

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 807 **FINAL HOUSE FLOOR ACTION:**

SPONSOR(S): Judiciary Committee; Business &
Professional Regulation

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Subcommittee; Civil Justice
Subcommittee; Moraitis

**COMPANION
BILLS:** CS/CS/CS/SB 798

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 807 passed the House on April 25, 2014, and subsequently passed the Senate on April 29, 2014.

The bill amends the statutes relating to various forms of residential properties, including condominiums, cooperatives, homeowners' associations, and timeshares. Specifically, this bill:

- Defines the term "timeshare project," which is a timeshare property that is also a public lodging establishment, and substitutes the new term for "timeshare plan" as appropriate.
- Specifies that the statutory notice required of a homeowners' association to renew its covenants and restrictions for an additional 30 years is sufficient.
- Provides that a condominium association may access an abandoned unit for the purpose of preservation of the unit and may seek appointment of a receiver to lease the unit to offset costs.
- Broadens the information that a condominium, cooperative or homeowners' association may include in a member directory.
- Requires outgoing board members of a condominium or cooperative to relinquish possession of records and property of the association to their successors in office, and authorizes the state to enforce compliance.
- Extends condominium bulk assignee and bulk buyer provisions by one year to July 1, 2016.
- Amends cooperative law to match condominium law on financial oversight, the prohibition on office-holding if delinquent or charged with theft of association funds, and emergency powers.
- Amends homeowners' association emergency powers to parallel those of a condominium.
- Simplifies the notice requirements regarding amendments its restrictive covenants.
- Repeals the Community Association Living Study Council.
- Provides that if a termination of condominium plan fails, another attempt to terminate the condominium may not be made for at least 180 days.
- Provides that a homeowners' association board meeting must be held at a handicapped-accessible location if so requested by a handicapped person who has a right to attend the meeting.

The bill does not appear to create a fiscal impact on state or local governments.

The bill was approved by the Governor on June 13, 2014, ch. 2014-133, L.O.F., and will become effective on July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Timeshares and Public Lodging Regulation

The state Division of Hotels and Restaurants¹ regulates public lodging establishments, primarily related to health and safety issues.² A timeshare plan³ may be a "public lodging establishment"⁴ if it is rented for less than 30 days,⁵ as a "vacation rental."⁶ Timeshares and other vacation plans are more extensively regulated by the Division of Condominiums, Timeshares and Mobile Homes.⁷ Both divisions are housed in the Department of Business and Professional Regulation.

A "transient public lodging establishment" is defined in s. 509.013, F.S., as:

[A]ny unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

A "vacation rental" is defined in s. 509.242, F.S., as:

[A]ny unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment.

This bill defines the term "timeshare project" as:

[A] timeshare property, as defined in chapter 721, that is located in this state and that is also a transient public lodging establishment.

The bill amends s. 509.242, F.S., to remove "timeshare plans" from the definition of a "vacation rental" and to affirmatively exclude the newly created "timeshare projects" from regulation as a "vacation rental." In other sections, instances of the term "timeshare plan" have been replaced with the more appropriate term "timeshare project," and the term "timeshare project" has been included wherever the term "vacation plan" or "vacation rental" appears in the regulation of public lodging establishments.

Marketable Record Title Act and Homeowners Associations

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.⁸ In general, MRTA provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims. One effect of MRTA is that homeowner association covenants can lose effect unless the association timely files a renewal. A homeowners' association wishing to timely renew its covenants may only do so under the following conditions:

¹ Section 509.013(1), F.S.

² Section 509.032(1), F.S.

³ Section 721.05(39), F.S.

⁴ Section 509.013(4)(a), F.S.

⁵ Section 509.013(4)(b)4., F.S.

⁶ Section 509.242(1)(c), F.S.

⁷ See generally, ch. 721, F.S.

⁸ *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1227 (Fla. 2004).

