited to, the number of voting interests~~  
 1523 ~~necessary to constitute a quorum, the number of voting interests~~  
 1524 ~~required to conduct an election, or the number of voting~~  
 1525 ~~interests required to approve an action under this chapter or~~  
 1526 ~~pursuant to the governing documents.~~ The notice and hearing  
 1527 requirements under subsection (2) do not apply to a suspension  
 1528 imposed under this subsection. The suspension ends upon full  
 1529 payment of all obligations currently due or overdue to the  
 1530 association.

1531 Section 15. Paragraph (d) is added to subsection (1) of  
 1532 section 720.306, Florida Statutes, and subsections (6) and (9)  
 1533 of that section are amended, to read:

1534 720.306 Meetings of members; voting and election  
 1535 procedures; amendments.—

1536 (1) QUORUM; AMENDMENTS.—

1537 (d) The Legislature finds that the procurement of mortgagee

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 1538 consent to amendments that do not affect the rights or interests  
 1539 of mortgagees is an unreasonable and substantial logistical and  
 1540 financial burden on the parcel owners and that there is a  
 1541 compelling state interest in enabling the members of an  
 1542 association to approve amendments to the association's governing  
 1543 documents through legal means. Accordingly, and notwithstanding  
 1544 any provision of this paragraph to the contrary:

1545 1. As to any mortgage recorded on or after July 1, 2013,  
 1546 any provision in the association's governing documents that  
 1547 requires the consent or joinder of some or all mortgagees of  
 1548 parcels or any other portion of the association's common areas  
 1549 to amend the association's governing documents or for any other  
 1550 matter is enforceable only as to amendments to the association's  
 1551 governing documents that adversely affect the priority of the  
 1552 mortgagee's lien or the mortgagee's rights to foreclose its lien  
 1553 or that otherwise materially affect the rights and interests of  
 1554 the mortgagees.

1555 2. As to mortgages recorded before July 1, 2013, any  
 1556 existing provisions in the association's governing documents  
 1557 requiring mortgagee consent are enforceable.

1558 3. In securing consent or joinder, the association is  
 1559 entitled to rely upon the public records to identify the holders  
 1560 of outstanding mortgages. The association may use the address  
 1561 provided in the original recorded mortgage document, unless  
 1562 there is a different address for the holder of the mortgage in a  
 1563 recorded assignment or modification of the mortgage, which  
 1564 recorded assignment or modification must reference the official  
 1565 records book and page on which the original mortgage was  
 1566 recorded. Once the association has identified the recorded

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 1567 mortgages of record, the association shall, in writing, request  
 1568 of each parcel owner whose parcel is encumbered by a mortgage of  
 1569 record any information that the owner has in his or her  
 1570 possession regarding the name and address of the person to whom  
 1571 mortgage payments are currently being made. Notice shall be sent  
 1572 to such person if the address provided in the original recorded  
 1573 mortgage document is different from the name and address of the  
 1574 mortgagee or assignee of the mortgage as shown by the public  
 1575 record. The association is deemed to have complied with this  
 1576 requirement by making the written request of the parcel owners  
 1577 required under this subparagraph. Any notices required to be  
 1578 sent to the mortgagees under this subparagraph shall be sent to  
 1579 all available addresses provided to the association.

1580 4. Any notice to the mortgagees required under subparagraph  
 1581 3. may be sent by a method that establishes proof of delivery,  
 1582 and any mortgagee who fails to respond within 60 days after the  
 1583 date of mailing is deemed to have consented to the amendment.

1584 5. For those amendments requiring mortgagee consent on or  
 1585 after July 1, 2013, in the event mortgagee consent is provided  
 1586 other than by properly recorded joinder, such consent shall be  
 1587 evidenced by affidavit of the association recorded in the public  
 1588 records of the county in which the declaration is recorded.

1589 6. Any amendment adopted without the required consent of a  
 1590 mortgagee is voidable only by a mortgagee who was entitled to  
 1591 notice and an opportunity to consent. An action to void an  
 1592 amendment is subject to the statute of limitations beginning 5  
 1593 years after the date of discovery as to the amendments described  
 1594 in subparagraph 1. and 5 years after the date of recordation of  
 1595 the certificate of amendment for all other amendments. This

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 1596 subparagraph applies to all mortgages, regardless of the date of  
 1597 recordation of the mortgage.

1598 (6) RIGHT TO SPEAK.—Members and parcel owners have the  
 1599 right to attend all membership meetings and to speak at any  
 1600 meeting with reference to all items opened for discussion or  
 1601 included on the agenda. Notwithstanding any provision to the  
 1602 contrary in the governing documents or any rules adopted by the  
 1603 board or by the membership, a member and a parcel owner have the  
 1604 right to speak for at least 3 minutes on any item, ~~provided that~~  
 1605 ~~the member or parcel owner submits a written request to speak~~  
 1606 ~~prior to the meeting.~~ The association may adopt written  
 1607 reasonable rules governing the frequency, duration, and other  
 1608 manner of member and parcel owner statements, which rules must  
 1609 be consistent with this subsection.

