HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 959 Residential Properties
SPONSOR(S): Skidmore
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1270; SB 1272

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill:

- Exempts certain condominium buildings from having to retrofit with alarm systems.
- Extends the current deadline for retrofitting with sprinklers in high-rise condominiums from 2014 to 2019.
- Increases lender liability payable to condominium associations and homeowners associations after foreclosure. In condominiums, the basic liability limit is increased from 6 months to 12 months. In all associations, mortgage lenders are additionally required to take all necessary action to protect and preserve the property. If the lender fails to do so, an association may take such action and collect from the lender. Lenders are also additionally liable for special assessments related to repairing damage to the common areas.
- Provides that a homeowners association may deny use of the common areas to a member who is 90 days delinquent.
- Repeals the requirement that high rise residential structures provide for emergency power for elevators and alarms.

This bill does not appear to have a fiscal impact on state or local governments. This bill may have substantial fiscal impacts on the private sector.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominium Fire Alarm Systems

Section 633.0215(2), F.S., enacted in 1998, is a part of the insurance law. The act requires the State Fire Marshal to "adopt the National Fire Pamphlet 101, current editions, by reference." Pamphlet 101 is referred to as the Life Safety Code. Chapter 2000-141, L.O.F., amended the original effective date of the act from July 1, 1999 to July 1, 2001. Subsequently, ch. 2001-186, L.O.F, amended the effective date of the act to January 1, 2002. The State Fire Marshall complied with the statute and adopted the Life Safety Code. Chapter 9.6 of the Life Safety Code requires installation of fire alarm systems in new and existing multi-family structures.

This bill adds subsection (1) to s. 633.0215, F.S., to provide that a condominium building of less than three stories in height and that is constructed with exterior corridors is exempt from the requirement to install a manual fire alarm system.

Condominium Fire Sprinkler Retrofitting

Section 633.0215(2), F.S., enacted in the 1998 session, is a part of the insurance laws. This section requires the State Fire Marshal to "adopt the National Fire Protection Association's Standard 1, Fire Prevention Code . . . [and] the Life Safety Code, Pamphlet 101, current editions, by reference." The original effective date of the requirement to adopt was moved back by ch. 2000-141, L.O.F., and was moved back again by ch. 2001-186, L.O.F., to January 1, 2002. One of the many requirements of those fire prevention codes and standards is a requirement that certain existing multi-family structures be retrofitted with fire sprinkler systems within 12 years of enactment. Thus, one effect of s. 633.0215, F.S., as it currently is in law, is to require some older condominium buildings to complete installation of fire sprinkler systems (retrofit) by January 1, 2014, unless a change is made in the standards.

The state building code has required since 1994 that a multi-family structure three stories or taller must have installed sprinkler systems when first built. Prior to 1994, some local building codes required sprinklers upon initial construction of certain multi-family structures.

Section 718.112(2)(l), F.S., provides that, notwithstanding the provisions of ch. 633, F.S., or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, a condominium association or unit owner is not obligated to retrofit the common elements or units of a

residential condominium with a fire sprinkler system or other engineered life safety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered life safety system by the affirmative vote of two-thirds of all voting interests in the affected condominium.

However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of the common areas in a high-rise building. A high-rise building is defined as a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest story that can be occupied. For purposes of this exception, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event may the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014.

There are special voting, reporting, notice and recording requirements related to votes on retrofitting, including a requirement that a prospective purchaser or lessee of a condominium unit must be notified that the association has voted to forego retrofitting. Of the 74 associations that have reported to the DBPR that they have conducted a vote to forego retrofitting with sprinklers, the vote to forego failed only once and the remaining 73 have voted to forego retrofitting.[1]

This bill provides that any condominium association may vote to extend the deadline for retrofitting the common areas of a high-rise condominium building with fire sprinklers or an engineered lifesafety system from the end of 2014 to the end of 2019. This bill also provides that a condominium building that is not a high-rise building (is lower than 75 feet in height) and that was constructed with 1 and 1/2 hour or higher fire-rated walls is not required to retrofit the inside of units with fire alarm systems or smoke-detection systems.

Condominium Assessments; Lender Liability

A condominium association is somewhat like a partnership between unit owners with a common interest in a condominium building or buildings. To operate, an association must collect regular assessments from the unit owners in order to pay for management, maintenance, insurance, and reserves for anticipated future major expenses. Under current law, an owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company insures the buyer should the closing agent not properly see to payment of assessments through closing.