- The board must give written notice to every parcel owner in a form set by statute;⁹
- The notice must include notice of a meeting of the board of directors including where the directors will decide whether to renew the covenants;¹⁰
- The board of directors of the association must approve the renewal by a two-thirds vote;¹¹ and
- Notice of the renewal must be recorded in the Official Records of the county.¹²

Additionally, s. 712.06(3), F.S. requires that either the clerk of the court furnish (at the association's expense) notice by certified mail to each homeowner member of the association a copy of the notice, or a copy of the notice must be published once a week for 2 consecutive weeks in the form and manner as other legal notices are published.¹³

The bill specifies in s. 712.05(1), F.S., that a homeowners' association or clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3), F.S. This change to s. 712.05(1), F.S., is intended to clarify existing law.

Condominium Associations

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which are individually owned, but have an undivided share of access to common facilities.¹⁴ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.¹⁵ A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.¹⁶ Further, it delineates condominium association bylaws, which govern the administration of the association, including, but not limited to, establishment of a quorum, voting rights, and election and removal of board members.¹⁷

Access to an Abandoned Condominium Unit

A condominium association has the right to access each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements, to any portion of a unit maintained by the association pursuant to the declaration, or as necessary to prevent damage to the common elements or to a unit. The bill amends s. 718.111(5), F.S., to add that the condominium association also has a right of access to an abandoned unit to:

- Inspect the unit and adjoining common elements;
- Make repairs to the unit or to the common elements serving the unit, as needed;
- Repair the unit if mold or deterioration is present;
- Turn on the utilities for the unit; or
- Otherwise maintain, preserve, or protect the unit and adjoining common elements.

A unit is presumed to be abandoned if the unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or no tenant appears to have resided in the unit for 2 consecutive months without prior

⁹ Section 712.06(1)(b), F.S.

¹⁰ Section 712.05(1), F.S.

¹¹ *Id.*

¹² Section 712.06(2), F.S.

¹³ Section 712.06(3)(b), F.S.

¹⁴ Section 718.103(11), F.S.

¹⁵ Section 718.104(2), F.S.

¹⁶ Section 718.104(5), F.S.

¹⁷ Section 718.112, F.S.

written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

Before entry, the association must give at least 2 days' notice of the association's intent to enter the unit, which must be mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to a unit owner who has consented to receive notice by electronic transmission.

The association may recover from the unit owner any costs incurred by the association. The association may place a lien against the unit to enforce collection of the expense.

The association may petition a court of competent jurisdiction to appoint a receiver and may lease an abandoned unit for the benefit of the association to offset the association's expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs, and reasonable attorney's fees.

Responsibility for Damage to the Condominium

A condominium association is required to maintain a property insurance policy covering loss or damage to the condominium.¹⁸ At one time, the split between association responsibility for loss and owner responsibility was set in the declaration of condominium, but that required insurance companies to review condominium documents when writing coverage and inevitably led to gaps where neither the association nor a member would have insurance for a loss, or led to unnecessary double coverage. Section 718.111(11)(f), F.S., resolves these insurance provisions by providing a clear split between association coverage and unit owner coverage. Where a covered loss to association property occurs, the association is responsible for the repair as a common expense. The bill amends s. 718.111(11)(j), F.S., to provide that where a loss occurs that is not an insurable event, the responsibility for the repair is as set forth in the declaration of condominium or the bylaws. Therefore, the split of responsibility in s. 718.111(11)(f), F.S., only covers insurable events.

Condominium Association Directory

Condominium law requires the association to keep and maintain certain records.¹⁹ In general, all records of the association are open for copying and inspection by any member of the association.²⁰ However, certain records, including names and phone numbers of unit owners, are confidential.

