FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 1195

FINAL HOUSE FLOOR ACTION:
113 Y's 1 N's

SPONSOR: Rep. Moraitis and Rep. Grant

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/CS/CS/SB 530

SUMMARY ANALYSIS

CS/CS/CS/HB 1195 passed the House on April 29, 2011, and subsequently passed the Senate on May 3, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-196, Laws of Florida, and becomes effective July 1, 2011.

The term "community association" refers to condominium, homeowners', and cooperative associations. Regarding community associations, the bill:

- Provides that a condominium, cooperative, or multifamily residential building that is less than four stories is exempt from installing a manual fire alarm system if the building has an exterior corridor providing a means of egress;
- Provides for the suspension of use rights and election rights of unit or parcel owners who are more than 90 days delinquent in the payment of a monetary obligation and for failure to comply with the association's governing documents and that the voting rights of the suspended unit or parcel owner may not be exercised for any purpose including a quorum; and
- Allows an association to demand payment from a unit or parcel owner's tenant for all unpaid monetary obligations of a unit owner owed to the association.

Regarding condominium associations, the bill:

- Allows condominium unit owners to consent to the disclosure of protected information, e.g. name and telephone numbers for a membership directory;
- Allows unit owners access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee;
- Permits condominium associations to hold closed meetings to discuss personnel matters;
- Provides that an association may also include impact glass and other code compliant windows for hurricane protection;
- Requires a vote of, or written consent by, a majority of the total voting interests of an association in order to enter into agreements and to acquire leaseholds, memberships and other possessory or use interests in lands or facilities;
- Provides for termination of a shared condominium and timeshare property where the improvements have been completely destroyed; and
- Provides for the partial termination of a condominium property.

Regarding homeowners' associations, the bill:

- Amends the definition of declaration of covenants to include multiple written instruments;
- Provides that a person who is 90 days delinquent on financial obligations to the association or who has been convicted of a felony is not eligible to run for election to the board; and
- Authorizes and provides procedures for homeowners associations to contract for communications, information, or Internet services on a bulk rate basis.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

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."[1] A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[2] 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.[3]

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.[4] A declaration of condominium may be amended as provided in the declaration. 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.[5] Condominiums are administered by a board of directors referred to as a "board of administration."[6]

Condominium – Official Records

The official records of the condominium are governed by s. 718.112, F.S. What constitutes the official records is provided in s. 718.112(12)(a), F.S. The official records of a condominium association must be maintained within the state for at least seven years.[7] The records must be made available to the unit owner within 45 miles of the condominium property or within the county in which the condominium property is located. The records must be made available within five working days after a written request is received by the governing board of the association or its designee. The records may be made available by having a copy of the official records of the association available for inspection or copying on the condominium property or association property. Alternatively, the association may offer the option of making the records of the association available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

---

[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grandview at Emerald Hills*, 861 So.2d 494, 496-97 (Fla. 4th DCA 2003).
[4] Section 718.104(5), F.S.
[5] Section 718.110(1)(a), F.S.
[6] Section 718.103(4), F.S.
[7] Section 718.111(12)(b), F.S.

The association must maintain accounting records and separate accounting records for each condominium that the association operates.[8] Section 718.111(12)(c), F.S., provides that all accounting records must be maintained for a period of not less than seven years. It prohibits any person from knowingly or intentionally defacing or destroying accounting records required to be maintained by ch. 718, F.S. It also prohibits a person from knowingly or intentionally defacing or destroying accounting or official records required to be created or maintained for a required period as provided in ch. 718, F.S., or knowingly or intentionally failing to create or maintain accounting records as required with the intent of causing harm to the association or one or more of its members. Persons who violate this provision are subject to a civil penalty as provided in s. 718.501(1)(d)6., F.S. The prohibition in s. 718.111(12)(c), F.S., is substantially similar to the prohibition in s. 718.111(12)(a)11., F.S.

Section 718.111(12)(c), F.S., prohibits unit owner access to certain official records or information in the possession of the association, including:

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records, including but not limited to disciplinary, health, insurance, and personnel records of the association's employees;
- Social security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, and any addresses of a unit owner that are not provided to fulfill the association's notice requirements, and any person identifying information of a unit owner;
- Electronic security measures used to safeguard data, including passwords; and
- Software and operating systems used by the association to allow manipulation of data.

Section 718.111(12)(c), F.S., allows access to the following personal identifying information of a unit: the person's name, lot or unit designation, mailing address, and property address.

Effect of the Bill: Condominiums – Official Records (Section 2)

The bill amends s. 718.111(12)(a)7., F.S., by adding unit owner facsimile numbers as a record to be maintained by the association. The bill provides that the email and facsimile addresses of unit owners are not accessible to other unit owners if consent to receive notice via electronic transmission is not provided in accordance with subparagraph (12)(c)5. of s. 718.111, F.S.

The bill amends s. 718.111(12)(a)11., F.S, to provide that the prohibited defacement or destruction of records relates to the accounting records that are required to be maintained for 7 years. It deletes redundant language relating to the records that are required to be created or maintained by ch. 718, F.S., during the period such records are required to be maintained.

The bill deletes the prohibition in s. 718.111(12)(c), F.S., relating to the defacement or destruction of accounting or official records, including the provision for a civil penalty as provided in

[8] Section 718.111(12)(a)11., F.S.

s. 718.501(1)(d)6., F.S. The deleted provision is substantially similar to an existing prohibition in s. 718.111(12)(a)11., F.S., which is not deleted by this bill.