Foreclosure, an involuntary sale, is different. As expected, a unit owner who stops paying the mortgage will likely also stop paying the regular assessments. Should the condominium unit be sold to a third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 718.116(1)(b), F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being responsible to the association for the lesser of 6 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the unit holders through increased regular assessments and may be passed on to the unit owners by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving condominium associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of condominium units in foreclosure which, coupled with

[1] Fire system retrofitting summary reports provided to staff by DBPR, on file with staff of the Civil Justice and Courts Policy Committee.

typical foreclosure delays now reaching approximately 18-24 months, have led to significant financial troubles in condominium associations statewide.[2]

This bill amends s. 718.116, F.S., to increase the maximum liability of a first mortgage holder. The bill:

- Increases the limit in the formula from 6 months to 12 months (the 1% limit is unchanged).
- Requires a lender, while a foreclosure case is pending, to "exercise any property preservation rights available under the mortgage."[3] If the lender does not exercise any such right, the association may perform the necessary services, charge the costs to the lender, and impose a lien for such costs.
- Requires a lender to pay all special assessments enacted during the pendency of a foreclosure action, where such special assessment is related to damage to the common areas.
- Allows the association to file a civil action for payment of these obligations, allows the association to file a lien for monies owed, and provides that the association may recover attorney's fees in any action to collect.

Homeowners Association Assessments; Lender Liability

A homeowners association is somewhat like a partnership between homeowners with a common interest in a neighborhood. To operate, an association must collect regular assessments from the homeowners in order to pay for management, maintenance, insurance, and perhaps reserves for anticipated future major expenses. Under current law, a homeowner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company insures the buyer should the closing agent not properly see to payment of assessments through closing.

[2] See, for instance: Iuspa-Abbott, *Condo Meltdown*, Daily Business Review, July 22, 2008; Bayles, *Help for Homeowners Associations*, HeraldTribune.com, October 6, 2008; Andron, *Condo Associations in Eye of Foreclosure Storm*, Miami Herald, April 21, 2008; 2008 *Florida Community Association Mortgage Foreclosure Survey*, April 16, 2008; Geffner, *Condo Foreclosures Hurt Others, Too*, MSNBC.com, August 29, 2008; Moody, *Banks Stick Unpaid Fees to Condos*, Florida Today, October 26, 2008; Owers, *Foreclosures Lead to Budget Problems for Associations*, South Florida Sun-Sentinel, February 24, 2009; *State of Distress: Florida Community Association Mortgage Foreclosures Spawn Crisis Within State's Condo and HOA Population*, February 24, 2008 (survey finding that nearly two-thirds of associations were impacted by foreclosure losses). All articles on file with committee staff.

[3] Paragraph 9 of the standard FNMA mortgage reads:

> **9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Foreclosure, an involuntary sale, is different. As expected, a homeowner who stops paying the mortgage will likely also stop paying the regular assessments. Should the home be sold to a third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 720.3085, F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being responsible to the association for the lesser of 12 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the homeowners through increased regular assessments and may be passed on to the homeowners by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving homeowners associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of homes in foreclosure which, coupled with typical foreclosure delays now reaching approximately 18-24 months, have led to financial troubles in some homeowners associations. Homeowners associations have been especially troubled by homes that have been abandoned and are awaiting foreclosure sale. Such abandoned homes often have overgrown lawns, are subject to vandalism, and tend to lead to urban blight and lowered property values in the neighborhood.

This bill amends s. 720.3085, F.S., to substantially increase the maximum liability of a first mortgage holder. The bill:

- Requires a lender, while a foreclosure case is pending, to "exercise any property preservation rights available under the mortgage."[4] If the lender does not exercise any such right, the association may perform the necessary services, charge the costs to the lender, and impose a lien for such costs.

- Requires a lender to pay all special assessments enacted during the pendency of a foreclosure action, where such special assessment is related to damage to the common areas.

- Allows the association to file a civil action for payment of these obligations, allows the association to file a lien for monies owed.

Homeowners Associations - Use of Common Areas

One of the privileges of membership in a homeowners' association is the right to use common areas and facilities. Those common areas and facilities may include clubhouses, recreational facilities, parks and playgrounds. Section 720.305(2), F.S., provides that, if allowed by the governing documents of an association, the association may suspend the right of an owner or tenant to use such facilities for a reasonable period of time.

