

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1410

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and
Senator Fasano

SUBJECT: Homeowners' Associations

DATE: April 3, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/1 amendment</u>
2.	<u>Maclure</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute allows a homeowners' association to institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members on matters of common interest to the members. If the litigation involves an amount above \$100,000, however, the association must obtain the approval of the voting interests at a meeting of the association members before commencing the litigation. The committee substitute specifically does not limit the statutory or common-law right of an individual or class to bring any action without participation of the association.

The committee substitute also prescribes that, unless otherwise provided in the governing documents of an association, an amendment may not materially or adversely alter the voting interest of a parcel or increase the percentage by which a parcel shares in common expenses of a homeowners' association unless the record parcel owner and all record owners of liens join in the execution of the amendment. Under the committee substitute, a change in quorum requirements is not an alteration of voting interests.

In addition, the committee substitute allows the board of directors of an incorporated homeowners' association to preserve a covenant or restriction, or a portion of such covenant or restriction, if the action is approved by a two-thirds vote of the board of directors of the association. Under existing law, preservation of the covenant or restriction must be approved by a majority vote at a meeting of the membership where a quorum is present. Also, the committee substitute contains requirements for a homeowners' association that is filing the notice to preserve covenants and restrictions under the marketable record title act.

This bill substantially amends the following sections of the Florida Statutes: 712.05, 712.06, 720.303, and 720.306.

II. Present Situation:

Homeowners' Associations

Chapter 720, F.S., pertains to homeowners' associations that are responsible for the operation and maintenance of a community where membership is mandatory and the property is subject to assessments that may become a lien against the property.¹ Specifically, ss. 720.301-720.312, F.S., provide operating procedures and offer protection for the individual rights of association members without impairing the ability of the association to perform its functions.² The powers and duties of an association include those set out in ch. 720, F.S., as well as those set forth in the governing documents³ of specific homeowners' associations.

Each member of an association, as well as a member's tenants, guests, and invitees, and each association is governed by ch. 720, F.S., and the governing documents of the association. Any action to redress the alleged failure or refusal to comply with any of these provisions may be brought by the association or any member against: the association itself; a member; a director or officer of an association who willfully and knowingly fails to comply with these provisions; or a tenant, guest, or invitee occupying a parcel or using the common areas.⁴ The prevailing party in the action is entitled to reasonable attorney's fees and costs. Chapter 720, F.S., also provides an option to litigation. The Legislature recognizes the role of alternative dispute resolution in reducing court dockets and trials and offering a more efficient, cost-effective alternative to litigation. Accordingly, at any time after a complaint is filed relating to a dispute under the homeowners' association law, the court may order mediation or arbitration.⁵

A member of a homeowners' association has the right to participate in meetings of the membership and to exercise his or her voting interest.⁶ The governing documents may not be amended unless the amendment has been presented to the members for their approval according to the requirements of the governing documents. If the governing documents do not provide for a threshold of approval, the amendment must be approved by two-thirds of the voting interests of the association. In addition, when an amendment affects the vested rights of parcel owners, owners affected by the change and all affected record owners of liens must join the execution of an amendment.⁷

¹ Section 720.301(7) and (9), F.S.

² Section 720.302(1), F.S.

³ The "governing documents" are the "recorded declaration of covenants for a community, and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto," as well as the "articles of incorporation and bylaws of the homeowners' association, and any duly adopted amendments thereto" (s. 720.301(6), F.S.).

⁴ Section 720.305(1), F.S.

⁵ Section 720.311, F.S.

⁶ Section 720.306(2), (6), and (7), F.S.

⁷ Section 720.306(1), F.S.; *see also* *Palma v. Townhomes of Oriole Ass'n, Inc.*, 610 So. 2d 112 (Fla. 4th DCA 1992).

Marketable Record Titles to Real Property

Chapter 712, F.S., governs the conditions under which a person has marketable record title to real property, and it also prescribes how a person may protect a claim of interest against that property or how a homeowners' association may preserve a covenant or restriction related to that property. A person who has been vested with an estate in land of record for at least 30 years is deemed to have a marketable record title to the estate in that land – free and clear of all claims except as otherwise provided by law.⁸ Marketability, however, does not extinguish any covenant or restriction that is preserved by the filing of proper notice.⁹ A homeowners' association that desires to preserve a covenant or restriction, or any portion of a covenant or restriction, may do so by filing for the record a written notice, which shall have the effect of preserving the covenant or restriction for a period not to exceed 30 years. A homeowners association, however, may file the notice only if the preservation of the covenant or restriction is approved by a majority vote at a meeting of the association membership where a quorum is present.¹⁰

The required content of the notice to be filed includes:

- The name of the homeowners' association desiring to preserve the covenant or restriction and the post office address of the association;
- The name and post office address of an owner or of the person in whose name the property is assessed on the last completed tax assessment roll of the county at the time of filing;
- A description of the land affected by the notice; and
- A copy of the covenant or restriction.¹¹

If the claim is based on an instrument of record or a recorded covenant or restriction, the instrument must be sufficiently described to identify it, including having a reference to the book and page in which it is recorded.¹²

III. Effect of Proposed Changes:

This committee substitute authorizes a homeowners' association to bring legal actions on behalf of the members regarding matters common to the members, such as common areas, roofs, and property taxes on commonly used facilities. The committee substitute also prescribes conditions under which a homeowners' association may amend its governing documents in a manner that materially or adversely alters the voting interest associated with a parcel or increases the parcel's share in common expenses.