Some associations publish a unit owner directory for the convenience of the members. An association may publish such a directory that includes unit owners' names, unit addresses, and a phone number. A unit owner may opt out of being published in the directory. The bill provides that multiple phone numbers may be published, and provides that a unit owner may consent to having other contact information published.²¹

Association Records

The bill creates s. 718.111(12)(f), F.S., to provide that an outgoing board member or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The bill also provides that the Division of Florida Condominiums, Timeshares and Mobile Homes may enforce this

¹⁸ Section 718.111(11)(d), F.S.

¹⁹ See generally, s. 718.111(12), F.S.

²⁰ Section 718.111(12)(c), F.S.

²¹ Other contact information is a broad term that could include email address, instant message (IM) addresses, Twitter names, or any other form of communication that may exist or be invented.

requirement by imposing a civil penalty²² against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

Meetings of the Board of Directors

Current law contemplates that most meetings of the directors will be in person, but meeting through use of a teleconference is allowed provided a speakerphone is used. The bill amends s. 718.112(2)(b)5., F.S., to also allow real-time videoconferencing, or similar real-time electronic or video communication, in lieu of physical appearance at the meeting. Directors who appear electronically count toward establishing a quorum and may vote. The bill also amends s. 718.112(2)(c), F.S., to allow board members to communicate via e-mail, although e-mail voting is not allowed.

The bill amends s. 718.112, F.S., to clarify the language to provide that if 20 percent of the voting interests within the condominium association petition the board to address an item of business that the board needs to put such item on its agenda for its next regular or special board meeting within 60 days, but that such meeting does not need to occur within 60 days.

Assessments and Liability

Current law provides that a condominium unit owner is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due until the transfer of title.²³ The bill amends s. 718.116(1)(a), F.S., to provide that the term “previous owner” does not include an association that acquires title to a property through foreclosure or deed in lieu of foreclosure. Furthermore, the bill provides that a present owner’s liability does not include any assessments that accrued after the association acquired title. This appears to be a restatement of current practice and does not appear to be a substantive change to the law.

Bulk Assignee and Bulk Buyer Provisions

Bulk assignees and bulk buyers are real estate investors who buy more than seven condominium units from a developer.²⁴ Regular condominium law requires turnover of association control to the owners when a developer has sold a percentage of the units, but the requirement of an early turnover discourages investors from buying distressed units. To encourage investors to rehabilitate financially troubled condominiums, the bulk assignee and bulk buyer provisions in ss. 718.701-.708, F.S., delay the turnover requirement and provide other legal protections to bulk assignees and bulk buyers. These protections are currently set to expire by a requirement that the bulk transfer occur no later than July 1, 2015. The bill amends s. 718.707, F.S., to extend the acquisition deadline to July 1, 2016.

Termination of Condominium

Current law provides for voluntary termination of condominium. In order to terminate a condominium, the plan of termination must be executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan.²⁵ A copy of the proposed plan must be given to all unit owners in the same manner as for the notice of an annual meeting,²⁶ at least 14 days prior to the meeting at which the plan will be voted on. Alternatively, the plan may be circulated prior to or simultaneously with the distribution of the solicitation seeking execution of the plan. A unit owner

²² Section 718.501(1)(d)6., F.S., provides for a civil penalty of up to \$5,000. The section also provides that a person who complies with an order of the division within 10 days may not be penalized.

²³ Section 718.116(1)(a), F.S.

²⁴ Section 718.703, F.S.

²⁵ According to s. 718.117(3), F.S., a voluntary termination of a plan of condominium must be approved by at least 80% of the voting interests if no more than 10% of the voting interest have rejected the plan by either a negative vote or by written objections. The declaration of condominium may provide for a lower percentage threshold.

²⁶ Notice must be provided in accordance with s. 718.112(2)(d)4.a., F.S.

may execute the plan or provide written consent in the manner of a deed. The plan of termination must be recorded in the public records of the county in which the condominium is located.²⁷

The bill amends s. 718.117(9), F.S., to provide that if a plan of termination fails to receive approval, a new attempt to terminate the condominium may not be initiated sooner than 180 days after the date that the failed plan was first proposed.