The bill amends s. 718.111(12)(c)1., F.S., which relates to access to records protected by the lawyer-client privilege, to apply the access restriction to records prepared in anticipation of litigation or proceedings. It deletes the current reference to the litigation being imminent civil or criminal litigation or an imminent adversarial proceeding.

The bill amends s. 718.111(12)(c)3., F.S., which relates to personnel records that are not accessible to unit owners, to include records regarding management company employees. It allows unit owners to have access to written employment agreements, or budgetary or financial records that indicate the compensation paid to an association employee.

The bill amends s. 718.111(12)(c)5., F.S., which relates to information about unit owners that is not accessible to other unit owners, to include facsimile numbers in the list of information that is not accessible to unit owners. However, s. 718.111(12)(c)5., F.S., excludes from its exemption, thus allowing unit owner access, information about unit owners that is provided to fulfill the association's notice requirements, including the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number.

The bill also amends s. 718.111(12)(c)5., F.S., to allow unit owners to consent to the disclosure of protected information. It provides that the association is not liable for the disclosure of protected information if it is included in other official records of the association, is voluntarily provided by an owner and is not requested by the association.

This provision is consistent with the provision in s. 718.111(12)(a)7., F.S., which provides that the association is not liable for the erroneous disclosure of e-mail addresses and facsimile numbers.

Effect of the Bill: Condominium - Fire Safety (Section 1)

The amendment of s. 633.0215, F.S., provided in this bill was signed into law in ch. 2010-174, L.O.F., but a conflicting provision was enacted in ch. 2010-176, L.O.F., which is what is provided in current law.[9]

The bill amends s. 633.0215, F.S., to include cooperative and multifamily residential buildings in the exemption from installing a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in the Florida Fire Prevention Code.

[9] *See* note in s. 633.0215(14), F.S. "As enacted by s. 47, ch. 2010-176. For a description of multiple acts in the same session affecting a statutory provision, see preface to the Florida Statutes, 'Statutory Construction.' Substantially similar material was created as subsection (13) by s. 6, ch. 2010-174, and redesignated as subsection (14) by the editors, and that version reads: (14) A condominium, cooperative, or multifamily residential building that is less than four stories in height and has a corridor providing an exterior means of egress is exempt from the requirement to install a manual fire alarm system under s. 9.6 of the Life Safety Code adopted in the Florida Fire Prevention Code."

Post-Election Certification of Condominium Board Members

The requirements for the association's bylaws are provided in s. 718.112, F.S. Section 718.112(2)(d)3.b., F.S., provides a post-election certification requirement for newly elected board members. Within 90 days of 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 administered by a division-approved condominium education provider.

A board member is automatically suspended from service on the board if he or she fails to timely file the written certification or educational certificate. 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. The validity of any appropriate action is not affected by the association's failure to have the certification on file.

Effect of the Bill: Condominiums – Bylaws (Section 3)

The bill creates s. 718.112(2)(c)3.b., F.S., to allow a condominium association to hold closed meetings to discuss personnel matters.

The bill amends s. 718.112(2)(d)2., F.S., to define the term "candidate" as an eligible person who timely submits the written notice, as described in s. 718.112(2)(d)4.a., F.S., of his or her intent to become a candidate. It also provides an additional exception to the requirement that the terms of all board members expire at the annual meeting. Under the bill, the terms of members with staggered terms will not expire at the annual meeting. In addition, sitting board members, whose terms would otherwise expire at the annual meeting, terms will not expire if there are no candidates.

The bill also amends s. 718.112(2)(d)2., F.S., to:

- Provide that, if the number of board members whose terms have expired exceeds the number of candidates, the candidates become board members upon the adjournment of the annual meeting;
- Provide that, unless the bylaws provide otherwise, any remaining vacancies are filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director;

- Delete the current provision that board members whose terms have expired need not stand for reelection and would be eligible for reappointment if the number of board members whose terms have expired exceeds the number of candidates; and
- Require that candidates comply with the notice of intent to be a candidate requirement in s. 718.112(2)(d)4.a., F.S., and be eligible to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board.

The bill amends s. 718.112(2)(d)4.b., F.S., to revise the post-election certification requirements for newly elected or appointed board members. The bill provides that within 90 days after being elected or appointed to the board, the newly elected or appointed board member may, in lieu of the written certification, submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the election. It also provides that a certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

In addition, the bill amends s. 718.112(2)(d)4.b., F.S., to provide that ch. 718, F.S., does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of the association.

Condominium - Hurricane Protection

Section 718.113(5)(a), F.S., provides that the board may install hurricane shutters or hurricane protection that complies with or exceeds the applicable building code. The association is responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection if the hurricane protection if so provided in the declaration. Otherwise, the maintenance is the responsibility of the owner.

Effect of the Bill: Hurricane Protection (Section 4)

The bill amends s. 718.133, F.S., to provide that impact glass and other code-compliant windows are included in the hurricane protection options available to the association.

Condominium - Association Powers

Section 718.114, F.S., provides the association power to enter into agreements, to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities (agreements) such as country clubs, golf courses, marinas, and other recreational facilities whether or not the lands or facilities are contiguous to the lands of the condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All agreements existing or created before the recording of the declaration must be stated fully and described in the declaration. Subsequent to the recording of the declaration, any agreement not entered into within 12 months following the recording of the declaration shall be considered a material alteration or substantial addition to the real property that is association

property. The association may not acquire or enter into such agreements except as authorized by the declaration as provided in s. 718.113, F.S.