Further, the committee substitute allows the board of directors of an incorporated homeowners' association to preserve a covenant or restriction if the action is approved by a two-thirds vote of the board, instead of approved by the members as required under current law. Also, the

⁸ Section 712.02, F.S.

⁹ Section 712.03, F.S.

¹⁰ Section 712.05(1), F.S.

¹¹ Section 712.06(1)(a)-(d), F.S.

¹² Section 712.06(1)(e), F.S.

committee substitute contains requirements for a homeowners' association that is filing the notice to preserve covenants and restrictions under the marketable record title act.

Section 1 provides that, after control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members. These matters of common interest include, but are not limited to:

- Common areas;
- The roof or structural components of a building, or other improvements for which the association is responsible;
- Mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible;
- Representations of the developer pertaining to any existing or proposed commonly used facility; and
- Protesting ad valorem taxes on commonly used facilities.

The committee substitute also provides that the association may defend actions in eminent domain or bring inverse condemnation actions.

However, before initiating litigation in the name of the association involving an amount exceeding \$100,000, the association must obtain the affirmative approval of a majority of the voting interests during a meeting of the members at which there is a quorum. The committee substitute further specifies that the changes do not limit the statutory or common-law right of an individual or class of members to bring any action without the participation of the association.

Section 2 provides that, unless otherwise provided in the governing documents of an association or in the statutes governing homeowners' association and not-for-profit corporations, an amendment may not materially or adversely alter the voting interest of a parcel or increase the percentage by which a parcel shares in the common expenses of a homeowners' association unless the record parcel owner and all record owners of liens join in the execution of the amendment. The committee substitute states that a change in quorum requirements is not an alteration of voting interests.

Section 3 provides that a homeowners' association may file a notice to preserve a covenant or restriction if that action is approved by two-thirds of the board of directors of the association at a meeting of which the members of the association are informed. Under current law, the preservation of the covenant or restriction requires approval by a majority of the association members at a meeting of the membership where a quorum is present. The committee substitute requires the board to mail or hand-deliver a "Statement of Marketable Record Title Action" (see Section 4 below) to the association members at least 7 days before the meeting.

Section 4 revises the content that is required, under s. 712.06, F.S., in the notice that a homeowners' association files to preserve a covenant or restriction. Under the committee substitute, the board of the homeowners' association may submit with the notice an affidavit affirming that the board mailed or hand-delivered a "Statement of Marketable Title Action" to

the homeowners' association members. The committee substitute prescribes the language of the statement to be mailed or hand-delivered to the members.

The committee substitute also specifies that if a claim is based on a recorded covenant or restriction, the covenant or restriction is sufficiently described in the notice filing if there is a reference to the book and page in which the covenant or restriction is recorded.

Section 5 provides the act shall take effect July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This committee substitute provides homeowners' associations with authority to institute legal actions to resolve disputes relating to common areas. This authority may assist homeowners' associations that have been otherwise unable to resolve these disputes.

Further, the committee substitute clarifies that, unless otherwise provided by the governing documents of specific state laws, an amendment to those documents may not materially or adversely alter the voting interest of a parcel or increase the percentage by which a parcel shares in the common expenses of a homeowners' association unless the record parcel owner and all record owners of liens join in the execution of the amendment. A change in quorum requirements does not, however, constitute an alteration of voting interests.

Under the committee substitute, members of a homeowners' association are to be notified by the association board of directors about the board's plans to preserve a covenant or restriction.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The committee substitute contains inconsistent references to the statement that the board of directors of a homeowners' association is required to mail or hand-deliver to the association members regarding the board's plans to preserve a covenant or restriction. Section 3 of the committee substitute refers to this document as the "Statement of Marketable *Record* Title Action," while section 4 refers to this document as the "Statement of Marketable Title Action." (Emphasis added.)

VII. Related Issues:

The Florida Rules of Civil Procedure allow mobile homeowners' associations and condominium associations to institute, maintain, settle, or appeal actions or hearings in the name of the association on behalf of all homeowners concerning matters of common interest.¹³ These associations also have the authority to maintain class action suits. In modifying the rules to allow condominium associations to maintain a class action, the Florida Supreme Court recognized the unique features of condominium development and ownership which necessitate a procedural vehicle to allow for the settlement of disputes relating to matters of common interest.¹⁴

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

¹³ *Florida Rules of Civil Procedure* 1.221 (Condominium Associations) and 1.222 (Mobile Homeowners' Associations).

¹⁴ See *In re Rule 1.220(b), Fla. Rules of Civil Procedure* (Petition to Modify), 353 So. 2d 95, 97 (Fla. 1977), citing *Avila South Condominium Assoc., Inc. v. Kappa Corp.*, 347 So. 2d 599, 608 (Fla. 1977) (invalidating the substance of statutory provisions authorizing class actions for condominium associations and adopting the substance of these statutory provisions as a rule of procedure).