Sections 720.308, and 720.3085, F.S., authorize a homeowners association to set and assess periodic assessments and special assessments, and to enforce payment through liens and legal action.

This bill creates s. 720.314, F.S. The bill defines "common area facilities" to include "any clubhouse, entertainment facility, exercise facility, swimming pool, tennis court, or other recreation area owned or maintained by a homeowners' association or condominium association and provided for use by dues-paying members of such association." This bill provides that a homeowners association may prohibit a member from using common area facilities if the member is 90 days or more delinquent in the payment of any fees owed to the association.

[4] See quoted Paragraph 9 of the standard FNMA mortgage, in footnote above.

The bill also provides that a condominium association may prohibit a delinquent member from using common area facilities, but the reference is in the chapter on homeowners' associations and thus may have no legal effect as to a condominium association. See s. 720.302(4), F.S.

Condominium and Cooperative Association Emergency Power Supplies

Current law at s. 553.509(2), F.S. requires, as to any residential structure 75 feet in height or greater, the owner must provide a means to supply 5 days worth of electricity to the building fire alarm systems and to at least one elevator. Independent power can be either through an owned generator or through a contract to have a generator delivered during emergencies. The requirement applies to new construction and required retrofitting of existing structures. Current law also requires significant recurring costs, either for periodic maintenance and inspection of owned generators or for standby generator contracts. This bill amends s. 553.509(2), F.S., to repeal these requirements.

B. SECTION DIRECTORY:

Section 1 amends s. 633.0215, F.S., providing an exception to the Florida Fire Prevention Code.

Section 2 amends s. 718.112, F.S., providing that certain condominiums need not install alarm systems.

Section 3 amends s. 718.116, F.S., increasing the liability of mortgage holders for past due assessments owed to a condominium association after foreclosure.

Section 4 amends s. 720.3085, F.S., increasing the liability of mortgage holders for past due assessments owed to a homeowners association after foreclosure

Section 5 creates s. 720.314, F.S., regulating use of the common areas of a homeowners association.

Section 6 amends .s 553.509, F.S., to repeal requirements for alternative elevator and alarm system power.

Section 7 provides an effective date of July 1, 2010.

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:

This bill contains several provisions that would save condominium unit owners from expenses required by current law. This bill will have a negative fiscal impact on vendors who supply the materials and

labor necessary to comply with current law. Specifically, the sections in this bill that have a direct economic impact on the private sector are:

- Section 1 repeals a current requirement for alarm systems in certain 2-story condominium buildings.
- Section 2 contains provisions extending requirements for retrofitting of condominiums with sprinklers and engineered lifesafety systems.
- Section 2 provides that certain condominiums need not install fire alarm systems.
- Section 6 of the bill repeals the requirement that a condominium association operating a high-rise building provide a power supply for at least 5 days operation of fire alarm systems and an elevator during an emergency situation (this change also applies to cooperative associations).

Sections 3 and 4 of this bill may substantially increase the liability of mortgage lenders for past due assessments related to condominium units and homeowners association parcels, and correspondingly may substantially increase the likely collection rates for condominium and homeowners associations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Sections 3 and 4 may substantially increase the liability of a mortgage lender for monies owed to associations by property owners. It is possible that such increased liability will be challenged in court. In 2008, the legislature amended laws related to the liability of a lender for past due homeowners association assessments. The Second District Court of Appeal recently ruled that a change in the law may not retroactively amend the obligations of a mortgage lender owed to a homeowners association. That court ruled that any increase in liability owed by a lender is only applicable to mortgages entered into after the effective date of the bill. The court found that increasing the liability of a mortgage lender who entered into a mortgage prior to the effective date of a law is an unconstitutional impairment of vested contractual rights. *Coral Lakes Community Association, Inc. v. Busey Bank, N.A.*, 2010 WL 567251 (Fla. 2nd DCA 2010) (citing to art. I, s. 10 of the state constitution). It appears that the changes in sections 3 and 4 of this bill may only affect collection related to condominium units in default and encumbered by a mortgage executed after the effective date of this bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions in Sections 3 and 4 that require a lender to exercise any property preservation rights available under the mortgage are potentially problematic. The phrase is not well defined, and it is not clear from reviewing the standard mortgage form what such steps are. This requirement is likely to lead to litigation to define the scope of responsibility.

Section 5 of this bill references condominium associations, but its placement in ch. 720, F.S., would make it only applicable to homeowners associations.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a