

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 996

INTRODUCER: Senator Garcia

SUBJECT: Community Associations

DATE: February 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

I. Summary:

SB 996 revises current law to provide that, when a condominium or cooperative association has filed a single joint petition on behalf of the unit owners to challenge a tax assessment issued by the county property appraiser, an association may continue to represent and defend the unit owners through any related subsequent proceeding in any tribunal or appeal. The association must provide unit owners with notice of its intent to respond to a complaint, and advise the unit owners that they may opt out of being represented by the association in the appeal.

Current law permits the condominium and cooperative associations to petition, on behalf of the unit owners, the value adjustment board. Current law permits associations to challenge the initial property valuation for a tax assessment by petitioning the value adjustment board (VAB), and also permits associations to appeal the decision of the value adjustment board in circuit court. However, an association may not defend an appeal in circuit court filed by the property appraiser when the association prevails in its petition to the VAB.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Condominium Associations

The Condominium Act “give[s] statutory recognition to the condominium form of ownership of real property and establish[es] procedures for the creation, sale and operation of condominiums.”¹ A condominium is a form of ownership of real property created pursuant to

¹ *Citizen Property Insurance Corp. v. River Manor Condominium Assoc., Inc.*, 125 So.3d 846, 850 (Fla. 4th DCA 2013) (citation omitted).

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.²

A condominium association, which is a Florida corporation for profit or a Florida corporation not for profit,³ “manages and operates the condominium community, maintains the common elements, and provides services in furtherance of its duties to the members. Each purchaser, by accepting title to his or her unit, automatically becomes an association member, and is bound by the association rules and regulations.”⁴

“The board of directors, initially appointed by the developer and subsequently elected by the unit owners, is responsible for managing the affairs of the association. The board may appoint committees to assist with the various duties of the association.”⁵ “It is the board’s duty and responsibility to determine the association’s needs, limited by the association’s fiscal resources. An association may be self-managed or hire professional management.”⁶

Cooperative Associations

A condominium is a “form of ownership of real property created under ch. 718, F.S.”⁷ Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements and members of the condominium association.⁸ For unit owners, membership in the association is an unalienable right and required condition of unit ownership.⁹ A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.¹⁰ A declaration is similar to a constitution in that it:

[S]trictly 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.¹¹

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a

² Section 718.103(11), F.S. “Common elements” are the portions of the condominium property not included in the units. Section 718.103(8), F.S. “The structure of the building including the roof, walls, conduit and hallways, and recreation facilities are examples of items that are usually part of the common elements. Common elements are legally attached to each unit and are transferred with the unit when it is sold.” *Condominium Living in Florida* (Revised Jan. 2018), Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, available at <http://www.myfloridalicense.com/dbpr/lsc/documents/CondominiumLiving.pdf> (last visited on March 18, 2019). This document is further cited in this analysis as “*Condominium Living in Florida*.”

³ Section 718.111(1)(a), F.S.

⁴ *Condominium Living in Florida*, *supra*. note 2. Owners of units are shareholders or association members. Section 718.111(1)(a), F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Section 718.103(11), F.S.

⁸ *See s.* 718.103, F.S.

⁹ *Id.*

¹⁰ Section 718.104(2), F.S.

¹¹ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

Florida not-for-profit corporation.¹² Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a “board of administration.”¹³ The board of administrators comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.¹⁴ In litigation, an association's board of directors is in charge of directing attorney actions.¹⁵

Homeowners’ Associations in Mobile Home Parks

Chapter 723, F.S., relates to mobile home park lot tenancies. In these communities, the homeowner does not own the real estate upon which the mobile home is located; the homeowner leases the real property (mobile home lot) from the mobile home park owner. Homeowners in these communities may form a homeowners association.¹⁶

The mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or increases of either, to the mobile home owner if such costs are not otherwise being collected in the remainder of the lot rental amount and the passing on of the costs was disclosed prior to tenancy.¹⁷

Tax Assessments

Condominium and cooperative unit owners are assessed yearly ad valorem¹⁸ taxes by the county property appraiser.¹⁹ For condominium and cooperative parcels, ad valorem taxes are assessed on the parcels and not upon the condominium or cooperative property as a whole, and the common elements or area are divided and levied proportionally among individual parcel owners.²⁰

Current law permits condominium, cooperative, and homeowners’ associations defined in s. 723.075, F.S., (homeowners’ associations) to file a single joint petition to the value adjustment board (“VAB”) contesting the tax assessment of all units within the community.²¹ The condominium, cooperative, or homeowners’ associations must provide the *unit owner* notice of its petition to the VAB and “provide at least 20 days for a *unit owner* to elect, in writing that his

¹² Section 718.303(3), F.S.