Effect of the Bill: Association Powers (Section 5)

The bill amends s. 718.114, F.S., to provide that an association may not enter into agreements to acquire leaseholds, memberships, or other possessory or use interest in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities after 12 months following the recording of the declaration without a vote of, or written consent by, a majority of the total voting interest or as authorized by the declaration pursuant to s. 718.113, F.S. Such agreements, which are not entered to within 12 months following the recording of the declaration, are a material alteration or substantial addition to the real property that is association property.

Condominiums - Assessments and Foreclosures

Current law defines an "assessment" as the "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."[10] "Special assessment" is defined to mean "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."[11] A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.[12]

Condominiums - Payments by Tenants

Section 718.116(11), F.S., authorizes the association to demand payment of any future monetary obligation from the tenant of a unit owner if the unit owner is delinquent in payment. The association must mail written notice of such action to the unit owner. The tenant is obligated to make such payments. These provisions are comparable to the provisions in ss. 719.108(10) and 720.3085(8), F.S., for tenants in cooperative associations and homeowners' associations, respectively.

The tenant is not required to pay any unpaid past monetary obligations of the unit owner. The tenant is required to pay monetary obligations to the association until the tenant is released by the association or by the terms of the lease, and is liable for increases in the monetary obligations only if given a notice of the increase not less than 10 days before the date the rent is due.

If the tenant has prepaid rent to the unit owner before the receipt of the association's demand for payment, and the tenant provides written evidence of the prepaid rent to the association within 14 days of receipt of the written demand, then the tenant must make all accruing rent payments thereafter to the association. The tenant will receive credit for the prepaid rent for the applicable period, and those payments will be credited against the monetary obligations of the unit owner to the association. A

[10] Section 718.103(1), F.S.
[11] Section 718.103(24), F.S.
[12] Section 718.116(1)(a), F.S.

tenant who responds in good faith to a written demand from an association is immune from any claim from the unit owner.

The landlord and unit owner must provide the tenant a credit against rent payments to the unit owner in the amount of monetary obligations paid to the association. The tenant's liability to the association may not exceed the amount due from the tenant to his or her landlord. If a tenant fails to pay, the association may act as a landlord to evict the tenant under the procedures in ch. 83, F.S. However, the association is not otherwise considered a landlord under ch. 83, F.S., and does not have the duty to maintain the premises as required by s. 83.56, F.S. The tenant's payments do not give the tenant voting rights or the right to examine the books and records of the association. If a court appoints a receiver, the effects of s. 718.116(11), F.S., may be superseded.

Comparable provisions are provided in s. 719.108(10), F.S., relating to tenants in cooperative associations, and s. 720.3085(8), F.S.

Effect of the Bill: Condominiums – Assessments (Section 6)

The bill amends s. 718.116(1), F.S., to provide an association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association which holds a superior lien interest on the unit.

The bill amends s. 718.116(11), F.S., to provide that a tenant may be required upon written demand by the association to pay rent to the association and continue to make rent payments to the association until all monetary obligations of the unit owner related to the unit have been paid in full to the association. The bill deletes the provision that the tenant must have acted in good faith to the association's demand for payment to be immune from any claim by the unit owner, but it maintains the tenant's immunity for claims from the unit owner that relate to the rent once the association has made written demand for the payment.

The bill also provides that the association must provide the tenant with a statutory notice when the association demands payment of rent.

Comparable provisions for collecting the unit owner's unpaid monetary obligations from their tenant are provided in the bill for cooperatives in s. 719.108(10), F.S., and for homeowners' associations in s. 720.3085(8), F.S.

Termination of a Condominium

Section 718.117, F.S., provides for the termination of a condominium when the continued operation of the condominium would constitute economic waste or would be impossible to operate or reconstruct a condominium. To terminate the condominium, the required vote is the lesser of the lowest percentage

of voting interests needed to amend the declaration or as otherwise provided in the declaration for termination of the condominium.[13] The criteria for economic waste or impossibility are:

- The total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the condominium after completion of the repairs; or
- It becomes impossible to operate or reconstruct a condominium in its prior physical configuration because of land-use laws or regulations.

If 75 percent or more of the condominium units are timeshare units, the condominium may be terminated by a plan of termination that is approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.[14]

Section 718.117(3), F.S., provides an optional termination procedure with a lower vote threshold. Regardless of whether continued operation would constitute economic waste or would be impossible, the condominium may be terminated if approved by at least 80 percent of the total voting interests of the condominium, provided that not more than 10 percent of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections thereto.

Section 718.117(4), F.S., provides that a plan of termination is not an amendment subject to s. 718.110(4), F.S., which relates to amendments that may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium.

Section 718.117(9), F.S., provides that the plan for termination must be a written document executed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. The plan may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, in which case the plan must specify the conditions of possession.[15] In the case of a conditional termination, the plan must specify the conditions for termination. A conditional plan will not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed have been recorded that confirm the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests.[16]

Section 718.117(12), F.S, provides for the distribution of the proceeds of sale. Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan must

[13] Section 718.117(2)(a), F.S.
[14] Section 718.117(2)(b), F.S.
[15] Section 718.117(11)(a), F.S.
[16] Section 718.117(11)(b), F.S.

first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair-market values immediately before the termination. The market values are to be determined by one or more independent appraisers selected by the association or termination trustee. The value of the common elements is to be paid to the owners according to their proportionate share in the common elements, as in current law.

