

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: SB 1410

SPONSOR: Senator Fasano

SUBJECT: Homeowners' Associations

DATE: March 13, 2003

REVISED: 03/17/03 _____

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

I. Summary:

This bill allows a homeowners' association to institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members. The bill also provides authority for homeowners' associations to maintain a class action. However, this provision in the bill does not limit the statutory or common-law right of an individual or class to bring any action without participation from the association.

The bill also provides 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 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 bill states that a change in quorum requirements is not an alteration of voting interests.

This bill amends the following sections of the Florida Statutes: 720.303 and 720.306.

II. Present Situation:

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 which may become a lien against the property.¹ Specifically, ss. 720.301-.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

¹ Ss. 720.301(7), (9), Fla. Stat. (2002).

² S. 720.302(1), Fla. Stat. (2002).

and duties of the associations 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 are governed by both 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 of the association against the association itself; a member; or a director or officer of an association who willfully and knowingly fails to comply with these provisions; or a tenant, guest, or invitees 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 ch. 720, F.S., 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

III. Effect of Proposed Changes:

Section 1 of the bill 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 the following:

- 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.

³ S. 720.301(6), Fla. Stat. (2002). The term "governing documents" means the "recorded declaration of covenants for a community, and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto and [t]he articles of incorporation and bylaws of the homeowners' association, and any duly adopted amendments thereto."

⁴ S. 720.305(1), Fla. Stat. (2002)

⁵ S. 720.311, Fla. Stat. (2002).

⁶ S. 720.306(2), (6)-(7), Fla. Stat. (2002).

⁷ S. 720.306(1)(b)-(c), Fla. Stat. (2002). *See also* Palma v. Townhouses of Oriole Ass'n, Inc., 610 So. 2d 112 (Fla. 4th DCA 1992).

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

In addition, the bill provides that if an association has the authority to maintain a class action, it may be joined in an action as a representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. However, this provision does not limit the statutory or common-law right of an individual or class to bring any action without participation from the association.

Section 2 of the bill provides 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 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 bill states that a change in quorum requirements is not an alteration of voting interests.

Section 3 of the bill 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 bill provides homeowners' association with authority to institute legal actions to resolve disputes relating to common areas. This will assist homeowners' associations that have been otherwise unable to resolve these disputes.

Also, the bill clarifies that, unless otherwise provided by the governing documents, 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 constitute an alteration of voting interests.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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.⁸ 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.⁹

VIII. Amendments:

#1 by Comprehensive Planning:

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

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

⁸ Florida Rules of Civil Procedure 1.221 (Condominium Associations) and 1.222 (Mobile Homeowners' Associations).

⁹ 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).