¹³ Section 718.103(4), F.S.

¹⁴ Section 718.103(2), F.S.

¹⁵ Section 718.103(30), F.S.

¹⁶ See ss. 723.075 through 723.0791, F.S.

¹⁷ Section 723.031(5)(c), F.S.

¹⁸ Section 192.001(1), F.S., defines the term “ad valorem tax” to mean a tax based upon the assessed value of property.

¹⁹ Section 194.011, F.S.

²⁰ Sections 718.120(1) and 719.114, F.S., F.S.

²¹ Section 194.011(3)(e), F.S.

or her unit not be included in the petition.”²² Although the homeowners’ associations are entitled to petition the VAB, current law references only “unit owners” in the context of the notice and opt-out requirements for the petition to the VAB. There are no “unit owners” in a homeowners’ association.

A decision by the VAB may only be appealed to the circuit court.²³ Current law allows a condominium, cooperative, or homeowners’ association to appeal, as a plaintiff, the VAB’s decision.²⁴

While current law is clear that an association is authorized to act on behalf of all unit owners when filing a petition to the VAB and when initiating an appeal of the VAB’s decision in circuit court, it is unclear whether the association may defend, on behalf of unit owners, an appeal of the VAB’s decision by the property appraiser.

In *Central Carillon Beach Condominium v. Garcia*, the Florida Third District Court of Appeals (Third DCA) reviewed this issue in a case of first impression.²⁵ Petitioners were two condominium associations who had represented their unit owners in a tax assessment challenge before a VAB. Respondent was the property appraiser for Miami-Dade County (appraiser).²⁶

When the associations initially challenged their tax assessment, the VAB substantially lowered their assessed property values.²⁷ As a result, the appraiser challenged the decision in an appeal to the Eleventh Judicial Circuit (Miami-Dade), and named the individual unit owners, instead of each association, as defendants.²⁸ In response, the associations submitted a motion to dismiss the appeal and a motion for certification of the unit owners as a defense class. Both motions were denied by the circuit court, and the associations appealed the denial of the motion to the Third DCA.²⁹

In response, the appraiser argued that defense class certification should be denied, and the appeal should name individual unit owners because the statutes governing tax assessment challenge procedures require that individual unit owners be named on appeal.³⁰

Section 194.181(2), F.S., provides that in any case brought by the taxpayer or association contesting the assessment of any property, the county property appraiser shall be the party defendant. If the property appraiser appeals a decision of the VAB under s. 194.036(1)(a) or (b), F.S.,³¹ the taxpayer is the party defendant. The term “taxpayer” means the person or other legal

²² *Id.*

²³ Section 194.171(1), F.S.

²⁴ See ss. 194.181(1) and (2), F.S.

²⁵ *Central Carillon Beach Condominium Association, Inc., et al., v. Garcia, et al., et al.*, 245 So. 3d 869 (Fla. 3d DCA 2018).

²⁶ *Id.* at 869.

²⁷ *Id.* at 870.

²⁸ *Id.* at 871.

²⁹ *Id.* at 869.

³⁰ *Id.* at 871.

³¹ This section providing grounds for an appeal of a VAB decision by the property appraiser.

entity in whose name property is assessed, including an agent of a timeshare period titleholder.³² In *Central Carillon*, the individual unit owners were assessed the taxes, not the associations.³³

The associations argued that this law conflicts with condominium association law which generally allows associations to represent unit owners through their rights of collective representation.³⁴

Section 718.111(3), F.S., permits a condominium association to appeal actions or hearings in its name on behalf of all unit owners “concerning matters of common interest to most or all unit owners,” including “protesting ad valorem taxes on commonly used facilities and on units.”³⁵ The association may also defend actions in eminent domain.³⁶

The Third DCA found that the associations’ argument was unsupported, stating that the s. 718.111(3), F.S., only addresses ad valorem taxes in one phrase: “protesting ad valorem taxes on commonly used facilities and on units.” The associations protested the ad valorem taxes on behalf of all units, but the lawsuits brought by the appraiser against the unit owners are not “protests.” Rather, they are judicial review proceedings in which the unit owners are defendants. The specific cases in which an association may defend on behalf of all unit owners are “actions in eminent domain.”³⁷

The associations argued that because they could bring a class action, if they appealed a decision of the VAB, they “may be joined in an action as a representative of that class with reference to litigation...” However, the court rejected the argument, because under s. 718.111(3), F.S., in an appraiser’s appeal of a VAB’s decision, “the taxpayer shall be the party defendant.”³⁸

III. Effect of Proposed Changes:

Value Adjustment Board Petitions

The bill amends s. 194.011(3)(e), to provide that, if a condominium, cooperative, or homeowners’ association has filed a single joint petition with the VAB to challenge a tax assessment, the association’s notice to the unit or parcel owners must include a statement that by not opting out of the petition, the unit or parcel owner agrees that the association will represent the unit or parcel owner in any related proceedings, without the unit or parcel owners being named or joined as parties.