Section 718.117(14), F.S., provides that the unit owners' rights and title as tenants in common in undivided interests in the condominium property vest in the termination trustee when the plan is recorded or at a later date specified in the plan. The termination trustee may deal with the condominium property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee may contract for the sale of real property, but the contract is not binding on the unit owners until the plan is approved.

Section 718.117(17), F.S., provides that the condominium property, association property, common surplus, and other assets of the association must be held by the termination trustee. The trustee would hold the property as trustee for the unit owner and lien holders in their order or priority.

Section 718.117(19), F.S., provides that the trustee is not barred from filing a declaration of condominium, or an amended and restated declaration of condominium, for any portion or the property.

Effect of the Bill: Condominium - Termination of Condominium (Section 7)

The bill creates s. 718.117(2)(c), F.S., to provide that a condominium that includes units and timeshare estates where the improvements have been totally destroyed or demolished may be terminated pursuant to a plan of termination proposed by a unit owner upon the filing of a petition in court seeking equitable relief. The bill requires that within ten days after filing the petition the petitioner must record the proposed plan of termination and mail a copy of the petition to:

- Each member of the board of directors and the registered agent of the association;[17]
- The managing entity;[18] as defined in s. 721.05, F.S.;
- Each unit owner and each timeshare estate owner; and
- Each holder of a recorded mortgage lien affecting a unit or timeshare estate.

Any of the above parties may intervene in the proceedings to contest the proposed plan of termination. If no party intervenes within 45 days of the filing of the petition, the petitioner may move the court to enter a final judgment to authorize the plan of termination be implemented. If a party timely intervenes to contest the proposed plan, the plan will not be implemented until a final judgment of the court has been entered finding that the plan is fair and reasonable and authorizing implementation of the plan.

[17] If the association has not been dissolved as a matter of law.
[18] As defined in s. 721.05(22), F.S., "Managing entity" means the person who operates or maintains the timeshare plan pursuant to s. 721.13(1), F.S.

The bill amends s. 718.117(3), F.S., to provide that a condominium may be terminated for all or a portion of the condominium property. Current law does not reference the termination of a portion of the condominium property.

The bill amends s. 718.117(4), F.S., to provide that a plan for partial termination is not an amendment subject to s. 718.110(4),[19] if the ownership share of the common elements of a surviving unit in the condominium remains in the same proportion to the surviving units as it was before the partial termination. In essence, the bill would permit the partial termination of a condominium with a less than unanimous approval of the unit owners.

The bill amends s. 718.117(11), F.S., to provide that the plan for partial termination must:

- Identify the units that survive the partial termination; and
- Provide that the units that survive the termination remain in the condominium form of ownership.

The bill provides that, in a partial termination, title to the surviving units and common elements remain vested in the ownership shown in the public records and do not vest in the termination trustee.

The bill amends s. 718.117(12)(a), F.S., to provide that, in a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined. It also requires that the plan of termination must specify the allocation of the proceeds of sale for the units and common elements.

The bill amends s. 718.117(12)(d), F.S., to provide that liens on terminated units transfer to the proceeds of sale of the portion of the condominium property being terminated attributable to each unit.

Regarding the association, the bill amends s. 718.117(18), F.S., to provide that the association may continue as the condominium association for the property that remains after the partial termination.

The bill amends s. 718.117(19), F.S., to provide that a partial termination does not bar the termination trustee from filing a declaration of condominium for any portion of the property that it terminated under the plan for partial termination. The termination plan may also provide for the simultaneous filing of an amendment to the declaration of condominium or an amended and restated declaration of condominium for any remaining portion of the condominium property.

Condominium – Sanctioning Unit Owners

Section 718.303(3), F.S., provides for the assessment of fines and provides penalties for failure to pay a monetary obligation to the association. It 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. The suspension may be, for a reasonable period of time, for the right of a

[19] Section 718.110(4), F.S., requires that all unit owners must approve any amendment that changes the configuration or size of any unit in any material fashion, materially alters or modifies the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses.

unit owner or a unit's occupant, licensee, or invitee, to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. The declaration of condominium or the bylaws of the association must authorize the suspension. A fine may not exceed $100 per violation, but may be levied on each day of a violation. A fine does not become a lien on the property. A fine against a unit owner may not in the aggregate exceed $1,000. Before a suspension or fine is imposed, notice and an opportunity for a hearing must be provided.

Suspensions may not be imposed by an association unless it first gives at least 14-days notice and an opportunity for a hearing to the unit owner or occupant, if applicable. Associations may provide in their bylaws or declaration of condominium that a unit owner's voting rights may be suspended due to nonpayment of assessments, fines, or other charges payable to the association which are delinquent in excess of 90 days. The suspension shall end when the payment due or overdue to the association is paid in full.

Effect of the Bill: Condominiums – Obligations of Owners and Occupants (Section 8)

The bill amends subsection (3) of s. 718.303, F.S., by deleting the provision authorizing the suspension of rights when a unit owner is more than 90 days delinquent in the payment of a monetary obligation. The bill adds the deleted provision from subsection (3) of s. 718.303, F.S., to a new subsection (4).

The bill creates s. 718.303(3)(a), F.S., to authorize associations to 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.