Community Association Living Study Council

The Community Association Living Study Council (Council) was created in 2004 as the Advisory Council on Condominiums²⁸ to receive public input on issues relating to condominium living and to recommend changes to condominium laws. The Council was also directed to review, evaluate, and advise the Division of Florida Condominiums, Timeshares, and Mobile Homes about revisions and adoption of rules and to recommend improvements to the Division's education programs. In 2008, the Council's title was changed and its mandate was expanded to include cooperative and homeowners' associations.²⁹ While its mandate expanded, its presence was significantly reduced, as the 2008 bill directed to Council to only meet every five years.

On March 7, 2014, the Council voted to recommend that the Legislature repeal the Council's enabling statute.³⁰ This bill repeals s. 718.50151, F.S., to eliminate the Community Association Living Study Council.³¹

Cooperative Associations

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned of record by the cooperative association,³² and individual units are leased to the residents, who own shares in the cooperative association.³³ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives are, in practice, operated in a fashion very similar to condominiums, and the laws regulating cooperatives are in many instances nearly identical.

The bill changes cooperative law in the same manner that condominium law is being changed by the bill (see description above) in the following aspects:

- Owner records and directories; and,
- The requirement that an outgoing board or committee member relinquish official records and property of the association.

The bill amends cooperative law to match previous changes to condominium law in the following aspects:

- The bill increases the cooperative association audit deadlines and thresholds at s. 719.104(4)(a), F.S., to match those at s. 718.111(13), F.S.
- The bill amends s. 719.106(1)(a), F.S., by adding a prohibition on holding office in the cooperative upon delinquency in payment of monies owned to the association, or upon a felony theft or embezzlement charge by information or indictment involving association funds, to match the same requirement at s. 718.112(2)(o), F.S.

²⁷ Section 718.117(9), F.S.

²⁸ Chapter 2004-345, L.O.F.

²⁹ Chapter 2008-28, L.O.F.

³⁰ See Community Association Living Study Council Meeting minutes, March 7, 2014 (on file with Judiciary Committee staff).

³¹ The Department of Business and Professional Regulation has reported to Judiciary Committee staff that there will be no adverse effects to the Division with the repeal of this section of the statute.

³² Section 719.103(2), F.S.

³³ Section 719.103(26), F.S.

- The bill creates s. 719.128, F.S., to give a cooperative association the same emergency powers as a condominium association under s. 718.1265, F.S.

Homeowners' Associations

A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute.³⁴ There is no state agency directly regulating homeowners' associations.

The bill changes homeowners' association law in the same manner that condominium law is being changed by this bill (see description above) with respect to owner records and directories.

The bill changes homeowners' association law to match previous changes to condominium law by creating s. 720.316, F.S., to give a homeowners' association the emergency powers similar to those granted a condominium association under s. 718.1265, F.S. However, where the emergency powers of a condominium association (current law) or a cooperative association (created by the bill) include the right to enter individual units, this bill does not grant to a homeowners' association the right to entry into individual homes.

Amendment to Governing Documents of a Homeowners Association.

A homeowners' association may amend its governing documents. The process for amendment and the vote required is generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. A homeowners' association must furnish each member with a copy of an amendment within 30 days of recording.³⁵

The bill provides that, in lieu of furnishing all members with a copy of the amendment, and if a draft copy was furnished to the members prior to adoption, the association may provide notice that the amendment was adopted. The notice must refer to the local recording information and must offer to furnish a copy on request and without charge.

Board Meetings

Current law provides that, unless the board is discussing proposed or pending litigation or some other matter that would qualify for attorney-client privilege, all board meetings must be open to all members.³⁶ The bill amends s. 720.303(2)(a), F.S., to provide that a meeting of the board must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

³⁴ Section 720.301(9), F.S.

³⁵ Section 720.306(1)(b), F.S.

³⁶ Section 720.303 (2)(a), F.S.

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.