1610 (9) ~~(a)~~ ELECTIONS AND BOARD VACANCIES.—

1611 (a) Elections of directors must be conducted in accordance  
 1612 with the procedures set forth in the governing documents of the  
 1613 association. All members of the association are eligible to  
 1614 serve on the board of directors, and a member may nominate  
 1615 himself or herself as a candidate for the board at a meeting  
 1616 where the election is to be held or, if the election process  
 1617 allows voting by absentee ballot, in advance of the balloting.  
 1618 Except as otherwise provided in the governing documents, boards  
 1619 of directors must be elected by a plurality of the votes cast by  
 1620 eligible voters. Any challenge to the election process must be  
 1621 commenced within 60 days after the election results are  
 1622 announced.

1623 (b) A person who is delinquent in the payment of any fee,  
 1624 fine, or other monetary obligation to the association for more

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1625 than 90 days is not eligible for board membership. A person who  
1626 has been convicted of any felony in this state or in a United  
1627 States District or Territorial Court, or has been convicted of  
1628 any offense in another jurisdiction which would be considered a  
1629 felony if committed in this state, is not eligible for board  
1630 membership unless such felon's civil rights have been restored  
1631 for at least 5 years as of the date on which such person seeks  
1632 election to the board. The validity of any action by the board  
1633 is not affected if it is later determined that a member of the  
1634 board is ineligible for board membership.

1635 (c) Any election dispute between a member and an  
1636 association must be submitted to mandatory binding arbitration  
1637 with the division. Such proceedings must be conducted in the  
1638 manner provided by s. 718.1255 and the procedural rules adopted  
1639 by the division. Unless otherwise provided in the bylaws, any  
1640 vacancy occurring on the board before the expiration of a term  
1641 may be filled by an affirmative vote of the majority of the  
1642 remaining directors, even if the remaining directors constitute  
1643 less than a quorum, or by the sole remaining director. In the  
1644 alternative, a board may hold an election to fill the vacancy,  
1645 in which case the election procedures must conform to the  
1646 requirements of the governing documents. Unless otherwise  
1647 provided in the bylaws, a board member appointed or elected  
1648 under this section is appointed for the unexpired term of the  
1649 seat being filled. Filling vacancies created by recall is  
1650 governed by s. 720.303(10) and rules adopted by the division.

1651 Section 16. This act shall take effect July 1, 2013.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Military Affairs, Space, and Domestic Security, *Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Finance and Tax  
Children, Families, and Elder Affairs  
Criminal Justice  
Environmental Preservation and Conservation

### JOINT COMMITTEE:

Joint Administrative Procedures Committee

### SENATOR THAD ALTMAN

16th District

February 20, 2013

The Honorable Kelli Stargel  
Senate Committee on Regulated Industries, Chair  
324 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairwoman Stargel:

I respectfully request that SB 436, related to *Residential Properties*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Thad Altman".

Thad Altman  
TA/rk

CC: Patrick L. "Booter" Imhof, Staff Director, 330 Knott Building

#### REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB 436  
*(if applicable)*

Name Diana Ferguson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address 119 S Monroe St Ste 202

Phone 850-481-6788

Tall FL 32301  
City State Zip

E-mail dferguson@reynoldslaw.com

Speaking:  For  Against  Information

Representing Community Advocacy Network

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-21-13

Meeting Date

436

Topic Support

Bill Number 480  
(if applicable)

Name Pete Dunbar

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Attorney

Address PO Box 10095

Phone 850-222-3533

Street

Tallahassee, FL 32302

City

State

Zip

E-mail pete@penningtonlaw.com

Speaking:  For  Against  Information

Representing The Real Property, Probate & Trust Law Section of the Florida Bar

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/13  
Meeting Date

Topic Residential Properties

Bill Number 436  
*(if applicable)*

Name TRAVIS MOORE

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
*Street*

Phone 727.421.6902

\_\_\_\_\_  
*City State Zip*

E-mail MOORET@Tampabay.fl.com

Speaking:  For  Against  Information

Representing Community Associations Institute - FLA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/21/13  
Meeting Date

Topic Residential Properties

Bill Number SB 436  
*(if applicable)*

Name Yeline Goin → (Ye-lee-nee)

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address 204 S. Monroe St. Suite 203  
*Street*  
Tallahassee FL 32301  
*City State Zip*

Phone 850-284-2460

E-mail ygoin@becker-potlakoфф.com

Speaking:  For  Against  Information

Representing Community Association Leadership Lobby (CALL)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 21, 2013  
Meeting Date

Topic 436 Strikes All

Bill Number 436  
*(if applicable)*

Name Jennifer Green

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Pres, Liberty Partners of TLH

Address P.O. Box 390  
Street  
Tallahassee FL 32302  
City State Zip

Phone 841-1726

E-mail jennifer@libertypartnersfl.com

Speaking:  For  Against  Information

Representing FICPA opposed to strike all

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**