The bill also includes, in subsection (4) of s. 718.303, F.S., a provision that provides the 14-day notice and a hearing are not required when the association suspends use rights when an owner is more than 90 days delinquent in the payment of any monetary obligation. A hearing is still required before a fine may be imposed and a board meeting is required before suspension of use rights.

The bill amends subsection (5) of s. 718.303, F.S., which relates to suspending the voting rights of a member due to nonpayment of a monetary obligation, to provide that the suspension of a member's voting rights may not be exercised or considered for any purpose, including a quorum, an election, or the votes required to approve an action. It also provides that the notice and hearing requirement for fines in subsection (3) do not apply to suspensions under this subsection.[20]

The bill creates subsection (6) of s. 718.303, F.S., to provide that all suspensions of use rights under subsection (4) and voting rights under subsection (5) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

[20] Section 718.303(3), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association may levy a fine. The fine cannot be levied if the committee does not agree with the fine.

The bill deletes the notice and hearing provisions in the current subsection (4) of s. 718.303, F.S, which relate to fines and suspension of use rights. The deleted provisions are redundant of the notice and hearing provisions in subsections (3), (4), (5), and (6) of s. 718.303, F.S.

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

Distressed Condominium Relief Act

The "Distressed Condominium Relief Act" in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

Section 718.703(1), F.S., defines the term "bulk assignee" to mean a person who acquires more than seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

Section 718.703(2), F.S., defines the term "bulk buyer" as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the right to:

- Conduct sales, leasing, and marketing activities within the condominium;
- Be exempt from making working capital contributions that arise out of or in connection with the bulk buyer's acquisition of a bulk number of units; and
- Be exempt from any rights of first refusal which may be held by the association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to any third-party purchaser concerning one or more units.

Section 718.704, F.S., provides for the assignment and assumption of developer rights. It provides that a bulk assignee assumes all the duties and responsibilities of the developer. The bulk assignee is not liable for:

- The warranties of a developer under ss. 718.203(1) or 718.618, F.S.; however, the bulk assignee would assume the warranties for design, construction, development, or repair work performed by or on behalf of the bulk assignee;
- The obligation to fund converter reserves for a unit not acquired by the bulk assignee;
- The obligation to provide converter warranties on any portion of the condominium property except as provided in a contract for sale between the assignee and a new purchaser;
- Providing the condominium association with a cumulative audit of the association's finances from the date of formation, except for the period that the bulk assignee elects a majority of the board; and
- The developer's failure to fund previous assessments or resolve budget deficits, but the bulk assignee must provide an audit for the period in which the assignee elects a majority of the

board members, except when the bulk assignee receives the assignment of rights of the developer to guarantee assessment levels and fund budget deficits.

Section 718.705, F.S., provides for the transfer of control of the condominium board of administration to the unit owners other than the developer, if a bulk owner is entitled to elect a majority of the board members. The condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a buyer, or to be owned by anyone other than the developer, until the parcel is conveyed to a buyer who is not the bulk assignee.

Section 718.706, F.S., provides for the sale or lease of units by a bulk assignee or a bulk buyer. It provides that, prior to the sale or lease of units for a term of more than five years, a bulk assignee or a bulk buyer must file the specified documents with the division and provide the documents to a prospective purchaser or tenant.

Section 718.707, F.S., provides a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2012. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Effect of the Bill: Distressed Condominium Relief Act - Definitions (Section 9)

The bill amends s. 718.703, F.S., to redefine the terms “bulk assignee” and “bulk buyer.” The bill further distinguishes the differences between the two classifications.

The bill amends the definition of “bulk assignee” in s. 718.703(1), F.S., to provide that a bulk assignee is one who acquires seven condominium parcels in a single condominium. Current law does not specify whether the seven condominium units are in a single condominium. It further revises the definition for a bulk assignee to include a final judgment or certificate of title issued at a foreclosure sale within the list of means by which a bulk assignee receives the assignment of any of the developer rights.

The bill also amends s. 718.703, F.S., to clarify the status of a mortgagee or its assignee as a bulk assignee or developer. A mortgagee or its assignee does not become a developer if it acquires condominium units and receives an assignment of some or all of a developer rights. However, the mortgagee or its assignee would be deemed a developer if they exercise any of the developer rights other than those described in subsection (2) of s. 718.703, F.S.

Further, the bill amends the definition of “bulk buyer” in s. 718.703(2), F.S., to provide that a bulk buyer is one who acquires seven condominium parcels in a single condominium, but does not receive an assignment of any developer rights, or receives only some or all of the certain enumerated rights.

Effect of the Bill: Distressed Condominium Relief Act – Developer Rights (Section 10)

The bill amends s. 718.704, F.S., to revise the provisions relating to the assignment of developer rights by a “bulk assignee” and “bulk buyer.” It provides that the bulk assignee is deemed to have assumed

the obligations of a developer when it acquires title to the units. This specifies that the assumption of developer obligations is prospective.

The bill amends subsections (1) and (2) of s. 718.704, F.S., to provide that the bulk assignee is liable for the developer's warrantees expressly provided in the prospectus, offering circular, or contract for purchase and sale.

The bill amends s. 718.704(5), F.S., to provide that the assignment of developer rights may be made by a mortgagee or assignee who has acquired title to the units and received an assignment of rights. It also clarifies that the previous bulk assignee may assign developer rights if the developer rights were held by the predecessor in title to the bulk assignee.