The notice of the association’s single joint petition must be hand delivered or sent by certified mail, return receipt requested, except that such notice may be electronically transmitted to a unit

³² Section 192.001(13), F.S.

³³ *Central Carillon*, *supra* note 25, at 871.

³⁴ *Id.* at 871, 872.

³⁵ Chapter 719, F.S., relating to cooperative associations, does not provide a comparable provision. However, as a corporation, a cooperative association has the right to sue and be sued, complain, and defend in its corporate name. *See* s. 607.0302(1), F.S., relating to the general powers of corporations; and s. 119.104(10), F.S., providing that cooperative associations have the powers and duties under part I of ch. 607, F.S., and ch. 617, F.S., as applicable

³⁶ Section 718.111(3), F.S.

³⁷ *Central Carillon*, *supra* note 22, at 872.

³⁸ *Id.* at 872.

or parcel owner who has expressly consented in writing to receiving such notices by electronic transmission.

Additionally, if the association is a condominium association or cooperative association, the notice must also be posted conspicuously on the condominium or cooperative property in the same manner as notices of board meetings under ss. 718.112(2) and 719.106(1), F.S.

The bill also reduces from 20 days to 14 days the time an association must give unit or parcel owners to opt out of the association's petition.

The bill provides that a condominium and cooperative associations have the right to seek judicial review or appeal of a decision of the single joint petition and may continue to represent the unit or parcel owners throughout any related proceedings, including defending an appeal by the property appraiser. Under the bill, a property appraiser is not required to name individual unit or parcel owners as defendants in its appeal of the VAB decision.

The bill also amends s. 194.011(3)(e), F.S., to include parcel owners. Current law only references unit owners.

The bill provides that this provision is intended to clarify existing law and applies to cases pending on July 1, 2021.

Judicial Appeals

The bill amends s. 194.181(2), F.S., to provide that, in any case brought by the property appraiser concerning a VAB decision on a single joint petition filed by a condominium or cooperative association, the association is the only required party defendant. The individual unit or parcel owners are not required to be named as parties.

The bill also amends s. 194.181(2), F.S., to require condominium and cooperative associations to provide unit or parcel owners a notice of the property appraiser's complaint. The notice must advise the parcel or unit owners that they may elect to:

- Retain their own counsel to defend the appeal for their units or parcels;
- Choose not to defend the appeal; or
- Be represented by the association.

The notice of the property appraiser's complaint must be hand delivered or sent by certified mail, return receipt requested, except that such notice may be electronically transmitted to a unit or parcel owner who has expressly consented in writing to receiving such notices by electronic transmission.

The notice must be mailed, delivered, or electronically transmitted to unit owners and posted conspicuously on the condominium or cooperative property in the same manner for notice of board meetings. An association must give unit or parcel owners 14 days to opt out of the association's representation. Under the bill, any unit owner who does not respond to the association's notice will be represented in the response or answer filed by the association.

The bill requires the tax collector to accept payment of the estimated amount in controversy, as determined by the tax collector, as to a specific unit or parcel. Upon the payment, the unit or parcel would be released from any *lis pendens*³⁹ and the unit or parcel owner may elect to remain in or be dismissed from the action.

Condominium Association Powers

The bill amends s. 718.111(3), F.S., to authorize condominium associations to defend actions pertaining to ad valorem taxation of commonly used facilities or units.

The bill creates s. 718.111(3)(d), F.S., to authorize a condominium association to, in its own name or on behalf of some or all unit owners, institute, file, protest, or maintain any administrative challenge, lawsuit, appeal, or other challenge to ad valorem taxes assessed on units, commonly used facilities, or common elements, including any subsequent proceeding, lawsuit, appeal, or other challenge brought by the property appraiser related to units that were the subject of a joint petition. It also provides that the association has the right to represent the interest of the unit owners and the unit owners are not necessary or indispensable parties to the action.

The bill also amends s. 718.111(3)(d), F.S., to provide that this paragraph is intended to clarify existing law and applies to cases pending on July 1, 2021.

The bill does not provide a comparable provision for cooperative or homeowners' associations.

Effective Date

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

³⁹ “*Lis pendens*” means a pending lawsuit or a recorded notice in the chain of title that the property is the subject of a matter on litigation. *See* BLACK’S LAW DICTIONARY (11th ed. 2019).

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 194.011, 194.181, and 718.111.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.