The bill amends s. 718.704(5), F.S., to provide that if more than one acquirer of condominium parcels in the same condominium receive an assignment of developer rights, the bulk assignee is the acquirer whose instrument of assignment is recorded first in the public records of the county in which the condominium is located. It further provides that any subsequent purported bulk assignee may still qualify as a bulk buyer.

Effect of the Bill: Distressed Condominium Relief Act – Transfer of Control (Section 11)

The bill amends s. 718.705, F.S., to provide if, at the time the bulk assignee acquires title to the units and receives an assignment of the developers rights, the developer has not relinquished control of the board of administration, for the purposes of determining the timing for transfer of control of the board of administration, a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.

The bill also provides that the bulk assignee is not required to deliver items and documents that he or she does not possess if some of the items were or should have been in existence before the bulk assignee acquired the units.

Effect of the Bill: Distressed Condominium Relief Act – Disclosures (Section 12)

The bill amends s. 718.706, F.S., to revise the provisions relating to bulk assignee and bulk buyers offering units for sale or lease. The bill amends ss. 718.706(1) and (2), F.S., to provide that the documents must be filed, provided or disclosed before offering more than seven units in a single condominium for sale or lease for a term exceeding five years.

The bill also amends s. 718.706(1), F.S., to revise the required disclosure that bulk assignees and bulk buyers must include in purchase contracts if certain financial information is not available despite good faith efforts by the bulk assignee or bulk buyer to obtain it. In current law, the disclosure gives notice that the financial information report required under s. 718.111(13), F.S., is not available. The bill revises the disclosure to provide that it relates to all or a portion of the financial information report. It also revises the disclosure to provide that the financial information report relates to the period before the

seller's acquisition of the unit instead of the time period immediately preceding the fiscal year of the association.

The bill provides that the disclosure requirements in s. 718.706(2), F.S., apply to tenants under a lease for a term exceeding 5 years.

The bill amends s. 718.706(5), F.S., to exempt bulk assignees and bulk buyers from the filing and disclosure requirements in subsections (1) and (2) of s. 718.706, F.S., if all of the units they own are offered and conveyed to a single purchaser in a single sale. The bill deletes the current provisions in this subsection that require the bulk buyer to comply with the requirements in the declaration for the transfer of a unit. It also deletes the provision that the bulk buyer is not entitled to any exemptions afforded a developer or successor developer under ch. 718, F.S., regarding the transfer of a unit.

Effect of the Bill: Distressed Condominium Relief Act – Time Limits for Classification (Section 13)

The bill amends s. 718.707, F.S., to provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2012. This provision appears to create a two-year window for classification as a bulk assignee or bulk buyer.

Cooperative Associations

Section 719.103(12), F.S., defines a "cooperative" as:

> 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.[21] In practice, there is little difference between a condominium and a cooperative.

Effect of the Bill: Cooperatives – Rents and Assessments (Section 14)

Current law only authorizes the cooperative association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill amends s. 719.108(10), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to

[21] *See* ss. 719.106(1)(g) and 719.107, F.S.

the association have been paid in full. The bill deletes the provision that the tenant must have acted in good faith to the association's demand for payment in order to be immune from any claim by the unit owner, but it maintains the tenant's immunity for claims from the unit owner that relate to the rent once the association has demanded payment.

The bill also provides that the association must provide the tenant with a statutory notice when the association demands payment of rent.

Comparable provisions for collecting a unit owner's unpaid monetary obligations from their tenant are provided in the bill for condominium associations in s. 718.116(11), F.S., and for homeowners' association in s. 720.3085(8), F.S.

Cooperatives - Sanctioning Unit Owners

Section 719.303(3), F.S., allows 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.

Effect of the Bill: Cooperatives – Obligations of Owners (Section 15)

The bill amends s. 719.303(3), F.S., which sets forth the provisions for fines by cooperative associations, to delete the requirement that the cooperative documents must provide for the ability to fine a unit owner.

The bill creates s. 719.303(3)(a), F.S., to authorize an association to 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.

The bill creates s. 719.303(4), F.S., to authorize a cooperative association 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. The suspension may be until the monetary obligation is paid. The suspension may be directed to the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. For the suspension of use rights, the notice and hearing requirements in s. 719.303(3), F.S., do not apply.[22]

The bill creates s. 719.303(5), F.S., to authorize a cooperative association to suspend the voting rights of members who are delinquent for more than 90 days in the payment of a monetary obligation to the association. The bill provides that the voting rights allocated to the unit which has been suspended may not be exercised for any purpose including a quorum, an election, or to approve an action. The

[22] Section 719.303(3), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association may levy a fine. The fine cannot be levied if the committee does not agree with the fine.

suspension ends when all due or unpaid monetary obligations are paid. For the suspension of voting rights, the notice and hearing requirements in s. 719.303(3), F.S., also do not apply.

The bill creates s. 719.303(6), F.S., to provide that all suspensions of use rights under subsection (4) and voting rights under subsection (5) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

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

Homeowners' Associations – Background

Florida law provides statutory recognition to corporations that operate residential communities in this state, provides procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.[23]

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.[24] Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 617, F.S., relating to not-for-profit corporations.[25]

Homeowners' associations are administered by a board of directors whose members are elected.[26] 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 the recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.[27] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[28]

Effect of the Bill: Declaration of Covenants (Section 16)

The bill amends s. 720.301(4), F.S., to modify the definition of declaration of covenants to provide that a declaration of covenants or declaration may be comprised or more than one written instrument.

[23] *See* s. 720.302(1), F.S.
[24] Section 720.301(9), F.S.
[25] Section 720.302(5), F.S.
[26] *See* ss. 720.303 and 720.307, F.S.
[27] *See* ss. 720.301 and 720.303, F.S.
[28] Section 720.303(1), F.S.

Homeowners' Associations – Board Meetings

Section 720.303(2), F.S., provides meetings of the board of directors of an association occur whenever a quorum of the board gathers to conduct association business. All meetings of the board must be open to all members, except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Members have the right to attend all meetings of the board and to speak on any matter placed on the meeting agenda by petition of the voting interests for at least 3 minutes.[29] The association may adopt written reasonable rules expanding the right of members to speak and governing the frequency, duration, and other manner of member statements. Such rules adopted by the board must be consistent with s.720.303(2)(b), F.S., and may include a sign-up sheet for members wishing to speak.

Homeowners' Associations – Inspection and Copying of Records

Section 720.303(5), F.S., provides for the inspection and copying of homeowners' association records. Generally, the official records of the association must be open to the association's membership for inspection and available for photocopying within 10 days of a written request for access. Section 720.303(5)(a), F.S., creates a rebuttable presumption that the association has willfully failed to comply with a member's written request to inspect its records if the association does not provide the member access to the records within ten days of the request. The member's request must be submitted by certified mail, return receipt requested.

Section 720.303(5)(c), F.S., authorizes the association to charge the member for the actual cost of copying records, and provides that the actual cost of copying records includes reasonable costs involving personnel fees and charges at an hourly rate for employee time to cover the administrative costs to the association. The copies may be made by the management company.

Section 720.303(5)(c)1., F.S., lists the official documents of the homeowners' association that are not accessible to members. These include:

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a parcel;
- Personnel records, payroll records of the association's employees, but not limited to disciplinary, payroll, health, and insurance records;
- Medical records of parcel owners or community residents;
- Social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address;

[29] To place an item on the agenda of the board meeting, 20% or more of the total voting interest of the association must file a petition with the board making the request.

- Any electronic security measure that is used by the association to safeguard data, including passwords; and
- The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Regarding records that are protected by the attorney-client privilege and that were prepared exclusively for civil or criminal litigation, s. 720.303(5)(c)1., F.S., provides that the protection lasts until the conclusion of the litigation or administrative proceedings.

These requirements are consistent with s. 718.111(12)(c), F.S., which exempts the same information from the open records requirements for condominium associations.

Effect of the Bill: Homeowners' Associations - Official Records (Section 17)

The bill amends s. 720.303(3)(b), F.S., to provide that the right to attend board meetings includes the right to speak at the meeting with respect to all designated items on the agenda, instead of only the items placed on the agenda by petition of the voting interest. The bill also removes the statutory three minute speaking time limit for members.

The bill revises the provisions related to access to the official records of a homeowners' association. It amends s. 720.303(5)(c)1., F.S., which relates to access to records protected by the lawyer-client privilege, to apply the access restriction to records prepared in anticipation of litigation or proceedings. It deletes the current reference to the litigation being imminent civil or criminal litigation or an imminent adversarial proceeding.

The bill amends s. 720.303(5)(c)3., F.S., which relates to personnel records that are not accessible to unit owners, to allow unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee.

The bill amends s. 720.303(5)(c)5., F.S., by adding unit owner facsimile numbers as a record to be maintained by the association but is not accessible to members or parcel owners.

The bill amends s. 720.303(5)(c)5., F.S., to allow unit owners to consent to the disclosure of protected information. It provides that the association is not liable for the disclosure of protected information if it is included in other official records of the association, is voluntarily provided by an owner, and is not requested by the association.

Homeowners' Associations – Sanctioning Parcel Owners

Section 720.305(2), F.S., authorizes a homeowners' association to suspend a unit owner's use rights until the unit owner's monetary obligation to the association is paid if the unit owner is delinquent for more than 90 days. The suspension of the parcel owner's right to use association property does not apply to common areas that provide access or utility services to the parcel. Any fine or suspension

must be imposed at a properly noticed board meeting. The owner, and, if applicable, the owner's occupant, licensee, or invitee must be notified of the fine or suspension by mail or hand delivery.

An association may levy a fine of up to $100 per violation. The fine may be levied for each day of the violation and may not exceed $1,000 in the aggregate. A fine of less than $1,000 may not become a lien against a parcel. If the association imposes a fine or suspension, the association must provide written notice by mail or hand delivery to the parcel owner or, in some instances, any tenant, licensee, or invitee of the parcel owner.

Effect of the Bill: Homeowners' Associations – Obligations of Members (Section 18)

The bill revises the suspension or use and voting rights provisions in s. 720.305, F.S.

The bill creates s. 720.305(2), F.S., by deleting the provision authorizing the suspension of rights when a unit owner is more than 90 days delinquent in the payment of a monetary obligation. The bill moves the deleted provision to s. 718.305(3), F.S. Regarding the suspension of use rights when a member is more than 90 days delinquent in the payment of a monetary obligation, s. 720.305(3), F.S., provides that the notice and hearing requirements of subsection (2) of s. 720.305, F.S., do not apply.

Section 720.305(2), F.S., also provides that the association may levy a reasonable fine against any member or any member's tenant, guest or invitee for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

The bill creates s. 720.305(2)(a), F.S., to authorize a homeowners' association to suspend, for a reasonable period of time, the rights of a member or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel, or its occupant, licensee, or invitee, to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

The bill amends s. 720.305(2)(a), F.S., to delete the provision that the suspension of use rights do not apply to the portion of the common areas that must be used to access the parcel or its utility service. The bill moves this provision to the new subsection (3) of s. 720.305, F.S.

The bill amends s. 718.305(4), F.S., to allow the association to suspending the voting rights of a member due to nonpayment of a monetary obligation in excess of 90 days. The bill also provides that a voting right or consent interest allocated to a parcel which has been suspended may not be exercised for any purpose including a quorum, an election, or to approve an action. The notice and hearing requirement for fines in subsection (3) do not apply to suspensions under this subsection.

The bill creates s. 718.303(5), F.S., to provide that all suspensions of use rights under subsection (3) and voting rights under subsection (4) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

The suspension provisions in s. 720.305, F.S., are substantially similar to the suspension provisions in the bill for condominiums in s. 718.303, F.S., and for cooperative associations in s. 719.303, F.S.

Effect of the Bill: Homeowners' Associations – Elections and Board Vacancies (Section 19)

The bill amends s. 720.306(9), F.S., to provide that a person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association for more than 90 days is not eligible for board membership. The bill also provides that a person who has been convicted of a felony is not eligible for board membership unless that person's civil rights have been restored for a least five years as of the date on which the person seeks election to the board. The bill provides that the validity of any action by the board is not affected if it is later determined that a member of the board is ineligible for board membership.

Effect of the Bill: Homeowners' Associations – Assessments and Liens (Section 20)

The bill amends s. 720.3085(2), F.S., to provide an association, or its successor or assignee, that acquires title to a parcel through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association, which holds a superior lien interest on the parcel.

Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill amends s. 720.3085(8), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make rent payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. The bill deletes the provision that the tenant must have acted in good faith to the association's demand for payment to be immune from any claim by the unit owner, but it maintains the tenant's immunity for claims from the unit owner that relate to the rent once the association has demanded payment.

The bill also provides that the association must provide the tenant with a statutory notice when the association demands payment of rent.

The bill amends s. 720.3085(8)(b), F.S., to provide that the liability of the tenant may not exceed the amount due to the tenant's landlord. An identical provision is included under current law in s. 718.116(11)(b), F.S., relating to condominium associations, and in s. 719.108.(10)(b), F.S., relating to cooperative associations.

Comparable provisions for collecting a homeowner's unpaid monetary obligations from their tenant are provided in the bill for condominium associations in s. 718.116(11), F.S., and for cooperatives in s. 719.108(10), F.S.

Effect of the Bill: Homeowners' Associations – Bulk Service Contracts (Section 21)

The bill amends s. 720.309, F.S. to authorize homeowners associations to contract for communications services, as defined in s. 202.11, F.S., information services, or internet services on a bulk rate basis. The contract for bulk information services or internet services shall be deemed an operating expense of the association. The association's governing documents must authorize such contracts before the authority can be exercised. However, if the governing documents do not authorize such contract, the board may enter into the contract, and the cost of the service will be an operating expense to be allocated on a per-unit basis rather than a percentage basis. The costs will be assessed on a per-unit basis even if the governing documents provide for other than an equal sharing of operating expenses.

The bill also provides that any contract entered into before July 1, 2011, in which the cost of the service is not equally divided among all homeowners, may be changed to allocate the cost equally among all parcels. The vote to change the allocation must be by the vote of a majority of the voting interests present at a regular or special meeting of the association.

The bill creates s. 720.309(2)(a), F.S., to allow the homeowners to terminate a bulk rate contract entered into by the board of directors. The vote to terminate the contract must be by the majority of the voting interests present at the next regular or special meeting of the association, whichever occurs first. The contract would be deemed ratified if not terminated at that meeting.

The bill creates s. 720.309(2)(b), F.S., to allow the following specified homeowners may discontinue the services without incurring disconnect fees, penalties, or subsequent service charges, or be required to pay for the costs allocated to their property:

- A hearing-impaired or legally blind parcel owner who does not occupy the parcel with a non-hearing-impaired or sighted person; or
- Any parcel owner receiving Social Security supplemental income;
- Any parcel owner who receives food assistance as administered by the Department of Children and Family Services pursuant to s. 414.31, F.S.

The expense of the contract must be shared among all the participating parcel owners, and the payment of the expense may be enforced using the provision in s. 720.3085, F.S., which relates to the enforcement of assessment payments.

The cost will be allocated to the homeowner whether or not the homeowner uses the contracted communication service or has contracted with another communication service provider. Payments can be enforced by the association by securing a lien on the property under s. 720.3085, F.S. The homeowner's property may be foreclosed upon by the association for nonpayment of the assessment for the communication service. Communication services under s. 202.11(2), F.S., include:

> The transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium

or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

It does not include, among other items, internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

The bill creates s. 720.309(2)(c), F.S., to provide that any parcel owner or tenant must be afforded access to any available franchised or licensed cable television service paid directly to the service provider by the resident. The resident or the cable or video service provider cannot be required to pay anything of value in order to obtain or provide such service, except those charges normally paid for like services by other residents of single-family homes not located in the community but which are within the same franchised or licensed area, and except for installation charges agreed to between the resident and the provider.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.